COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

The Parties to this Agreement, resolving to :

REAFFIRM the matters embodied in the preamble to the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016 (hereinafter referred to as "the TPP");

REALISE expeditiously the benefits of the TPP through this Agreement and their strategic and economic significance;

CONTRIBUTE to maintaining open markets, increasing world trade, and creating new economic opportunities for people of all incomes and economic backgrounds;

PROMOTE further regional economic integration and cooperation between them;

ENHANCE opportunities for the acceleration of regional trade liberalisation and investment;

REAFFIRM the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest; and

WELCOME the accession of other States or separate customs territories to this Agreement,

HAVE AGREED as follows :

Article 1. Incorporation of the Trans-pacific Partnership Agreement

1. The Parties hereby agree that, under the terms of this Agreement, the provisions of the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016 ("the TPP") are incorporated, by reference, into and made part of this Agreement mutatis mutandis, except for Article 30.4 (Accession), Article 30.5 (Entry into Force), Article 30.6 (Withdrawal) and Article 30.8 (Authentic Texts).(1)

2. For the purposes of this Agreement, references to the date of signature in the TPP shall mean the date of signature of this Agreement.

3. In the event of any inconsistency between this Agreement and the TPP, when the latter is in force, this Agreement shall prevail to the extent of the inconsistency.

(1) For greater certainty, nothing in this Agreement shall provide any rights to any non-Party to this Agreement.

Article 2. Suspension of the Application of Certain Provisions

Upon the date of entry into force of this Agreement, the Parties shall suspend the application of the provisions set out in the Annex to this Agreement, until the Parties agree to end suspension of one or more of these provisions. (2)

(2) For greater certainty, any agreement by the Parties to end a suspension shall only apply to a Party upon the completion of that Party's applicable legal procedures.

Article 3. Entry Into Force

1. This Agreement shall enter into force 60 days after the date on which at least six or at least 50 per cent of the number of

signatories to this Agreement, whichever is smaller, have notified the Depositary in writing of the completion of their applicable legal procedures.

2. For any signatory to this Agreement for which this Agreement has not entered into force under paragraph 1, this Agreement shall enter into force 60 days after the date on which that signatory has notified the Depositary in writing of the completion of its applicable legal procedures.

Article 4. Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the overall contact points designated under Article 27.5 (Contact Points) of the TPP.

2. A withdrawal shall take effect six months after a Party provides written notice to the Depositary under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

Article 5. Accession

After the date of entry into force of this Agreement, any State or separate customs territory may accede to this Agreement, subject to such terms and conditions as may be agreed between the Parties and that State or separate customs territory.

Article 6. Review of the Comprehensive and Progressive Agreement for Trans-pacific Partnership

Further to Article 27.2 (Functions of the Commission) of the TPP, if the entry into force of the TPP is imminent or if the TPP is unlikely to enter into force, the Parties shall, on request of a Party, review the operation of this Agreement so as to consider any amendment to this Agreement and any related matters.

Article 7. Authentic Texts

The English, Spanish and French texts of this Agreement are equally authentic. In the event of any divergence between those texts, the English text shall prevail.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Santiago the eighth day of March, two thousand and eighteen, in the English, French and Spanish languages.

Annex (3)

(3) To assist with the understanding of this Annex, the Parties have used a colon to indicate the specific portion(s) of a provision that has been suspended.

1. Chapter 5 (Customs Administration and Trade Facilitation) Article 5.7 (Express Shipments) – paragraph 1 – subparagraph (f): second sentence

2. Chapter 9 (Investment)

(a) Article 9.1 (Definitions):

(i) definition of investment agreement including footnotes 5 through 9;

(ii) definition of investment authorisation including footnotes 10 and 11;

(b) Article 9.19 (Submission of a Claim to Arbitration)

(i) paragraph 1:

(A) subparagraph (a)(i)(B) including footnote 31;

(B) subparagraph (a)(i)(C);

(C) subparagraph (b)(i)(B);

(D) subparagraph (b)(i)(C);

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

(ii) paragraph 2: all of this paragraph including footnote 32;

(iii) paragraph 3 – subparagraph (b): the phrase "investment authorisation or investment agreement";

(c) Article 9.22 (Selection of Arbitrators): paragraph 5;

(d) Article 9.25 (Governing Law): paragraph 2 including footnote 35;

(e) Annex 9-L (Investment Agreements): all of this Annex

3. Chapter 10 (Cross-Border Trade in Services) Annex 10-B (Express Delivery Services):

(a) paragraph 5 including footnote 13;

(b) paragraph 6 including footnote 14

4. Chapter 11 (Financial Services)

(a) Article 11.2 (Scope) – paragraph 2 – subparagraph (b): the phrase "Article 9.6 (Minimum Standard of Treatment)" including footnote 3;

(b) Annex 11-E: all of this Annex

5. Chapter 13 (Telecommunications)

Article 13.21 (Resolution of Telecommunications Disputes) – paragraph 1: subparagraph (d) including the heading "Reconsideration" and footnote 22

6. Chapter 15 (Government Procurement)

(a) Article 15.8 (Conditions for Participation): paragraph 5 including footnote 1;

(b) Article 15.24 (Further Negotiations) – paragraph 2: the phrase "No later than three years after the date of entry into force of this Agreement" (4)

(4) The Parties agree that negotiations referred to in paragraph 2 of Article 15.24 (Further Negotiations) shall commence no earlier than five years after entry into force of this Agreement, unless the Parties agree otherwise. Such negotiations shall commence at the request of a Party.

7. Chapter 18 (Intellectual Property)

(a) Article 18.8 (National Treatment): the last two sentences of footnote 4;

(b) Article 18.37 (Patentable Subject Matter)

(i) paragraph 2: all of this paragraph;

(ii) paragraph 4: the last sentence;

(c) Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays): all of this Article including footnotes 36 through 39;

(d) Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment): all of this Article including footnotes 45 through 48;

(e) Article 18.50 (Protection of Undisclosed Test or Other Data): all of this Article including footnotes 50 through 57;

(f) Article 18.51 (Biologics): all of this Article including footnotes 58 through 60;

(g) Article 18.63 (Term of Protection for Copyright and Related Rights): all of this Article including footnotes 74 through 77;

(h) Article 18.68 (Technological Protection Measures (TPMs)): all of this Article including footnotes 82 through 95;

(i) Article 18.69 (Rights Management Information (RMI)): all of this Article including footnotes 96 through 99;

(j) Article 18.79 (Protection of Encrypted Program-Carrying Satellite and Cable Signals): all of this Article including footnotes 139 through 146;

(k) Article 18.82 (Legal Remedies and Safe Harbours): all of this Article including footnotes 149 through 159;

(l) Annex 18-E (Annex to Section J): all of this Annex;

(m) Annex 18-F (Annex to Section J): all of this Annex

8. Chapter 20 (Environment)

Article 20.17 (Conservation and Trade) – paragraph 5: the phrase "or another applicable law" including footnote 26

9. Chapter 26 (Transparency and Anti-Corruption)

Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices): Article 3 (Procedural Fairness) including footnotes 11 through 16

10. Annex II

Schedule of Brunei Darussalam – 14 – paragraph 3: the phrase "after the signature of this Agreement" (5)

(5) As a result of the suspension, the Parties agree that the phrase "after the signature of this Agreement" shall refer to after the entry into force of this Agreement for Brunei Darussalam. Therefore, the Parties understand that the reference to "Any non-conforming measure adopted or maintained" in this paragraph shall mean any non-conforming measure adopted or maintained after the date of entry into force of this Agreement for Brunei Darussalam.

11. Annex IV

Schedule of Malaysia – 3 and 4 – Scope of Non-Conforming Activities (hereinafter referred to as the "Scope"): all references to the phrase "after signature of this Agreement" (6)

(6) As a result of the suspension, the Parties agree that the phrase "after signature of this Agreement" shall refer to after the entry into force of this Agreement for Malaysia. Therefore, the Parties understand that the references in the Scope to: (a) "the first year" shall be the first one year period; (b) "the second and third years" shall be the second and third one year periods; (c) "the fourth year" shall be the fourth one year period; (d) "the fifth year" shall be the fifth one year period; and (e) "the sixth year" shall be the sixth one year period, counted from the date of entry into force of this Agreement for Malaysia.

The Parties to this Agreement, resolving to:

ESTABLISH a comprehensive regional agreement that promotes economic integration to liberalise trade and investment, bring economic growth and social benefits, create new opportunities for workers and businesses, contribute to raising living standards, benefit consumers, reduce poverty and promote sustainable growth;

STRENGTHEN the bonds of friendship and cooperation between them and their peoples;

BUILD on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

RECOGNISE the differences in their levels of development and diversity of economies;

STRENGTHEN the competitiveness of their businesses in global markets and enhance the competitiveness of their economies by promoting opportunities for businesses, including promoting the development and strengthening of regional supply chains;

SUPPORT the growth and development of micro, small and medium- sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

ESTABLISH a predictable legal and commercial framework for trade and investment through mutually advantageous rules;

FACILITATE regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

RECOGNISE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;

RECOGNISE further their inherent right to adopt, maintain or modify health care systems;

AFFIRM that state-owned enterprises can play a legitimate role in the diverse economies of the Parties, while recognising that the provision of unfair advantages to state-owned enterprises undermines fair and open trade and investment, and resolve to establish rules for state-owned enterprises that promote a level playing field with privately owned businesses, transparency and sound business practices;

PROMOTE high levels of environmental protection, including through effective enforcement of environmental laws, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;

PROTECT and enforce labour rights, improve working conditions and living standards, strengthen cooperation and the Parties' capacity on labour issues;

PROMOTE transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and investment;

RECOGNISE the important work that their relevant authorities are doing to strengthen macroeconomic cooperation, including on exchange rate issues, in appropriate fora;

RECOGNISE the importance of cultural identity and diversity among and within the Parties, and that trade and investment can expand opportunities to enrich cultural identity and diversity at home and abroad;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader regional and international cooperation;

ESTABLISH an Agreement to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time; and

EXPAND their partnership by encouraging the accession of other States or separate customs territories in order to further enhance regional economic integration and create the foundation of a Free Trade Area of the Asia Pacific,

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A. Initial Provisions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Relation to other Agreements

1. Recognising the Parties'intention for this Agreement to coexist with their existing international agreements, each Party affirms:

(a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing

rights and obligations with respect to the other Parties; and

(b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 28 (Dispute Settlement). (1)

(1) For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

Section B. General Definitions

Article 1.3. General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

AD Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, sct out in Annex 1A to the WTO Agreement;

Agreement means the Trans-Pacific Partnership Agreement; APEC means Asia-Pacific Economic Cooperation;

central level of government has for cach Party the meaning set out in Annex 1-A (Party-Specific Definitions);

Commission means the Trans-Pacific Partnership Commission established under Article 27.1 (Establishment of the Trans-Pacific Partnership Commission),

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;

customs administration means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and, where applicable, policies, and has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in

connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article I:2 of GATT 1994;

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

(c) antidumping or countervailing duty; Customs Valuation Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, sct out in Annex 1A to the WTO Agreement,

days means calendar days;

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

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

GATS means the General Agreement on Trade in Services, sct out in Annex 1B to the WTO Agreement,

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

goods means any merchandise, product, article or material;

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

and includes originating goods of a Party;

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

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

heading means the first four digits in the tariff classification number under the Harmonized System;

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

national means a "natural person who has the nationality of a Party" according to Annex 1-A (Party-Specific Definitions) or a permanent resident of a Party;

originating means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures) or Chapter 4 (Textile and Apparel Goods);

Party means any State or separate customs territory for which this Agreement is in force;

person means a natural person or an enterprise;

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

preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to each Party's Tariff Schedule set out in Annex 2-D (Tariff Commitments),

recovered material means a material in the form of one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

regional level of government has for each Party the meaning set out in Annex 1- A (Party-Specific Definitions),

Safeguards Agreement means the Agreement on Safeguards, sct out in Annex 1A to the WTO Agreement,

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

SCM Agreement means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;

SME means a small and medium-sized enterprise, including a micro-sized enterprise;

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

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

subheading means the first six digits in the tariff classification number under the Harmonized System;

territory has for cach Party the meaning set out at Annex 1-A (Party-Specific Definitions);

textile or apparel good means a good listed in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin);

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement; (2)

WTO means the World Trade Organization; and

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

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

ANNEX 1-A. PARTY-SPECIFIC DEFINITIONS

Further to Article 1.3 (General Definitions), for the purposes of this Agreement, unless provided elsewhere in this Agreement:

central level of government means:

(a) for Australia, the Commonwealth Government;

(b) for Brunei Darussalam, the national level of government;

(c) for Canada, the Government of Canada;

(d) for Chile, the national level of government;

(e) for Japan, the Government of Japan,

(f) for Malaysia, the federal level of government;

(g) for Mexico, the federal level of government;

(h) for New Zealand, the national level of government;

(i) for Peru, the national level of government;

(j) for Singapore, the national level of government;

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

(l) for Viet Nam, the national level of government;

customs administration means:

(a) for Australia, the Department of Immigration and Border Protection;

(b) for Brunei Darussalam, the Royal Customs and Excise Department;

(c) for Canada, the Canada Border Services Agency;

(d) for Chile, the National Customs Service of Chile (Servicio Nacional de Aduanas);

(e) for Japan, the Ministry of Finance;

(f) for Malaysia, the Royal Malaysian Customs Department,

(g) for Mexico, the Ministry of Finance and Public Credit (Secretaria de Hacienda y Crédito Público);

(h) for New Zealand, the New Zealand Customs Service;

(i) for Peru, the National Superintendence of Customs and Tax Administration (Superintendencia Nacional de Aduanas y de Administracion Tributaria),

(j) for Singapore, the Singapore Customs,

(k) for the United States, U.S. Customs and Border Protection; and, with respect to provisions that concern enforcement, information sharing and investigations, this also means U.S. Immigration and Customs Enforcement, as applicable; and

(l) for Viet Nam, the General Department of Viet Nam Customs, or any successor of such customs administration;

natural person who has the nationality of a Party means:

(a) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007, as amended from time to time, or any successor legislation;

(b) for Brunei Darussalam, a subject of His Majesty the Sultan and Yang Di-Pertuan in accordance with the laws of Brunei Darussalam;

(c) for Canada, a natural person who is a citizen of Canada under Canadian legislation;

(d) for Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile (Constitución Política de la Republica de Chile),

(e) for Japan, a natural person who has the nationality of Japan under its laws;

(f) for Malaysia, a natural person who is a citizen of Malaysia in accordance with its laws and regulations;

(g) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws;

(h) for New Zealand, a natural person who is a citizen as defined in the Citizenship Act 1977, as amended from time to time, or any successor legislation;

(i) for Peru, a natural person who has the nationality of Peru by birth, naturalisation or option in accordance with the Political Constitution of Peru (Constitución Política del Perú) and other relevant domestic legislation;

(j) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws;

(k) for the United States, a "national of the United States" as defined in the Immigration and Nationality Act; and

(l) for Viet Nam, a natural person who is a citizen of Viet Nam within the meaning of its Constitution and its domestic laws;

regional level of government means:

(a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory;

(b) for Brunei Darussalam, the term regional level of government is not applicable;

(c) for Canada, a provincial or territorial government;

(d) for Chile, as a unitary Republic, the term regional level of government is not applicable;

(e) for Japan, the term regional level of government is not applicable;

(f) for Malaysia, a State of the Federation of Malaysia in accordance with the Federal Constitution of Malaysia;

(g) for Mexico, a state of the United Mexican States;

(h) for New Zealand, the term regional level of government is not applicable;

(i) for Peru, regional government in accordance with the Political Constitution of Peru (Constitución Política del Perú) and other applicable legislation;

(j) for Singapore, the term regional level of government is not applicable;

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

(l) for Viet Nam, the term regional level of government is not applicable; and

territory means:

(a) for Australia, the territory of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

(b) for Brunei Darussalam, the land territory, internal waters and territorial sea of Brunei Darussalam, extending to the air space above its territorial sea, as well as to its sea-bed and subsoil over which it exercises sovereignty, and the maritime area beyond its territorial sea, which has been or may hereafter be designated under the laws of Brunei Darussalam in accordance with international law as an area over which Brunei Darussalam exercises sovereign rights and jurisdiction with respect to the seabed, the subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

(c) for Canada:

(i) the land territory, air space, internal waters and territorial seas of Canada;

(ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea done at Montego Bay on December 10, 1982 (UNCLOS); and

(iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

(d) for Chile, the land, maritime, and air space under its sovercignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(e) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law including the UNCLOS and the laws and regulations of Japan;

(f) for Malaysia, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea as designated or that might in the future be designated under its national law, in accordance with international law, as an area within which Malaysia exercises sovereign rights and jurisdiction with regards to the seabed, subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

(g) for Mexico:

(i) the states of the Federation and the Federal District;

(ii) the islands, including the reefs and keys, in the adjacent seas;

(iii) the islands of Guadalupe and Revillagigedo, situated in the Pacific Ocean;

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs;

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;

(vi) the space located above the national territory, in accordance with international law; and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea done at Montego Bay on December 10, 1982, and its domestic law, Mexico may exercise sovereign rights or jurisdiction;

(h) for New Zealand, the territory of New Zealand and the exclusive economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;

(i) for Peru, the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (Constitución Política del Perú) and other relevant domestic law and international law;

(j) for Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

(k) for the United States:

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

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

(iii) the territorial sea of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the United Nations Convention on the Law of the Sea, the United States may

exercise sovereign rights or jurisdiction; and

(l) for Viet Nam, the land territory, islands, internal waters, territorial sea, and air space above them, the maritime areas beyond territorial sea including seabed, subsoil and natural resources thereof over which Viet Nam exercises its sovereignty, sovereign rights or jurisdiction in accordance with its domestic laws and international law.

Chapter 2. NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A. Definitions and Scope

Article 2.1. Definitions

For the purposes of this Chapter:

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

Agreement on Agriculture means the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;

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

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

consumed means, with respect to a good:

(a) actually consumed; or

(b) further processed or manufactured:

(i) so as to result in a substantial change in the value, form or use of the good; or

(ii) in the production of another good;

duty-free means free of customs duty;

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

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

import licensing means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the importing Party as a prior condition for importation into the territory of that Party;

Import Licensing Agreement means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;

performance requirement means a requirement that: (a) a given level or percentage of goods or services be exported;

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

(c) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply

services in the territory of the Party that grants the waiver of customs duties or the import licence, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows,

but does not include a requirement that an imported good be:

(f) subsequently exported;

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

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

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

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

Article 2.2. Scope

Unless otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

Section B. National Treatment and Market Access for Goods

Article 2.3. National Treatment

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

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

3. Paragraph 1 shall not apply to the measures set out in Annex 2-A (National Treatment and Import and Export Restrictions).

Article 2.4. Elimination of Customs Duties

1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-D (Tariff Commitments).

3. On request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-D (Tariff Commitments).

4. An agreement between two or more of the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to those Parties' Schedules to Annex 2-D (Tariff Commitments) for that good once approved by each Party to that agreement in accordance with its applicable legal procedures. The parties to that agreement shall inform the other Parties as early as practicable before the new rate of customs duty takes effect.

5. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-D (Tariff Commitments) on originating goods of one or more of the other Parties. A Party shall inform the other Parties as early as practicable before the new rate of customs duty takes effect.

6. For greater certainty, no Party shall prohibit an importer from claiming for an originating good the rate of customs duty

applied under the WTO Agreement.

7. For greater certainty, a Party may raise a customs duty to the level set out in its Schedule to Annex 2-D (Tariff Commitments) following a unilateral reduction for the respective year.

Article 2.5. Waiver of Customs Duties

1. No Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. No Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

Article 2.6. Goods Re-entered after Repair and Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good. (1)

2. No Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

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

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

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

(1) For Canada, this paragraph shall not apply to certain ships of Chapter 89 that have been repaired or altered. These ships will be treated in a manner consistent with the notes associated with the relevant tariff items in Canadaâs Schedule to Annex 2-D (Tariff Commitments).

Article 2.7. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

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

(a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

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

Article 2.8. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

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

(b) goods intended for display or demonstration;

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

(d) goods admitted for sports purposes.

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

3. No Party shall condition the duty-free temporary admission of the goods referred to in paragraph 1, other than to require that those goods:

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

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

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;

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

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

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, that are in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this paragraph, container means an article of transport equipment that is: fully or partially enclosed to constitute a compartment intended for containing goods; substantial and has an internal volume of one cubic metre or more; of a permanent character and accordingly strong enough to be suitable for repeated use; used in significant numbers in international traffic; specially designed to facilitate the carriage of goods by more than one mode of transport without intermediate reloading; and designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does not include vehicles, accessories or spare parts of vehicles or packaging. (2)

(b) For the purposes of this paragraph, pallet means a small, portable platform, which consists of two decks separated by bearers or a single deck supported by feet, on which goods can be moved, stacked and stored, and which is designed essentially for handling by means of fork lift trucks, pallet trucks or other jacking devices.

5. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good in addition to any other charges or penalties provided for under its law.

6. Each Party shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, those procedures shall provide that when a good admitted under this Article accompanies a national of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

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

8. Each Party shall, in accordance with its law, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

9. Subject to Chapter 9 (Investment) and Chapter 10 (Cross-Border Trade in Services):

(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economical and prompt departure of that vehicle or container; (3)

(b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the customs port of entry and the customs port of departure of a vehicle or container;

(c) no Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on the exit of that vehicle or container through any particular customs port of departure; and

(d) no Party shall require that the vehicle or carrier bringing a container from the _ territory of another Party into its territory

be the same vehicle or carrier that takes that container to the territory of that other Party, or to the territory of any other Party.

10. For the purposes of paragraph 9, vehicle means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

(2) Each Party shall eliminate customs duties on containers classified in HS 86.09 that have an internal volume of less than one cubic metre on the date of entry into force of this Agreement for that Party as set out in that Partyâs Schedule to Annex 2-D (Tariff Commitments).

(3) For greater certainty, nothing in this subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway safety measures of general application, or from preventing a vehicle or container from entering or exiting its territory in a location where the Party does not maintain a customs port.

Article 2.9. Ad Hoc Discussions

1. Each Party shall designate and notify a contact point in accordance with Article 27.5 (Contact Points), to facilitate communications between the Parties on any matter covered by this Chapter, including any request or information conveyed under Article 26.5 (Provision of Information) relating to a measure of a Party that may affect the operation of this Chapter.

2. A Party (the requesting Party) may request ad hoc discussions on any matter arising under this Chapter (including a specific non-tariff measure) that the requesting Party believes may adversely affect its interests in trade in goods, except a matter that could be addressed under a Chapter-specific consultation mechanism established under another Chapter, by delivering a written request to another Party (the requested Party) through its contact point for this Chapter. The request shall be in writing and identify the reasons for the request, including a description of the requesting Party's concerns and an indication of the provisions of this Chapter to which the concerns relate. The requesting Party may provide all the other Parties with a copy of the request.

3. If the requested Party considers that the matter that is the subject of the request should be addressed under a Chapter-specific consultation mechanism established under another Chapter, it shall promptly notify the contact point for this Chapter of the requesting Party and include in its notice the reasons it considers that the request should be addressed under the other mechanism. The requested Party shall promptly forward the request and its notice to the overall contact points of the requesting and requested Parties designated under Article 27.5 (Contact Points) for appropriate action.

4. Within 30 days of receipt of a request under paragraph 2, the requested Party shall provide a written reply to the requesting Party. Within 30 days of the requesting Party's receipt of the reply, the requesting and requested Parties (the discussing Parties) shall meet in person or via electronic means to discuss the matter identified in the request. If the discussing Parties choose to meet in person, the meeting shall take place in the territory of the requested Party, unless the discussing Parties decide otherwise.

5. Any Party may submit a written request to the discussing Parties to participate in the ad hoc discussions. If the matter has not been resolved prior to the receipt of a Party's request to participate and the discussing Parties agree, the Party may participate in these ad hoc discussions subject to any conditions that the discussing Parties may decide.

6. If the requesting Party believes that the matter is urgent, it may request that ad hoc discussions take place within a shorter time frame than that provided for under paragraph 4. Any Party may request urgent ad hoc discussions if a measure:

(a) is applied without prior notice or without an opportunity for a Party to avail itself of ad hoc discussions under paragraphs 2, 3 and 4; and

(b) may threaten to impede the importation, sale or distribution of an originating good which is in the process of being transported from the exporting Party to the importing Party, or has not been released from customs control, or is in storage in a warehouse regulated by the customs administration of the importing Party.

7. Ad hoc discussions under this Article shall be confidential and without prejudice to the rights of any Party, including being without prejudice to rights pertaining to dispute settlement proceedings under Chapter 28 (Dispute Settlement).

Article 2.10. Import and Export Restrictions

1. Unless otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the

importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

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

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

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

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

3. For greater certainty, paragraph 1 applies to the importation of commercial cryptographic goods.

4. For the purposes of paragraph 3:

commercial cryptographic goods means any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

5. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A (National Treatment and Import and Export Restrictions).

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

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

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

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

8. No Party shall, as a condition for engaging in importation or for the importation of a good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory. (4)

9. For greater certainty, paragraph 8 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

10. For the purposes of paragraph 8:

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party of goods of another Party.

(4) This paragraph shall not apply to the importation or distribution of rice and paddy in Malaysia.

Article 2.11. Remanufactured Goods

1. For greater certainty, Article 2.10.1 (Import and Export Restrictions) shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods. (5) (6)

(5) For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods: (a) be identified as such for distribution or sale in its territory; and (b) meet all applicable technical requirements that apply to equivalent goods in new condition.

(6) This paragraph shall not apply to the treatment of certain remanufactured goods by Viet Nam as set out in Annex 2-B (Remanufactured Goods).

Article 2.12. Import Licensing

1. No Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force for a Party, that Party shall notify the other Parties of its existing import licensing procedures, if any. The notice shall include the information specified in Article 5.2 of the Import Licensing Agreement and any information required under paragraph 6.

3. A Party shall be deemed to be in compliance with the obligations in paragraph 2 with respect to an existing import licensing procedure if:

(a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement;

(b) in the most recent annual submission due before the date of entry into force of this Agreement for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire; and

(c) it has included in either the notice described in subparagraph (a) or the annual submission described in subparagraph (b) any information required to be notified to the other Parties under paragraph 6.

4. Each Party shall comply with Article 1.4(a) of the Import Licensing Agreement with respect to any new or modified import licensing procedure. Each Party shall also publish on an official government website any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement.

5. Each Party shall notify the other Parties of any new import licensing procedures it adopts and any modifications it makes to its existing import licensing procedures, if possible, no later than 60 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of its publication. The notification shall include any information required under paragraph 6. A Party shall be deemed to be in compliance with this obligation if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with Article 5.1, 5.2 or 5.3 of the Import Licensing Agreement, and includes in its notification any information required to be notified to the other Parties under paragraph 6.

6. (a) A notice under paragraph 2, 3 or 5 shall state if, under any import licensing procedure that is a subject of the notice:

(i) the terms of an import licence for any product limit the permissible end users of the product; or

(ii) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:

(A) membership in an industry association;

(B) approval by an industry association of the request for an import licence;

(C) a history of importing the product or similar products;

(D) minimum importer or end user production capacity;

(E) minimum importer or end user registered capital; or

(F) a contractual or other relationship between the importer and a distributor in the Party's territory.

(b) A notice that states, under subparagraph (a), that there is a limitation on permissible end users or a licence-eligibility condition shall:

(i) list all products for which the end-user limitation or licence- eligibility condition applies; and

(ii) describe the end-user limitation or licence-eligibility condition.

7. Each Party shall respond within 60 days to a reasonable enquiry from another Party concerning its licensing rules and its procedures for the submission of an application for an import licence, including the eligibility of persons, firms and

institutions to make an application, the administrative body or bodies to be approached and the list of products subject to the licensing requirement.

8. If a Party denies an import licence application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

9. No Party shall apply an import licensing procedure to a good of another Party unless it has, with respect to that procedure, met the requirements of paragraph 2 or 4, as applicable.

Article 2.13. Transparency In Export Licensing Procedures (7)

(7) The obligations in this Article shall apply only to procedures for applying for an export licence.

1. For the purposes of this Article:

export licensing procedure means a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.

2. Within 30 days of the date of entry into force of this Agreement for a Party, that Party shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government websites. Thereafter, each Party shall publish in the notified publications and websites any new export licensing procedure, or any modification of an export licensing procedure, that it adopts as soon as practicable but no later than 30 days after the new procedure or modification takes effect.

3. Each Party shall ensure that it includes in the publications it notifies under paragraph 2:

(a) the texts of its export licensing procedures, including any modifications it makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each procedure, a description of:

(i) the process for applying for a licence; and

(ii) any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application for a licence or other relevant documentation must be submitted;

(f) a description of or a citation to a publication reproducing in full any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if practicable, value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions available to the public that replace the requirement to obtain an export licence, how to request or use these exemptions or exceptions and the criteria for them.

4. Except where doing so would reveal business proprietary or other confidential information of a particular person, on request of another Party that has a substantial trade interest in the matter, a Party shall provide, to the extent possible, the following information regarding a particular export licensing procedure that it adopts or maintains:

(a) the aggregate number of licences that the Party has granted over a recent period that the requesting Party has specified; and

(b) measures, if any, that the Party has taken in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilise production, supply or prices for the relevant good.

5. Nothing in this Article shall be construed in a manner that would require a Party to grant an export licence, or that would prevent a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies; the Nuclear Suppliers Group; the Australia Group; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris, January 13, 1993; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, done at Washington, London, and Moscow, April 10, 1972; the Treaty on the Non-Proliferation of Nuclear Weapons, done at London, Moscow and Washington, July 1, 1968; and the Missile Technology Control Regime.

Article 2.14. Administrative Fees and Formalities

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

2. No Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Party.

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

4. No Party shall levy fees and charges on or in connection with importation or exportation on an ad valorem basis. (8)

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

(8) The Merchandise Processing Fee (MPF) shall be the only fee or charge of the United States to which this paragraph shall apply. In addition, this paragraph shall not apply to any fee or charge of the United States until three years after the date of entry into force of this Agreement for the United States. Further, this paragraph shall not apply to any fee or charge of Mexico on or in connection with the importation or exportation of a non-originating good until five years after the date of entry into force of this Agreement for Mexico.

Article 2.15. Export Duties, Taxes or other Charges

Except as provided for in Annex 2-C (Export Duties, Taxes or Other Charges), no Party shall adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on that good when destined for domestic consumption.

Article 2.16. Publication

Each Party shall promptly publish the following information in a non- discriminatory and easily accessible manner, in order to enable interested parties to become acquainted with it:

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

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

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

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

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

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

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

(h) appeal procedures;

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

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

(k) correlation tables showing correspondence between any new national nomenclature and the previous national nomenclature.

Article 2.17. Trade In Information Technology Products

Each Party shall be a participant in the WTO Ministerial Declaration on Trade in Information Technology Products (Information Technology Agreement), 13 December 1996, and have completed the procedures for modification and rectification of its Schedule of Tariff Concessions set out in the Decision of 26 March 1980, L/4962, in accordance with paragraph 2 of the Information Technology Agreement. (9) (10)

(9) This Article shall not apply to Brunei Darussalam until one year after the date of entry into force of this Agreement for Brunei Darussalam.

(10) Notwithstanding this Article, Chile and Mexico shall endeavour to become participants in the Information Technology Agreement. The eventual participation of Chile and Mexico in that agreement shall be subject to the completion of their respective internal legal procedures.

Article 2.18. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods (Committee), composed of government representatives of each Party.

2. The Committee shall meet as necessary to consider any matters arising under this Chapter. During the first five years after entry into force of this Agreement, the Committee shall meet no less than once a year.

3. The Committee's functions shall include:

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, other than those within the competence of other committees, working groups or any other subsidiary bodies established under this Agreement, especially those related to the application of non-tariff measures and, if appropriate, refer these matters to the Commission for its consideration;

(c) reviewing the future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, including by establishing, as needed, guidelines for the transposition of Parties' Schedules to Annex 2-D (Tariff Commitments) and consulting to resolve any conflicts between:

(i) amendments to the Harmonized System and Annex 2-D (Tariff Commitments); or

(ii) Annex 2-D (Tariff Commitments) and national nomenclatures;

(d) consulting on and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-D (Tariff Commitments); and

(e) undertaking any additional work that the Commission may assign to it.

4. The Committee shall consult, as appropriate, with other committees established under this Agreement when addressing issues of relevance to those committees.

5. The Committee shall, within two years of the date of entry into force of this Agreement, submit to the Commission an initial report on its work under paragraphs 3(a) and 3(b). In producing this report, the Committee shall consult, as appropriate, with the Committee on Agricultural Trade established under Article 2.25 (Committee on Agricultural Trade) and the Committee on Textile and Apparel Trade Matters established under Chapter 4 (Textile and Apparel Goods) of this Agreement on portions of the report of relevance to those committees.

Section C. Agriculture

Article 2.19. Definitions

For the purposes of this Section:

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture;

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture, including any amendment of that Article;

modern biotechnology means the application of:

(a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles; or

(b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection; and

products of modern biotechnology means agricultural goods, as well as fish and fish products (11), developed using modern biotechnology, but does not include medicines and medical products.

(11) For the purposes of Article 2.27 (Trade of Products of Modem Biotechnology) and the definition of "products of modern biotechnology", "fish and fish products" are defined as products in Chapter 3 of the Harmonized System.

Article 2.20. Scope

This Section shall apply to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 2.21. Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together to achieve an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. No Party shall adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party. (12)

(12) For greater certainty and without prejudice to any Party's position in the WTO, this Article does not cover measures referred to in Article 10 of the Agreement on Agriculture.

Article 2.22. Export Credits, Export Credit Guarantees or Insurance Programmes

Recognising the ongoing work in the WTO in the area of export competition and that export competition remains a key priority in multilateral negotiations, Parties shall work together in the WTO to develop multilateral disciplines to govern the provision of export credits, export credit guarantees and insurance programmes, including disciplines on matters such as transparency, self-financing and repayment terms.

Article 2.23. Agricultural Export State Trading Enterprises

The Parties shall work together toward an agreement in the WTO on export state trading enterprises that requires:

(a) the elimination of trade distorting restrictions on the authorisation to export agricultural goods;

(b) the elimination of any special financing that a WTO Member grants directly or indirectly to state trading enterprises that export for sale a significant share of the Member's total exports of an agricultural good; and

(c) greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 2.24. Export Restrictions - Food Security

1. Parties recognise that under Article XI:2(a) of GATT 1994, a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of GATT 1994 on foodstuffs (13) to prevent or relieve a critical shortage of foodstuffs, subject to meeting the conditions set out in Article 12.1 of the Agreement on Agriculture.

2. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Party may apply an export prohibition or restriction, other than a duty, tax or other charge, on foodstuffs:

(a) a Party that:

(i) imposes such a prohibition or restriction on the exportation or sale for export of foodstuffs to another Party to prevent or relieve a critical shortage of foodstuffs, shall in all cases notify the measure to the other Parties prior to the date it takes effect and, except when the critical shortage is caused by an event constituting force majeure, shall notify the measure to the other Parties at least 30 days prior to the date it takes effect; or

(ii) as of the date of entry into force of this Agreement for that Party, maintains such a prohibition or restriction, shall, within 30 days of that date, notify the measure to the other Parties.

(b) A notification under this paragraph shall include the reasons for imposing or maintaining the prohibition or restriction, as well as an explanation of how the measure is consistent with Article XI:2(a) of GATT 1994, and shall note alternative measures, if any, that the Party considered before imposing the prohibition or restriction.

(c) A measure shall not be subject to notification under this paragraph or paragraph 4 if it prohibits or restricts the exportation or sale for export only of a foodstuff or foodstuffs of which the Party imposing the measure has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.

(d) If a Party that adopts or maintains a measure referred to in subparagraph (a) has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that Party does not provide the other Parties with a notification under subparagraph (a), the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff or foodstuffs during these three calendar years.

3. A Party that is required to notify a measure under paragraph 2(a) shall:

(a) consult, on request, with any other Party having a substantial interest as an importer of the foodstuffs subject to the measure, with respect to any matter relating to the measure;

(b) on the request of any Party having a substantial interest as an importer of the foodstuffs subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article XI:2(a) of GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and

(c) respond in writing to any question posed by any other Party regarding the measure within 14 days of receipt of the question.

4. A Party which considers that another Party should have notified a measure under paragraph 2(a) may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party which considers that the measure should have been notified may itself bring the measure to the attention of the other Parties.

5. A Party should ordinarily terminate a measure subject to notification under paragraph 2(a) or 4 within six months of the date it is imposed. A Party contemplating continuation of a measure beyond six months from the date it is imposed shall notify the other Parties no later than five months after the date the measure is imposed and provide the information specified in paragraph 2(b). Unless the Party has consulted with the other Parties that are net importers of any foodstuff the exportation of which is prohibited or restricted under the measure, the Party shall not continue the measure beyond 12 months from the date it is imposed. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.

6. No Party shall apply any measure that is subject to notification under paragraph 2(a) or 4 to food purchased for non-commercial humanitarian purposes.

(13) For the purpose of this Article, foodstuffs include fish and fisheries products, intended for human consumption.

Article 2.25. Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade, composed of government representatives of each Party.

2. The Committee on Agricultural Trade shall provide a forum for:

(a) promoting trade in agricultural goods between the Parties under this Agreement and other issues as appropriate;

(b) monitoring and promoting cooperation on the implementation and administration of this Section, including notification of export restrictions on foodstuffs as stipulated in Article 2.24 (Export Restrictions - Food Security), and discussing the cooperative work identified in Article 2.21 (Agricultural Export Subsidies), Article 2.22 (Export Credits, Export Credit Guarantees or Insurance Programmes) and Article 2.23 (Agricultural Export State Trading Enterprises);

(c) consultation among the Parties on matters related to this Section in coordination with other committees, working groups or any other subsidiary bodies established under this Agreement; and

(d) undertaking any additional work that the Committee on Trade in Goods and the Commission may assign.

3. The Committee on Agricultural Trade shall meet as necessary. During the first five years after entry into force of this Agreement, the Committee on Agricultural Trade shall meet no less than once a year.

Article 2.26. Agricultural Safeguards

Originating agricultural goods from any Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

Article 2.27. Trade of Products of Modern Biotechnology

1. The Parties confirm the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology.

2. Nothing in this Article shall prevent a Party from adopting measures in accordance with its rights and obligations under the WTO Agreement or other provisions of this Agreement.

3. Nothing in this Article shall require a Party to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory.

4. Each Party shall, when available and subject to its laws, regulations and policies, make available publicly:

(a) any documentation requirements for completing an application for the authorisation of a product of modern biotechnology;

(b) a summary of any risk or safety assessment that has led to the authorisation of a product of modern biotechnology; and

(c) a list or lists of the products of modern biotechnology that have been authorised in its territory.

5. Each Party shall designate and notify a contact point or contact points for the sharing of information on issues related to low level presence (LLP) (14) occurrences, in accordance with Article 27.5 (Contact Points).

(14) For the purposes of this Article, "LLP occurrence" means the inadvertent low level presence in a shipment of plants or plant products, except for a plant or plant product that is a medicine or medical product, of rDNA plant material that is authorised for use in at least one country, but not in the importing country, and if authorised for food use, a food safety assessment has been done based on the Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003).

6. In order to address an LLP occurrence, and with a view to preventing a future LLP occurrence, on request of an importing Party, an exporting Party shall, when available and subject to its laws, regulations and policies:

(a) provide a summary of the risk or safety assessment or assessments, if any, that the exporting Party conducted in connection with an authorisation of a specific plant product of modern biotechnology;

(b) provide, if known to the exporting Party, contact information for any entity within its territory that received authorisation for the plant product of modern biotechnology and which the Party believes is likely to possess:

(i) any validated methods that exist for the detection of the plant product of modern biotechnology found at a low level in a

shipment;

(ii) any reference samples necessary for the detection of the LLP occurrence; and

(iii) relevant information that can be used by the importing Party to conduct a risk or safety assessment or, if a food safety assessment is appropriate, relevant information for a food safety assessment in accordance with Annex 3 of the Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants (CAC/GL 45-2003); and

(c) encourage an entity referred to in subparagraph (b) to share the information referred to in subparagraphs (b)(i), (b)(ii) and (b)(iii) with the importing Party.

7. In the event of an LLP occurrence, the importing Party shall, subject to its laws, regulations and policies:

(a) inform the importer or the importer's agent of the LLP occurrence and of any additional information that the importer will be required to submit to allow the importing Party to make a decision on the disposition of the shipment in which the LLP occurrence has been found;

(b) if available, provide to the exporting Party a summary of any risk or safety assessment that the importing Party has conducted in connection with the LLP occurrence; and

(c) ensure that the measures (15) applied to address the LLP occurrence are appropriate to achieve compliance with its laws, regulations and policies.

8. To reduce the likelihood of trade disruptions from LLP occurrences:

(a) each exporting Party shall, consistent with its laws, regulations and policies, endeavour to encourage technology developers to submit applications to Parties for authorisation of plants and plant products of modern biotechnology; and

(b) a Party authorising plant and plant products derived from modern biotechnology shall endeavour to:

(i) allow year-round submission and review of applications for authorisation of plants and plant products of modern biotechnology; and

(ii) increase communications between the Parties regarding new authorisations of plants and plant products of modern biotechnology so as to improve global information exchange.

9. The Parties hereby establish a working group on products of modern biotechnology (Working Group) under the Committee on Agricultural Trade for information exchange and cooperation on trade-related matters associated with products of modern biotechnology. The Working Group shall be comprised of government representatives of Parties that inform, in writing, the Committee on Agricultural Trade that they will participate in the Working Group and name one or more government representatives to the Working Group.

10. The Working Group shall provide a forum to:

(a) exchange, subject to a Party's laws, regulations and policies, information on issues, including on actual and proposed laws, regulations and policies, related to the trade of products of modern biotechnology; and

(b) further enhance cooperation between two or more Parties, when there is mutual interest, related to the trade of products of modern biotechnology.

(15) For the purposes of this paragraph, "measures" does not include penalties.

Section D. Tariff-Rate Quota Administration

Article 2.28. Scope and General Provisions

1. Each Party shall implement and administer tariff-rate quotas (TRQs) (16) in accordance with Article XIII of GATT 1994, including its interpretative notes, the Import Licensing Agreement and Article 2.12 (Import Licensing). All TRQs established by a Party under this Agreement shall be incorporated into that Party's Schedule to Annex 2-D (Tariff Commitments).

2. Each Party shall ensure that its procedures for administering its TRQs are made available to the public, are fair and equitable, are no more administratively burdensome than absolutely necessary, are responsive to market conditions and

are administered in a timely manner.

3. The Party administering a TRQ shall publish all information concerning its TRQ administration, including the size of quotas and eligibility requirements; and, if the TRQ will be allocated, application procedures, the application deadline, and the methodology or procedures that will be used for the allocation or reallocation, on its designated publicly available website at least 90 days prior to the opening date of the TRQ concerned.

(16) For the purposes of this Section, TRQs means only TRQs that are established under this Agreement as set out in a Party's Schedule to Annex 2-D (Tariff Commitments). For greater certainty, this Section shall not apply to TRQs set out in a Party's Schedule to the WTO Agreement.

Article 2.29. Administration and Eligibility

1. Each Party shall administer its TRQs in a manner that allows importers the opportunity to utilise TRQ quantities fully.

2. (a) Except as provided in subparagraphs (b) and (c), no Party shall introduce a new or additional condition, limit or eligibility requirement on the utilisation of a TRQ for importation of a good, including in relation to specification or grade, permissible end-use of the imported product or package size, beyond those set out in its Schedule to Annex 2-D (Tariff Commitments). (17)

(b) A Party seeking to introduce a new or additional condition, limit or eligibility requirement on the utilisation of a TRQ for importation of a good shall notify the other Parties at least 45 days prior to the proposed effective date of the new or additional condition, limit or eligibility requirement. Any Party with a demonstrable commercial interest in supplying the good may submit a written request for consultations to the Party seeking to introduce the new or additional condition, limit or eligibility requirement. On receipt of such a request for consultations, the Party seeking to introduce the new or additional condition, limit or eligibility requirement shall promptly undertake consultations with the Party that submitted the request, in accordance with Article 2.32.6 (Transparency).

(c)The Party seeking to introduce the new or additional condition, limit or eligibility requirement may do so if:

(i) it has consulted with any Party with a demonstrable commercial interest in supplying the good that has submitted a written request for consultations pursuant to subparagraph (b); and

(ii) no Party with a demonstrable commercial interest in supplying the good that submitted a written request for consultations pursuant to subparagraph (b) objected, after the consultation, to the introduction of the new or additional condition, limit or eligibility requirement.

(d) A new or additional condition, limit or eligibility requirement that is the outcome of any consultation held pursuant to subparagraph (c), shall be circulated to the Parties prior to its implementation.

(17) For greater certainty, this paragraph shall not apply to conditions, limits or eligibility requirements that apply regardless of whether or not the importer utilises the TRQ when importing the good.

Article 2.30. Allocation (18)

(18) For the purposes of this Section, "allocation mechanism" means any system where access to the TRQ is granted on a basis other than first-come first-served.

1. In the event that access under a TRQ is subject to an allocation mechanism, each importing Party shall ensure that:

(a) any person of a Party that fulfils the importing Party's eligibility requirements is able to apply and to be considered for a quota allocation under the TRQ;

(b) unless otherwise agreed, it does not allocate any portion of the quota to a producer group, condition access to an allocation on the purchase of domestic production or limit access to an allocation to processors;

(c) each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request;

(d) an allocation for in-quota imports is applicable to any tariff lines subject to the TRQ and is valid throughout the TRQ year;

(e) if the aggregate TRQ quantity requested by applicants exceeds the quota size, allocation to eligible applicants shall be conducted by equitable and transparent methods;

(f) applicants have at least four weeks after the opening of the application period to submit their applications; and

(g) quota allocation takes place no later than four weeks before the opening of the quota period, unless the allocation is based in whole or in part on import performance during the 12-month period immediately preceding the quota period. If the Party bases the allocation in whole or in part on import performance during the 12- month period immediately preceding the quota period, the Party shall make a provisional allocation of the full quota amount no later than four weeks before the opening of the quota period. All final allocation decisions, including any revisions, shall be made and communicated to applicants by the beginning of the quota period.

2. During the first TRQ year that this Agreement is in force for a Party, if less than 12 months remain in the TRQ year on the date of entry into force of this Agreement for that Party, the Party shall make available to quota applicants, beginning on the date of entry into force of this Agreement for that Party, the quota quantity established in its Schedule to Annex 2-D (Tariff Commitments), multiplied by a fraction the numerator of which shall be a whole number consisting of the number of months remaining in the TRQ year on the date of entry into force of this Agreement for that Party, including the entirety of the month in which this Agreement enters into force for that Party, and the denominator of which shall be 12. The Party shall make the entire quota quantity established in its Schedule to Annex 2-D (Tariff Commitments) available to quota applicants beginning on the first day of each TRQ year thereafter that the quota is in operation.

3. The Party administering a TRQ shall not require the re-export of a good as a condition for application for, or utilisation of, a quota allocation.

4. Any quantity of goods imported under a TRQ under this Agreement shall not be counted towards, or reduce the quantity of, any other TRQ provided for such goods in a Party's Schedule to the WTO Agreement or under any other trade agreements. (19)

(19) For greater certainty, nothing in this paragraph shall prevent a Party from applying a different in-quota rate of customs duty to goods from other Parties, as set out in that Party's Schedule to Annex 2-D (Tariff Commitments), than that applied to the same goods of non-Parties under a TRQ established under the WTO Agreement. Further, nothing in this paragraph requires a Party to change the in-quota quantity of any TRQ established under the WTO Agreement.

Article 2.31. Return and Reallocation of TRQs

1. When a TRQ is administered by an allocation mechanism, a Party shall ensure that there is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

2. Each Party shall publish on a regular basis on its designated publicly available website all information concerning amounts allocated, amounts returned and, if available, quota utilisation rates. In addition, each Party shall publish on the same website amounts available for reallocation and the application deadline, at least two weeks prior to the date on which the Party will begin accepting applications for reallocations.

Article 2.32. Transparency

1. Each Party shall identify the entity or entities responsible for administering its TRQs and designate and notify at least one contact point, in accordance with Article 27.5 (Contact Points), to facilitate communications between the Parties on matters relating to the administration of its TRQs. Each Party shall promptly notify the other Parties of any amendments to the details of its contact point.

2. When a TRQ is administered by an allocation mechanism, the name and address of allocation holders shall be published on the designated publicly available website.

3. When a TRQ is administered on a first-come, first-served basis, over the course of each year, the importing Party's administering authority shall publish, in a timely and continually on-going manner on its designated publicly available website, utilisation rates and remaining available quantities for each TRQ.

4. When a TRQ of an importing Party that is administered on a first-come, first-served basis fills, that Party shall publish a notice to this effect on its designated publicly available website within 10 days.

5. When a TRQ of an importing Party that is administered by an allocation mechanism fills, that Party shall publish a notice to this effect on its designated publicly available website as early as practicable.

6. On written request of an exporting Party or Parties, the Party administrating a TRQ shall consult with the requesting Party or Parties regarding the administration of its TRQ.

Chapter 3. RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A. Rules of Origin

Article 3.1. Definitions

For the purposes of this Chapter:

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

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

Generally Accepted Accounting Principles means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

indirect material means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the

maintenance of buildings or the operation of equipment, associated with the production of a good, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the good;

(c) gloves, glasses, footwear, clothing, safety equipment and supplies;

(d) tools, dies and moulds;

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

(f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good;

non-originating good or non-originating material means a good or material that does not qualify as originating in accordance with this Chapter,

originating good or originating material means a good or material that qualifies as originating in accordance with this Chapter,

packing materials and containers for shipment means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good;

production means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good; transaction value means the price actually paid or payable for the good when sold for export or other value determined in accordance with

the Customs Valuation Agreement; and

value of the good means the transaction value of the good excluding any costs incurred in the international shipment of the good.

Article 3.2. Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or more of the Parties as established in Article 3.3 (Wholly Obtained or Produced Goods);

(b) produced entirely in the territory of one or more of the Parties, exclusively from originating materials; or

(c) produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all

applicable requirements of Annex 3-D (Product-Specific Rules of Origin),

and the good satisfies all other applicable requirements of this Chapter.

Article 3.3. Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 3.2 (Originating Goods), a good is wholly obtained or produced entirely in the territory of one or more of the Parties if it is:

(a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) through (c), extracted or taken from there;

(g) fish, shellfish and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, in accordance with international law, outside the territorial sea of non-Parties! by vessels that are registered, listed or recorded with a Party and entitled to fly the flag of that Party;

(h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(j) a good that is:

(i) waste or scrap derived from production there; or

(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.

(1) Nothing in this Chapter shall prejudice the positions of the Parties with respect to matters relating to the law of the sea.

Article 3.4. Treatment of Recovered Materials Used In Production of a Remanufactured Good

1. Each Party shall provide that a recovered material derived in the territory of one or more of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods); and

(b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods).

Article 3.5. Regional Value Content

1. Each Party shall provide that a regional value content requirement specified in this Chapter, including related Annexes, to determine whether a good is originating, is calculated as follows:

(a) Focused Value Method: Based on the Value of Specified Non- Originating Materials

RVC = Value of the Good - FVNM / Value of the Goofd x 100

(b) Build-down Method: Based on the Value of Non-Originating Materials

RVC = Value of the Good - VNM / Value of the Good x 100

(c) Build-up Method: Based on the Value of Originating Materials

RVC = VOM / Value of the Good x 100 or

(d) Net Cost Method (for Automotive Goods Only)

RVC = NC - VNM / NC x 100

where:

RVC is the regional value content of a good, expressed as a percentage;

VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of the good;

NC is the net cost of the good determined in accordance with Article 3.9 (Net Cost);

FVNM is the value of non-originating materials, including materials of undetermined origin, specified in the applicable product-specific-rule (PSR) in Annex 3-D (Product-Specific Rules of Origin) and used in the production of the good. For greater certainty, non-originating materials that are not specified in the applicable PSR in Annex 3-D (Product-Specific Rules of Origin) are not taken into account for the purpose of determining FVNM; and

VOM is the value of originating materials used in the production of the good in the territory of one or more of the Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

Article 3.6. Materials Used In Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and

(b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

Article 3.7. Value of Materials Used In Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 3.8. Further Adjustments to the Value of Materials

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.7 (Value of Materials Used in Production):

(a) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

3. If the cost or expense listed in paragraph 1 or 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

Article 3.9. Net Cost

1. If Annex 3-D (Product-Specific Rules of Origin) specifies a regional value content requirement to determine whether an automotive good of subheading 8407.31 through 8407.34, 8408.20, subheading 8409.91 through 8409.99, heading 87.01 through 87.09 or heading 87.11 is originating, each Party shall provide that the requirement to determine the origin of that good based on the Net Cost Method is calculated as set out under Article 3.5 (Regional Value Content).

2. For the purposes of this Article:

(a) net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost; and

(b) net cost of the good means the net cost that can be reasonably allocated to the good, using one of the following methods:

(i) calculating the total cost incurred with respect to all automotive goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocating the resulting net cost of those goods to the good;

(ii) calculating the total cost incurred with respect to all automotive goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing and after-sales service costs; royalties, shipping and packing costs, and non- allowable interest costs that are included in the portion of the total cost allocated to the good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the good, so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs, provided that the allocation of all those costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles.

3. Each Party shall provide that, for the purposes of the Net Cost Method for motor vehicles of heading 87.01 through 87.06 or heading 87.11, the calculation may be averaged over the producer's fiscal year using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of another Party:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party;

(c) the same model line of motor vehicles produced in the territory of a Party; or

(d) any other category as the Parties may decide.

4. Each Party shall provide that, for the purposes of the Net Cost Method in paragraphs 1 and 2, for automotive materials of subheading 8407.31 through 8407.34, 8408.20, heading 84.09, 87.06, 87.07, or 87.08, produced in the same plant, a calculation may be averaged:

(a) over the fiscal year of the motor vehicle producer to whom the good is sold

(b) over any quarter or month; or

(c) over the fiscal year of the producer of the automotive material, provided that the good was produced during the fiscal year, quarter or month forming the basis for the calculation, in which:

(i) the average in subparagraph (a) is calculated separately for those goods sold to one or more motor vehicle producers; or

(ii) the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of another Party.

5. For the purposes of this Article:

(a) class of motor vehicles means any one of the following categories of motor vehicles:

(i) motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;

(ii) motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90;

(iii) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.21 or 8704.31;

(iv) motor vehicles classified under subheadings 8703.21 through 8703.90; or

(v) motor vehicles classified under heading 87.11.

(b) model line of motor vehicles means a group of motor vehicles having the same platform or model name;

(c) non-allowable interest costs means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

(d) reasonably allocate means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

(e) royalty means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright; literary, artistic or scientific work; patent; trademark; design; model; plan; secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(i) personnel training, without regard to where that training is performed; or

(ii) engineering, tooling, die-setting, software design and similar computer services, or other services, if performed in the territory of one or more of the Parties;

(f) sales promotion, marketing and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(i) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (good brochures, catalogues, technical literature, price lists, service manuals and sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; and entertainment;

(ii) sales and marketing incentives; consumer, retailer or wholesaler rebates; and merchandise incentives;

(iii) salaries and wages; sales commissions; bonuses; benefits (for example, medical, insurance or pension benefits); travelling and living expenses; and membership and professional fees for sales promotion, marketing and after-sales service personnel;

(iv) recruiting and training of sales promotion, marketing and after-sales service personnel and after-sales training of customers'employees, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(v) liability insurance for goods;

(vi) office supplies for sales promotion, marketing and after- sales service of goods, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(vii) telephone, mail and other communications, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(viii) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;

(ix) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and payments by the producer to other persons for warranty repairs;

(g) shipping and packing costs means the costs incurred to pack a good for shipment and to ship the good from the point of direct shipment to the buyer, excluding costs to prepare and package the good for retail sale; and

(h) total cost means all product costs, period costs and other costs for a good incurred in the territory of one or more of the Parties, where:

(i) product costs are costs that are associated with the production of a good and include the value of materials, direct labour costs and direct overheads;

(ii) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and

(iii) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes.

Article 3.10. Accumulation

1. Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 (Originating Goods) and all other applicable requirements in this Chapter.

2. Each Party shall provide that an originating good or material of one or more of the Parties that is used in the production of another good in the territory of another Party is considered as originating in the territory of the other Party.

3. Each Party shall provide that production undertaken on a non-originating material in the territory of one or more of the Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

Article 3.11. De Minimis

1. Except as provided in Annex 3-C (Exceptions to Article 3.11 (De Minimis)), each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3-D (Product-Specific Rules of Origin) for the good is nonetheless an originating good if the value of all those materials does not exceed 10 per cent of the value of the good, as defined under Article 3.1 (Definitions), and the good meets all the other applicable requirements of this Chapter.

2. Paragraph 1 applies only when using a non-originating material in the production of another good.

3. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.

4. With respect to a textile or apparel good, Article 4.2 (Rules of Origin and Related Matters) applies in place of paragraph 1.

Article 3.12. Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as originating based on the:

(a) physical segregation of each fungible good or material; or

(b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Article 3.13. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in Annex 3-D (Product-Specific Rules of Origin), accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; and

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non- originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, and instructional or other information materials are covered when:

(a) the accessories, spare parts, tools and instructional or other information materials are classified with, delivered with but

not invoiced separately from the good; and

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

Article 3.14. Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3-D (Product-Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 3.15. Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

Article 3.16. Indirect Materials

Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

Article 3.17. Sets of Goods

1. Each Party shall provide that for a set classified as a result of the application of rule 3(a) or (b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product-specific rule of origin that applies to the set.

2. Each Party shall provide that for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 10 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non-originating materials and the value of the good.

Article 3.18. Transit and Transhipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good:

(a) does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party; and

(b) remains under the control of the customs administration in the territory of a non-Party.

Section B. Origin Procedures

Article 3.19. Application of Origin Procedures

Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall apply the procedures in this Section.

Article 3.20. Claims for Preferential Treatment

1. Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer. (2) (3)

2. An importing Party may:

(a) require that an importer who completes a certification of origin provide documents or other information to support the certification;

(b) establish in its law conditions that an importer shall meet to complete a certification of origin;

(c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or

(d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from making a subsequent claim for preferential tariff treatment for the same importation based on a certification of origin completed by the exporter or producer.

3. Each Party shall provide that a certification of origin: (a) need not follow a prescribed format;

(b) be in writing, including electronic format;

(c) specifies that the good is both originating and meets the requirements of this Chapter; and

(d) contains a set of minimum data requirements as set out in Annex 3- B (Minimum Data Requirements).

4. Each Party shall provide that a certification of origin may apply to: (a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.

5. Each Party shall provide that a certification of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

6. Each Party shall allow an importer to submit a certification of origin in English. If the certification of origin is not in English, the importing Party may require the importer to submit a translation in the language of the importing Party.

(2) Nothing in this Chapter shall prevent a Party from requiring an importer, exporter or producer in its territory that completes a certification of origin to demonstrate that it is able to support that certification.

(3) For Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than five years after their respective dates of entry into force of this Agreement.

Article 3.21. Basis of a Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of:

(a) the importer having documentation that the good is originating; or

(b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin to another person.

Article 3.22. Discrepancies

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

Article 3.23. Waiver of Certification of Origin

No Party shall require a certification of origin if:

(a) the customs value of the importation does not exceed US $1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or

(b) it is a good for which the importing Party has waived the requirement or does not require the importer to present a certification of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

Article 3.24. Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) make a declaration (4) that the good qualifies as an originating good;

(b) shave a valid certification of origin in its possession at the time the declaration referred to in subparagraph (a) is made;

(c) provide a copy of the certification of origin to the importing Party if required by the Party; and

(d) if required by a Party to demonstrate that the requirements in Article 3.18 (Transit and Transhipment) have been satisfied, provide relevant documents, such as transport documents, and in the case of storage, storage or customs documents.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's law.

(4) A Party shall specify its declaration requirements in its laws, regulations or procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

Article 3.25. Obligations Relating to Exportation

1. Each Party shall provide that an exporter or producer in its territory that completes a certification of origin shall submit a copy of that certification of origin to the exporting Party, on its request.

2. Each Party may provide that a false certification of origin or other false information provided by an exporter or a producer in its territory to support a claim that a good exported to the territory of another Party is originating has the same legal consequences, with appropriate modifications, as those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation.

3. Each Party shall provide that if an exporter or a producer in its territory has provided a certification of origin and has reason to believe that it contains or is based on incorrect information, the exporter or producer shall promptly notify, in

writing, every person and every Party to whom the exporter or producer provided the certification of origin of any change that could affect the accuracy or validity of the certification of origin.

Article 3.26. Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

(a) the documentation related to the importation, including the certification of origin that served as the basis for the claim; and

(b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall endeavour to make available information on types of records that may be used to demonstrate that a good is originating.

3. Each Party shall provide that an importer, exporter or producer in its territory may choose to maintain the records specified in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with that Party's law.

Article 3.27. Verification of Origin

1. For the purpose of determining whether a good imported into its territory is originating, the importing Party may conduct a verification of any claim for preferential tariff treatment by one or more of the following: (5)

(a) a written request for information from the importer of the good;

(b) a written request for information from the exporter or producer of the good;

(c) a verification visit to the premises of the exporter or producer of the good;

(d) for a textile or apparel good, the procedures set out in Article 4.6 (Verification); or

(e) other procedures as may be decided by the importing Party and the Party where an exporter or producer of the good is located.

(5) For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

2. If an importing Party conducts a verification, it shall accept information directly from the importer, exporter or producer.

3. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer and, in response to a request for information by an importing Party under paragraph 1(a), the importer does not provide information to the importing Party or the information provided is not sufficient to support a claim for preferential tariff treatment, the importing Party shall request information from the exporter or producer under paragraph 1(b) or 1(c) before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1(b) or 1(c), within the time provided in paragraph 6(c). (6)

(6) For greater certainty, a Party is not required to request information from the exporter or producer to support a claim for preferential tariff treatment or complete a verification through the exporter or producer if the claim for preferential tariff treatment is based on the importer's certification of origin.

4. A written request for information or for a verification visit under paragraphs 1(a) through 1(c) shall:

(a) be in English or in an official language of the Party of the person to whom the request is made;

(b) include the identity of the government authority issuing the request;

(c) state the reason for the request, including the specific issue the requesting Party seeks to resolve with the verification;

(d) include sufficient information to identify the good that is being verified;

(e) include a copy of relevant information submitted with the good, including the certification of origin; and

(f) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited, and state the proposed date and location for the visit and its specific purpose.

5. If an importing Party has initiated a verification in accordance with paragraph 1(b) or 1(c), it shall inform the importer of the initiation of the verification.

6. For a verification under paragraphs 1(a) through 1(c), the importing Party shall:

(a) ensure that a written request for information, or for documentation to be reviewed during a verification visit, is limited to information and documentation to determine whether the good is originating;

(b) describe the information or documentation in sufficient detail to allow the importer, exporter or producer to identify the information and documentation necessary to respond;

(c) allow the importer, exporter or producer at least 30 days from the date of receipt of the written request for information under paragraph 1(a) or 1(b) to respond;

(d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(c) to consent or refuse the request; and

(e) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, including, if applicable, any information received under paragraph 9, and no later than 365 days after the first request for information or other action under paragraph 1. If permitted by its law, a Party may extend the 365 day period in exceptional cases, such as where the technical information concerned is very complex.

7. If an importing Party makes a verification request under paragraph 1(b), it shall, on request of the Party where the exporter or producer is located and in accordance with the importing Party's laws and regulations, inform that Party. The Parties concerned shall decide the manner and timing of informing the Party where the exporter or producer is located of the verification request. In addition, on request of the importing Party, the Party where the exporter or producer is located may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing a contact point for the verification, collecting information from the exporter or producer on behalf of the importing Party, or other activities in order that the importing Party may make a determination as to whether the good is originating. The importing Party shall not deny a claim for preferential tariff treatment solely on the ground that the Party where the exporter or producer is located did not provide requested assistance.

8. If an importing Party initiates a verification under paragraph 1(c), it shall, at the time of the request for the visit, inform the Party where the exporter or producer is located and provide the opportunity for the officials of the Party where the exporter or producer is located to accompany them during the visit.

9. Prior to issuing a written determination, the importing Party shall inform the importer and any exporter or producer that provided information directly to the importing Party, of the results of the verification and, if the importing Party intends to deny preferential tariff treatment, provide those persons a period of at least 30 days for the submission of additional information relating to the origin of the good.

10. The importing Party shall:

(a) provide the importer with a written determination of whether the good is originating that includes the basis for the determination; and

(b) provide the importer, exporter or producer that provided information during the verification or certified that the good was originating with the results of the verification and the reasons for that result.

11. During verification, the importing Party shall allow the release of the good, subject to payment of duties or provision of security as provided for in its law. If as a result of the verification the importing Party determines that the good is an originating good, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations.

12. If verifications of identical goods by a Party indicate a pattern of conduct by an importer, exporter or producer of false or unsupported representations relevant to a claim that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported or produced by that person until that

person demonstrates that the identical goods qualify as originating. For the purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

13. For the purpose of a verification request, it is sufficient for a Party to rely on the contact information of an exporter, producer or importer in a Party provided in a certification of origin.

Article 3.28. Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2 or Article 4.7 (Determinations), cach Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good that arrives in its territory on or after the date of entry into force of this Agreement for that Party. In addition, if permitted by the importing Party, the importing Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good which is imported into its territory or released from customs control on or after the date of entry into force of this Agreement for that Party.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 3.27 (Verification of Origin), it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.27 (Verification of Origin);

(d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.27 (Verification of Origin); or

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

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party. If an invoice is issued in a non- Party, a Party shall require that the certification of origin be separate from the invoice.

Article 3.29. Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

(a) make a claim for preferential tariff treatment;

(b) provide a statement that the good was originating at the time of importation;

(c) provide a copy of the certification of origin; and

(d) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

Article 3.30. Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

Article 3.31. Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

Section C. Other Matters

Article 3.32. Committee on Rules of Origin and Origin Procedures

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures (Committee), composed of government representatives of each Party, to consider any matters arising under this Chapter.

2. The Committee shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

3. The Committee shall consult to discuss possible amendments or modifications to this Chapter and its Annexes, taking into account developments in technology, production processes or other related matters.

4. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

5. With respect to a textile or apparel good, Article 4.8 (Committee on Textile and Apparel Trade Matters) applies in place of this Article.

6. The Committee shall consult on the technical aspects of submission and the format of the electronic certification of origin.

Chapter 4. TEXTILE AND APPAREL GOODS

Article 4.1. Definitions

For the purposes of this Chapter:

customs offence means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the terms of this Agreement governing importations or exportations of textile or apparel goods between the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, falsification of documents relating to the importation or exportation of goods, fraud or smuggling; and

transition period means the period beginning on the date of entry into force of this Agreement between the Parties concerned until five years after the date on which the importing Party eliminates duties on a good for the exporting Party pursuant to this Agreement.

Article 4.2. Rules of Origin and Related Matters

Application of Chapter 3

1. Except as provided in this Chapter, Chapter 3 (Rules of Origin and Origin Procedures) shall apply to textile and apparel goods.

De Minimis

2. A textile or apparel good classified outside of Chapters 61 through 63 of the Harmonized System that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those materials is not more than 10 per cent of the total weight of the good and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

3. A textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibres or yarns in the component of the good that determines the tariff classification of the good that do not satisfy the applicable change in tariff classification set out in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those fibres or yarns is not more than 10 per cent of the total weight of that component and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

4. Notwithstanding paragraphs 2 and 3, a good described in paragraph 2 containing elastomeric yarn or a good described in paragraph 3 containing elastomeric yarn in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of one or more of the Parties. (1) (2)

Treatment of Sets

5. Notwithstanding the textile and apparel product-specific rules of origin set out in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), textile and apparel goods put up in sets for retail sale, classified as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 per cent of the value of the set.

6. For the purposes of paragraph 5:

(a) the value of non-originating goods in the set shall be calculated in the same manner as the value of non-originating materials in Chapter 3 (Rules of Origin and Origin Procedures); and

(b) the value of the set shall be calculated in the same manner as the value of the good in Chapter 3 (Rules of Origin and Origin Procedures).

Treatment of Short Supply List Materials

7. Each Party shall provide that, for the purposes of determining whether a textile or apparel good is originating under Article 3.2(c) (Originating Goods), a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) is originating provided that the material meets any requirement, including any end use requirement, specified in the Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin).

8. If a claim that a textile or apparel good is originating relies on the incorporation of a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), the importing Party may require in the importation documentation, such as a certification of origin, the number or description of the material on Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product- Specific Rules of Origin).

9. Non-originating materials marked as temporary in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) may be considered as originating under paragraph 7 for five years from the date of entry into force of this Agreement.

Treatment for Certain Handmade or Folkloric Goods

10. An importing Party may identify particular textile or apparel goods of an exporting Party to be eligible for duty-free or preferential tariff treatment that the importing and exporting Parties mutually agree fall within:

(a) hand-loomed fabrics of a cottage industry;

(b) hand-printed fabrics with a pattern created with a wax-resistance technique;

(c) hand-made cottage industry goods made of such hand-loomed or hand-printed fabrics; or

(d) traditional folklore handicraft goods;

provided that any requirements agreed by the importing and exporting Parties for such treatment are met.

(1) For greater certainty, this paragraph shall not be construed to require a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) to be produced from elastomeric yarns wholly formed in the territory of one or more of the Parties.

(2) For the purposes of this paragraph, "wholly formed" means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibres into yarn, or both, and ending with a finished yarn or plied yarn.

Article 4.3. Emergency Actions

1. Subject to this Article if, as a result of the reduction or elimination of a customs duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such time as may be necessary to prevent or remedy such

damage and to facilitate adjustment, take emergency action in accordance with paragraph 6, consisting of an increase in the rate of duty on the good of the exporting Party or Parties to a level not to exceed the lesser of:

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

(b) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement for the importing Party.

2. Nothing in this Article shall be construed to limit the rights and obligations of a Party under Article XIX of GATT 1994 and the Safeguards Agreement, or Chapter 6 (Trade Remedies).

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

(a) shall examine the effect of increased imports from the exporting Party or Parties of a textile or apparel good benefiting from preferential tariff treatment under this Agreement on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which cither alone or combined with other factors shall necessarily be decisive; and

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

4. The importing Party may take an emergency action under this Article only following its publication of procedures that identify the criteria for a finding of serious damage, or actual threat thereof, and an investigation by its competent authorities. Such an investigation must use data based on the factors described in paragraph 3(a) that serious damage or actual threat thereof is demonstrably caused by increased imports of the product concerned as a result of this Agreement.

5. The importing Party shall submit to the exporting Party or Parties, without delay, written notice of the initiation of the investigation provided for in paragraph 4, as well as of its intent to take emergency action and, on the request of the exporting Party or Parties, shall enter into consultations with that Party or Parties regarding the matter. The importing Party shall provide the exporting Party or Parties with the full details of the emergency action to be taken. The Parties concerned shall begin consultations without delay and, unless otherwise decided, shall complete them within 60 days of receipt of the request. After completion of the consultations, the importing Party shall notify the exporting Party or Parties of any decision. If it decides to take an emergency action, the notification shall include the details of the emergency action, including when it will take effect.

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

(a) no emergency action shall be maintained for a period exceeding two years unless extended for an additional period of up to two years;

(b) no emergency action shall be taken or maintained beyond the expiration of the transition period;

(c) no emergency action shall be taken by an importing Party against any particular good of another Party or Parties more than once; and

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

7. The Party taking an emergency action under this Article shall provide to the exporting Party or Parties against whose goods the emergency action is taken mutually agreed trade liberalising compensation in the form of concessions either having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties concerned otherwise agree. If the Parties concerned are unable to agree on compensation within 60 days or a longer period agreed by the Parties concerned, the Party or Parties against whose good the emergency action is taken may take tariff action that has trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply it only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

8. No Party shall take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a transitional safeguard measure under Chapter 6 (Trade Remedies), or to a safeguard measure that a Party takes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

9. The investigations referred to in this Article shall be carried out according to procedures established by cach Party. Each Party shall, on the date of entry into force of this Agreement for that Party or before it initiates an investigation, notify the other Parties of these procedures.

10. Each Party shall, in any year where it takes or maintains an emergency action under this Article, provide a report on such actions to the other Parties.

Article 4.4. Cooperation

1. Each Party shall, in accordance with its laws and regulations, cooperate with other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offences for trade in textile or apparel goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.

2. Each Party shall take appropriate measures, which may include legislative, administrative, judicial or other action for:

(a) enforcement of its laws, regulations and procedures related to customs offences; and

(b) cooperation with an importing Party in the enforcement of its laws, regulations and procedures related to the prevention of customs offences.

3. For the purposes of paragraph 2, "appropriate measures" means measures a Party takes, in accordance with its laws, regulations and procedures, such as:

(a) providing its government officials with the legal authority to meet the obligations under this Chapter,

(b) enabling its law enforcement officials to identify and address customs offences;

(c) establishing or maintaining criminal, civil or administrative penalties that are aimed at deterring customs offences;

(d) undertaking appropriate enforcement action when it believes, based on a request from another Party that includes relevant facts, that a customs offence has occurred or is occurring in the requested Party's territory with regard to a textile or apparel good, including in free trade zones of the requested Party; and

(e) cooperating with another Party, on request, to establish facts regarding customs offences in the requested Party's territory with regard to a textile or apparel good, including in free trade zones of the requested Party.

4. A Party may request information from another Party if it has relevant facts, such as historical evidence, indicating that a customs offence is occurring or is likely to occur.

5. Any request under paragraph 4 shall be made in writing, by electronic means or any other method that acknowledges receipt, and shall include a brief statement of the matter at issue, the cooperation requested, the relevant facts indicating a customs offence, and sufficient information for the requested Party to respond in accordance with its laws and regulations.

6. To enhance cooperative efforts under this Article between Parties to prevent and address customs offences, a Party that receives a request under paragraph 4 shall, subject to its laws, regulations and procedures, including those related to confidentiality referred to in Article 4.9.4 (Confidentiality) provide to the requesting Party, upon receipt of a request in accordance with paragraph 5, available information on the existence of an importer, exporter or producer, goods of an importer, exporter or producer, or other matters related to this Chapter. The information may include any available correspondence, reports, bills of lading, invoices, order contracts or other information regarding enforcement of laws or regulations related to the request.

7. A Party may provide information requested in this Article on paper or in electronic form.

8. Each Party shall designate and notify a contact point for cooperation under this Chapter in accordance with Article 27.5 (Contact Points) and shall notify the other Parties promptly of any subsequent changes.

Article 4.5. Monitoring

1. Each Party shall establish or maintain programmes or practices to identify and address textiles and apparel customs offences. This may include programmes or practices to ensure the accuracy of claims for preferential tariff treatment for textile and apparel goods under this Agreement.

2. Through those programmes or practices, a Party may collect or share information related to textiles or apparel goods for use for risk management purposes.

3. In addition to paragraphs 1 and 2, some Parties have bilateral agreements that apply between those Parties.

Article 4.6. Verification

1. An importing Party may conduct a verification with respect to a textile or apparel good pursuant to Article 3.27.1(a), Article 3.27.1(b) or Article 3.27.1(e) (Verification of Origin) and their associated procedures to verify whether a good qualifies for preferential tariff treatment or through a request for a site visit as described in this Article. (3)

(3) For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

2. An importing Party may request a site visit under this Article from an exporter or producer of textile or apparel goods to verify whether:

(a) a textile or apparel good qualifies for preferential tariff treatment under this Agreement; or

(b) customs offences are occurring or have occurred.

3. During a site visit under this Article, an importing Party may request access to:

(a) records and facilities relevant to the claim for preferential tariff treatment; or

(b) records and facilities relevant to the customs offences being verified.

4. If an importing Party secks to conduct a site visit under paragraph 2, it shall notify the host Party, no later than 20 days before the visit, regarding:

(a) the proposed dates;

(b) the number of exporters and producers to be visited in appropriate detail to facilitate the provision of any assistance, but does not need to specify the names of the exporters or producers to be visited;

(c) whether assistance by the host Party will be requested and what type;

(d) if relevant, the customs offences being verified under paragraph 2(b), including relevant factual information available at the time of the notification related to the specific offences, which may include historical information; and.

(e) whether the importer claimed preferential tariff treatment.

5. On receipt of information on a proposed visit under paragraph 2, the host Party may request information from the importing Party to facilitate planning of the visit, such as logistical arrangements or provision of requested assistance.

6. If an importing Party secks to conduct a site visit under paragraph 2, it shall provide the host Party, as soon as practicable and prior to the date of the first visit to an exporter or producer under this Article, with a list of the names and addresses of the exporters or producers it proposes to visit.

7. If an importing Party seeks to conduct a site visit under paragraph 2:

(a) officials of the host Party may accompany the officials of the importing Party during the site visit;

(b) officials of the host Party may, in accordance with its laws and regulations, on request of the importing Party or on its own initiative, assist the officials of the importing Party during the site visit and provide, to the extent available, information relevant to conduct the site visit;

(c) the importing and host Parties shall limit communication regarding the site visit to relevant government officials and shall not inform the exporter or producer outside the government of the host Party in advance of a visit or provide any other verification or enforcement information not publicly available whose disclosure could undermine the effectiveness of the action;

(d) the importing Party shall request permission from the exporter or producer (4) for access to the relevant records or facilities, no later than the time of the visit. Unless advance notice would undermine the effectiveness of the site visit, the importing Party shall request permission with appropriate advance notice; and

(e) if the exporter or producer of textile or apparel goods denies such permission or access, the visit will not occur. The

importing Party shall give consideration to any reasonable alternative dates proposed, taking into account the availability of relevant employees or facilities of the person visited.

(4) The importing Party shall request permission from a person who has the capacity to consent to the visit at the facilities to be visited.

8. On completion of a site visit under paragraph 2, the importing Party shall:

(a) on request of the host Party, inform the host Party of its preliminary findings;

(b) on receiving a written request from the host Party, provide the host Party with a written report of the results of the visit, including any findings, no later than 90 days after the date of the request. If the report is not in English, the importing Party shall provide a translation of it in English on request of the host Party; and

(c) on receiving a written request of the exporter or producer, provide that person with a written report of the results of the visit as it pertains to that exporter or producer, including any findings, no later than 90 days after the date of the request. This may be a report prepared under subparagraph (b), with appropriate changes. The importing Party shall inform the exporter or producer of the entitlement to request this report. If the report is not in English, the importing Party shall provide a translation of it in English on request of that exporter or producer.

9. If an importing Party conducts a site visit under paragraph 2 and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it shall, before it may deny preferential tariff treatment, provide to the importer and any exporter or producer that provided information directly to the importing Party 30 days to submit additional information to support the claim for preferential tariff treatment. If advance notice was not given under paragraph 7(d), that importer, exporter or producer may request an additional 30 days.

10. The importing Party shall not reject a claim for preferential tariff treatment on the sole grounds that the host Party does not provide the requested assistance or information under this Article.

11. While a verification is being conducted under this Article, the importing Party may take appropriate measures under procedures established in its laws and regulations, including suspending or denying the application of preferential tariff treatment to textile or apparel goods of the exporter or producer subject to a verification.

12. If verifications of identical textile or apparel goods by an importing Party indicate a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into its territory qualifies for preferential tariff treatment, the importing Party may withhold preferential tariff treatment for identical textile or apparel goods imported, exported or produced by that person until it is demonstrated to the importing Party that those identical textile or apparel goods qualify for preferential tariff treatment. For the purposes of this paragraph, "identical textile or apparel goods" means textile or apparel goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

Article 4.7. Determinations

The importing Party may deny a claim for preferential tariff treatment for a textile or apparel good:

(a) for a reason listed in Article 3.28.2 (Determination on Claims for Preferential Tariff Treatment);

(b) if, pursuant to a verification under this Chapter, it has not received sufficient information to determine that the textile or apparel good qualifies as originating; or

(c) if, pursuant to a verification under this Chapter, access or permission for the visit is denied, the importing Party is prevented from completing the visit on the proposed date, and the exporter or producer does not provide an alternative date acceptable to the importing Party, or the exporter or producer does not provide access to the relevant records or facilities during a visit.

Article 4.8. Committee on Textile and Apparel Trade Matters

1. The Parties hereby establish a Committee on Textile and Apparel Trade Matters, (Committee), composed of government representatives of each Party.

2. The Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide and on request of the Commission. The Committee shall meet at such venues and times as the Parties decide.

3. The Committee may consider any matter arising under this Chapter, and its functions shall include review of the implementation of this Chapter, consultation on technical or interpretive difficulties that may arise under this Chapter, and discussion of ways to improve the effectiveness of cooperation under this Chapter.

4. In addition to discussions under the Committee, a Party may request in writing discussions with any other Party or Parties regarding matters under this Chapter concerning those Parties, with a view to resolution of the issue, if it believes difficulties are occurring with respect to implementation of this Chapter.

5. Unless the Parties amongst whom a discussion is requested agree otherwise, they shall hold the discussions pursuant to paragraph 4 within 30 days of receipt of a written request by a Party and endeavour to conclude within 90 days of receipt of the written request.

6. Discussions under this Article shall be confidential and without prejudice to the rights of any Party in any other proceeding.

7. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

Article 4.9. Confidentiality

1. Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

2. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

3. A Party may decline to provide information requested by another Party if that Party has failed to act in conformity with paragraph 1 or 2.

4. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Partyâs customs or other laws related to this Chapter, or collected in accordance with this Chapter, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Chapter 5. CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 5.1. Customs Procedures and Facilitation of Trade

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

Article 5.2. Customs Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall:

(a) encourage cooperation with other Parties regarding significant customs issues that affect goods traded between the Parties; and

(b) endeavour to provide each Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations or exportations, that is likely to substantially affect the operation of this Agreement.

2. Each Party shall, in accordance with its law, cooperate with the other Parties through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:

(a) the implementation and operation of the provisions of this Agreement governing importations or exportations, including claims for preferential tariff treatment, procedures for making claims for preferential tariff treatment and verification procedures;

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

(c) restrictions or prohibitions on imports or exports;

(d) investigation and prevention of customs offences, including duty evasion and smuggling; and

(e) other customs matters as the Parties may decide.

3. If a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request that another Party provide specific confidential information that is normally collected in connection with the importation of goods.

4. If a Party makes a request under paragraph 3, it shall:

(a) be in writing;

(b) specify the purpose for which the information is sought; and

(c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.

6. For the purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations that govern importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations that govern importations by a manufacturer, producer or other person involved in the movement of goods from the territory of one Party to the territory of another Party;

(c) historical evidence of non-compliance with laws or regulations that govern importations by some or all of the persons involved in the movement of goods within a specific product sector from the territory of one Party to the territory of another Party; or

(d) other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavour to provide another Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party's laws or regulations that govern importations, in particular those related to unlawful activities, including smuggling and similar infractions.

8. In order to facilitate trade between the Parties, a Party receiving a request shall endeavour to provide the Party that made the request with technical advice and assistance for the purpose of:

(a) developing and implementing improved best practices and risk management techniques;

(b) facilitating the implementation of international supply chain standards;

(c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;

(d) developing the technical skill of customs personnel; and

(e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations.

9. The Parties shall endeavour to establish or maintain channels of communication for customs cooperation, including by establishing contact points in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

Article 5.3. Advance Rulings

1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party (1), with regard to (2):

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;

(c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and

(d) such other matters as the Parties may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the requester is secking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

4. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or if the ruling was in error.

5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.

6. No Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.

7. Each Party shall ensure that requesters have access to administrative review of advance rulings.

8. Subject to any confidentiality requirements in its law, cach Party shall endeavour to make its advance rulings publicly available, including online.

(1) For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

(2) For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

Article 5.4. Response to Requests for Advice or Information

On request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request on:

(a) the requirements for qualifying for quotas, such as tariff rate quotas;

(b) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;

(c) the eligibility requirements for goods under Article 2.6 (Goods Re- entered after Repair and Alteration);

(d) country of origin marking, if it is a prerequisite for importation; and

(e) other matters as the Parties may decide.

Article 5.5. Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination (3) on a customs matter has access to:

(a) administrative review of the determination, independent (4) of the employee or office that issued the determination; and

(b) judicial review of the determination. (5)

2. Each Party shall ensure that an authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review.

(3) For the purposes of this Article, a determination, if made by Peru, means an administrative act.

(4) The level of administrative review may include any authority supervising the customs administration.

(5) Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

Article 5.6. Automation

1. Each Party shall:

(a) endeavour to use international standards with respect to procedures for the release of goods;

(b) make electronic systems accessible to customs users;

(c) employ electronic or automated systems for risk analysis and targeting;

(d) endeavour to implement common standards and elements for import and export data in accordance with the World Customs Organization (WCO) Data Model;

(e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and

(f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

Article 5.7. Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:

(a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest, through, if possible, electronic means; (6)

(c) to the extent possible, provide for the release of certain goods with a minimum of documentation;

(d) under normal circumstances, provide for express shipments to be released within six hours after submission of the necessary customs documents, provided the shipment has arrived;

(e) apply to shipments of any weight or value recognising that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law. (7)

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate (8) and expedited customs procedure that provides that treatment for express shipments.

(6) For greater certainty, additional documents may be required as a condition for release.

(7) Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

(8) For greater certainty, "separate" does not mean a specific facility or lane.

Article 5.8. Penalties

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Partyâs customs administration for a breach of its customs laws, regulations or procedural requirements, including those governing tariff classification, customs valuation, country of origin and claims for preferential treatment under this Agreement.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of a customs law, regulation or procedural requirement is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed by its customs administration is dependent on the facts and circumstances (9) of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

5. Each Party shall ensure that if a penalty is imposed by its customs administration for a breach of a customs law, regulation or procedural requirement, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

6. If a person voluntarily discloses to a Party's customs administration the circumstances of a breach of a customs law, regulation or procedural requirement prior to the discovery of the breach by the customs administration, the Party's customs administration shall, if appropriate, consider this fact as a potential mitigating factor when a penalty is established for that person.

7. Each Party shall provide in its laws, regulations or procedures, or otherwise give effect to, a fixed and finite period within which its customs administration may initiate proceedings (10) to impose a penalty relating to a breach of a customs law, regulation or procedural requirement.

8. Notwithstanding paragraph 7, a customs administration may impose, outside of the fixed and finite period, a penalty where this is in lieu of judicial or administrative tribunal proceedings.

(9) Facts and circumstances shall be established objectively according to each Party's law.

(10) For greater certainty, "proceedings" means administrative measures by the customs administration and does not include judicial proceedings.

Article 5.9. Risk Management

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

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 5.10. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;

(b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without temporary transfer to warehouses or other facilities; and

(d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.

3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

Article 5.11. Publication

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online.

3. To the extent possible, cach Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

Article 5.12. Confidentiality

1. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

Chapter 6. TRADE REMEDIES

Section A. Safeguard Measures

Article 6.1. Definitions

For the purposes of this Section:

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

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

threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent;

transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good; and

transitional safeguard measure means a measure described in Article 6.3.2 (imposition of a Transitional Safeguard Measure).

Article 6.2. Global Safeguards

1. Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement.

2. Except as provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

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

4. No Party shall apply or maintain a safeguard measure under this Chapter, to any product imported under a tariff rate quota (TRQ) established by the Party under this Agreement. A Party taking a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude from the safeguard measure imports of originating goods under a TRQ established by the Party under this Agreement and set out in Appendix A to the Party's Schedule to Annex 2-D (Tariff Commitments), if such imports are not a cause of serious injury or threat thereof.

5. No Party shall apply or maintain two or more of the following measures, with respect to the same good, at the same time:

(a) a transitional safeguard measure under this Chapter;

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

(c) a safeguard measure set out in Appendix B to its Schedule to Annex 2-D (Tariff Commitments); or

(d) an emergency action under Chapter 4 (Textiles and Apparel Goods).

Article 6.3. Imposition of a Transitional Safeguard Measure

1. A Party may apply a transitional safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement:

(a) an originating good of another Party, individually, is being imported into the Partyâs territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good; or

(b) an originating good of two or more Parties, collectively, is being imported into the Partyâs territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production, since the date of entry into force of this Agreement for those Parties.

2. If the conditions in paragraph 1 are met, the Party may, to the extent necessary to prevent or remedy serious injury and to facilitate adjustment:

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

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

(i) the most-favoured-nation applied rate of customs duty in effect at the time the measure is applied; and

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

The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of transitional safeguard measure.

Article 6.4. Standards for a Transitional Safeguard Measure

1. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

2. That period shall not exceed two years, except that the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 6.5 (investigation Procedures and Transparency Requirements), that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

3. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

4. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

5. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in the Party's Schedule to Annex 2-D (Tariff Commitments) as if that Party had never applied the transitional safeguard measure.

6. No Party shall apply a transitional safeguard measure more than once on the same good.

Article 6.5. Investigation Procedures and Transparency Requirements

1. A Party shall apply a transitional safeguard measure only following an investigation by the Partyâs competent authorities in accordance with Article 3 and Article 4.2(c) of the Safeguards Agreement; to this end, Article 3 and Article 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

2. In the investigation described in paragraph 1, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

Article 6.6. Notification and Consultation

1. A Party shall promptly notify the other Parties, in writing, if it:

(a) initiates a transitional safeguard investigation under this Chapter;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in Article 6.3 (Imposition of a Transitional Safeguard Measure);

(c) takes a decision to apply or extend a transitional safeguard measure; and

(d) takes a decision to modify a transitional safeguard measure previously undertaken.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent authorities that is required under Article 6.5.1 (Investigation Procedures and Transparency Requirements).

3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a transitional safeguard

measure, that Party shall include in that notification:

(a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-D (Tariff Commitments) are based;

(c) a precise description of the transitional safeguard measure;

(d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(ec) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with the proceeding.

Article 6.7. Compensation

1. A Party applying a transitional safeguard measure shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the transitional safeguard measure.

3. A Party against whose good the transitional safeguard measure is applied shall notify the Party applying the transitional safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the transitional safeguard measure.

Section B. Antidumping and Countervailing Duties

Article 6.8. Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement and the SCM Agreement.

2. Nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement or the SCM Agreement.

3. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Section or Annex 6-A (Practices Relating to Antidumping and Countervailing Duty Proceedings).

Chapter 7. SANITARY AND PHYTOSANITARY MEASURES

Article 7.1. Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter:

competent authority means a government body of each Party responsible for measures and matters referred to in this Chapter;

emergency measure means a sanitary or phytosanitary measure that is applied by an importing Party to another Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure;

import check means an inspection, examination, sampling, review of documentation, test or procedure, including laboratory, organoleptic or identity, conducted at the border by an importing Party or its representative to determine if a consignment complies (1) with the sanitary and phytosanitary requirements of the importing Party;

import programme means mandatory sanitary or phytosanitary policies, procedures or requirements of an importing Party that govern the importation of goods;

primary representative means the government body of a Party that is responsible for the implementation of this Chapter and the coordination of that Party's participation in Committee activities under Article 7.5 (Committee on Sanitary and Phytosanitary Measures);

risk analysis means the process that consists of three components: risk assessment; risk management; and risk communication;

risk communication means the exchange of information and opinions concerning risk and risk-related factors between risk assessors, risk managers, consumers and other interested parties; and

risk management means the weighing of policy alternatives in light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures.

(1) For greater certainty, the Parties recognise that import checks are one of many tools available to assess compliance with an importing Party's sanitary and phytosanitary measures.

Article 7.2. Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade by utilising a variety of means to address and seek to resolve sanitary and phytosanitary issues;

(b) reinforce and build on the SPS Agreement;

(c) strengthen communication, consultation and cooperation between the Parties, and particularly between the Parties' competent authorities and primary representatives;

(d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unjustified obstacles to trade;

(e) enhance transparency in and understanding of the application of each Partyâs sanitary and phytosanitary measures; and

(f) encourage the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties.

Article 7.3. Scope

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

2. Nothing in this Chapter prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

Article 7.4. General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. Nothing in this Agreement shall limit the rights and obligations that each Party has under the SPS Agreement.

Article 7.5. Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (Committee), composed of government representatives of cach Party responsible for sanitary and phytosanitary matters.

2. The objectives of the Committee are to:

(a) enhance each Party's implementation of this Chapter;

(b) consider sanitary and phytosanitary matters of mutual interest; and

(c) enhance communication and cooperation on sanitary and phytosanitary matters.

3. The Committee:

(a) shall provide a forum to improve the Parties' understanding of sanitary and phytosanitary issues that relate to the implementation of the SPS Agreement and this Chapter,

(b) shall provide a forum to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(c) shall exchange information on the implementation of this Chapter;

(d) shall determine the appropriate means, which may include ad hoc working groups, to undertake specific tasks related to the functions of the Committee;

(e) may identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;

(f) may serve as a forum for a Party to share information on a sanitary or phytosanitary issue that has arisen between it and another Party or Parties, provided that the Parties between which the issue has arisen have first attempted to address the issue through discussions between themselves; and

(g) may consult on matters and positions for the meetings of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (WTO SPS Committee), and meetings held under the auspices of the Codex Alimentarius Commission, the World Organisation for Animal Health and the International Plant Protection Convention.

4. The Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

5. The Committee shall meet within one year of the date of entry into force of this Agreement and once a year thereafter unless Parties agree otherwise.

Article 7.6. Competent Authorities and Contact Points

Each Party shall provide the other Parties with a written description of the sanitary and phytosanitary responsibilities of its competent authorities and contact points within cach of these authorities and identify its primary representative within 60 days of the date of entry into force of this Agreement for that Party. Each Party shall keep this information up to date.

Article 7.7. Adaptation to Regional Conditions, Including Pest- or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise that adaptation to regional conditions, including regionalisation, zoning and compartmentalisation, is an important means to facilitate trade.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. The Parties may cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

4. When an importing Party receives a request for a determination of regional conditions from an exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

5. When an importing Party commences an assessment of a request for a determination of regional conditions under paragraph 4, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

7. When an importing Party adopts a measure that recognises specific regional conditions of an exporting Party, the importing Party shall communicate that measure to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The importing and exporting Parties involved in a particular determination may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

9. The Parties involved in a determination recognising regional conditions are encouraged, if mutually agreed, to report the outcome to the Committee.

10. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

11. If there is an incident that results in the importing Party modifying or revoking the determination recognising regional conditions, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

Article 7.8. Equivalence

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. Further to Article 4 of the SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

2. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

3. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.

4. When an importing Party commences an equivalence assessment, that Party shall promptly, on request of the exporting Party, explain its equivalence process and plan for making the equivalence determination and, if the determination results in recognition, for enabling trade.

5. In determining the equivalence of a sanitary or phytosanitary measure, an importing Party shall take into account available knowledge, information and relevant experience, as well as the regulatory competence of the exporting Party.

6. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure:

(a) achieves the same level of protection as the importing Party's measure; or

(b) has the same effect in achieving the objective as the importing Party's measure.(2)

7. When an importing Party adopts a measure that recognises the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate the measure it has adopted to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The Parties involved in an equivalence determination that results in recognition are encouraged, if mutually agreed, to report the outcome to the Committee.

9. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

(2) No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for this subparagraph.

Article 7.9. Science and Risk Analysis

1. The Parties recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.

2. Each Party shall ensure that its sanitary and phytosanitary measures cither conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement (3)

3. Recognising the Parties' rights and obligations under the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing the level of protection it determines to be appropriate;

(b) establishing or maintaining an approval procedure that requires a risk analysis to be conducted before the Party grants a product access to its market; or

(c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis.

4. Each Party shall:

(a) ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties; and

(b) conduct its risk analysis in a manner that is documented and that provides interested persons and other Parties an opportunity to comment, in a manner to be determined by that Party. (4)

5. Each Party shall ensure that each risk assessment it conducts is appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data, including qualitative and quantitative information.

6. When conducting its risk analysis, each Party shall:

(a) take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations;

(b) consider risk management options that are not more trade restrictive (5) than required, including the facilitation of trade by not taking any measure, to achieve the level of protection that the Party has determined to be appropriate; and

(c) select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

7. If an importing Party requires a risk analysis to evaluate a request from an exporting Party to authorise importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Party, the importing Party shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Party.

8. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

9. If the importing Party, as a result of a risk analysis, adopts a sanitary or phytosanitary measure that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

10. Without prejudice to Article 7.14 (Emergency Measures), no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

(3) No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for this paragraph.

(4) For greater certainty, this subparagraph applies only to a risk analysis for a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

(5) For the purposes of subparagraphs (b) and (c), a risk management option is not more trade-restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

Article 7.10. Audits (6)

1. To determine an exporting Party's ability to provide required assurances and meet the sanitary and phytosanitary measures of the importing Party, each importing Party shall have the right, subject to this Article, to audit the exporting Party's competent authorities and associated or designated inspection systems. That audit may include an assessment of the competent authorities' control programmes, including: if appropriate, reviews of the inspection and audit programmes; and on-site inspections of facilities.

2. An audit shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

3. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale and decide: the objectives and scope of the audit; the criteria or requirements against which the exporting Party will be assessed; and the itinerary and procedures for conducting the audit.

5. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party makes its conclusions and takes any action. The auditing Party shall provide a report setting out its conclusions in writing to the audited Party within a reasonable period of time.

6. A decision or action taken by the auditing Party as a result of the audit shall be supported by objective evidence and data that can be verified, taking into account the auditing Partyâs knowledge of, relevant experience with, and confidence in, the audited Party. This objective evidence and data shall be provided to the audited Party on request.

7. The costs incurred by the auditing Party shall be borne by the auditing Party, unless both Parties decide otherwise.

8. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

(6) For greater certainty, nothing in this Article prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

Article 7.11. Import Checks

1. Each Party shall ensure that its import programmes are based on the risks associated with importations, and the import checks are carried out without undue delay. (7)

2. A Party shall make available to another Party, on request, information on its import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations.

3. A Party may amend the frequency of its import checks as a result of experience gained through import checks or as a result of actions or discussions provided for in this Chapter.

4. An importing Party shall provide to another Party, on request, information regarding the analytical methods, quality controls, sampling procedures and facilities that the importing Party uses to test a good. The importing Party shall ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample,

and the analytical methods used on the test sample.

5. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure, is limited to what is reasonable and necessary, and is rationally related to the available science.

6. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification about the adverse result to at least one of the following: the importer or its agent; the exporter; the manufacturer; or the exporting Party.

7. When the importing Party provides a notification pursuant to paragraph 6, it shall:

(a) include:

(i) the reason for the prohibition or restriction;

(ii) the legal basis or authorisation for the action; and

(iii) information on the status of the affected goods and, if appropriate, on their disposition;

(b) do so in a manner consistent with its laws, regulations and requirements as soon as possible and no later than seven days (8) after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and

(c) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

8. An importing Party that prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the decision and consider any relevant information submitted to assist in the review. The review request and information should be submitted to the importing Party within a reasonable period of time (9)

9. If an importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.

10. On request, an importing Party shall provide to the exporting Party available information on goods from the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party.

(7) For greater certainty, nothing in this Article prohibits a Party from performing import checks to obtain information to assess risk or to determine the need for, develop or periodically review a risk-based import programme.

(8) For the purposes of this paragraph, the term "days" does not include national holidays of the importing Party.

(9) For greater certainty, nothing in this Article prevents an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal or plant life or health in the Partyâs territory.

Article 7.12. Certification

1. The Parties recognise that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates and that different systems may be capable of meeting the same sanitary or phytosanitary objective.

2. If an importing Party requires certification for trade in a good, the Party shall ensure that the certification requirement is applied, in meeting the Party's sanitary or phytosanitary objectives, only to the extent necessary to protect human, animal or plant life or health.

3. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. An importing Party shall limit attestations and information it requires on the certificates to essential information that is related to the sanitary or phytosanitary objectives of the importing Party.

5. An importing Party should provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.

6. The Parties may agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, taking into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

7. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

Article 7.13. Transparency (10)

1. The Parties recognise the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing interested persons and other Parties with the opportunity to comment on their proposed sanitary and phytosanitary measures.

2. In implementing this Article, each Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. A Party shall notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of another Party, including any that conforms to international standards, guidelines or recommendations, by using the WTO SPS notification submission system as a means of notifying the other Parties.

4. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for interested persons and other Parties to provide written comments on the proposed measure after it makes the notification under paragraph 3. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from an interested person or another Party to extend the comment period. On request of another Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

5. The Party shall make available to the public, by electronic means in an official journal or on a website, the proposed sanitary or phytosanitary measure notified under paragraph 3, the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received from the public on the measure.

6. If a Party proposes a sanitary or phytosanitary measure which does not conform to an international standard, guideline or recommendation, the Party shall provide to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, the relevant documentation that the Party considered in developing the proposed measure, including documented and objective scientific evidence that is rationally related to the measure, such as risk assessments, relevant studies and expert opinions.

7. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with another Party, on request and if appropriate and feasible, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

8. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official journal or website.

9. Each Party shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. A Party shall also make available to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

10. If a final sanitary or phytosanitary measure is substantively altered from the proposed measure, a Party shall also include in the notice of the final sanitary or phytosanitary measure that it publishes, an explanation of:

(a) the objective and rationale of the measure and how the measure advances that objective and rationale; and

(b) any substantive revisions that it made to the proposed measure.

11. An exporting Party shall notify the importing Party through the contact points referred to in Article 7.6 (Competent Authorities and Contact Points) in a timely and appropriate manner:

(a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;

(b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;

(c) of significant changes in the status of a regionalised pest or disease;

(d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests or diseases; and

(e) of significant changes in food safety, pest or disease management, control or eradication policies or practices that may affect current trade.

12. If feasible and appropriate, a Party should provide an interval of more than six months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to address an urgent problem of human, animal or plant life or health protection or the measure is of a trade- facilitating nature.

13. A Party shall provide to another Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

(10) For greater certainty, this Article applies only to a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

Article 7.14. Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the Party shall promptly notify the other Parties of that measure through the primary representative and the relevant contact point referred to in Article 7.6 (Competent Authorities and Contact Points). The Party that adopts the emergency measure shall take into consideration any information provided by other Parties in response to the notification.

2. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months and make available the results of the review to any Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

Article 7.15. Cooperation

1. The Parties shall explore opportunities for further cooperation, collaboration and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter. Those opportunities may include trade facilitation initiatives and technical assistance. The Parties shall cooperate to facilitate the implementation of this Chapter.

2. The Parties shall cooperate and may jointly identify work on sanitary and phytosanitary matters with the goal of eliminating unnecessary obstacles to trade between the Parties.

Article 7.16. Information Exchange

A Party may request information from another Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavour to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

Article 7.17. Cooperative Technical Consultations

1. If a Party has concerns regarding any matter arising under this Chapter with another Party, it shall endeavour to resolve the matter by using the administrative procedures that the other Party's competent authority has available. If the relevant Parties have bilateral or other mechanisms available to address the matter, the Party raising the matter shall endeavour to resolve the matter through those mechanisms, if it considers that it is appropriate to do so. A Party may have recourse to the Cooperative Technical Consultations (CTC) set out in paragraph 2 at any time it considers that the continued use of the administrative procedures or bilateral or other mechanisms would not resolve the matter.

2. One or more Parties (requesting Party) may initiate CTC with another Party (responding Party) to discuss any matter arising under this Chapter that the requesting Party considers may adversely affect its trade by delivering a request to the

primary representative of the responding Party. The request shall be in writing and identify the reason for the request, including a description of the requesting Partyâs concerns about the matter, and set out the provisions of this Chapter that relate to the matter.

3. Unless the requesting Party and the responding Party (the consulting Parties) agree otherwise, the responding Party shall acknowledge the request in writing within seven days of the date of its receipt.

4. Unless the consulting Parties agree otherwise, the consulting Parties shall meet within 30 days of the responding Party's acknowledgement of the request to discuss the matter identified in the request, with the aim of resolving the matter within 180 days of the request if possible. The meeting shall be in person or by electronic means.

5. The consulting Parties shall ensure the appropriate involvement of relevant trade and regulatory agencies in meetings held pursuant to this Article.

6. All communications between the consulting Parties in the course of CTC, as well as all documents generated for CTC, shall be kept confidential unless the consulting Parties agree otherwise and without prejudice to the rights and obligations of any Party under this Agreement, the WTO Agreement or any other international agreement to which it is a party.

7. The requesting Party may cease CTC proceedings under this Article and have recourse to dispute settlement under Chapter 28 (Dispute Settlement) if:

(a) the meeting referred to in paragraph 4 does not take place within 37 days of the date of the request, or such other timeframe as the consulting Parties may agree under paragraphs 3 and 4; or

(b) the meeting referred to in paragraph 4 has been held.

8. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter through CTC in accordance with this Article.

Article 7.18. Dispute Settlement

1. Unless otherwise provided in this Chapter, Chapter 28 (Dispute Settlement) shall apply to this Chapter, subject to the following:

(a) with respect to Article 7.8 (Equivalence), Article 7.10 (Audits) and Article 7.11 (import Checks), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of one year after the date of entry into force of this Agreement for that Party; and

(b) with respect to Article 7.9 (Science and Risk Analysis), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of two years after the date of entry into force of this Agreement for that Party.

2. In a dispute under this Chapter that involves scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the Parties involved in the dispute. To this end, the panel may, if it deems appropriate, establish an advisory technical experts group, or consult the relevant international standard setting organisations, at the request of either Party to the dispute or on its own initiative.

Chapter 8. TECHNICAL BARRIERS TO TRADE

Article 8.1. Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 of the TBT Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter:

consular transactions means requirements that products of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for conformity assessment documentation;

marketing authorisation means the process or processes by which a Party approves or registers a product in order to authorise its marketing, distribution or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration" and "sanitary approval" for a product. Marketing authorisation does not include

notification procedures;

mutual recognition agreement means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government agreements to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 and the Electrical and Electronic Equipment Mutual Recognition Arrangement of July 7, 1999 and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

mutual recognition arrangement means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment;

post-market surveillance means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products;

TBT Agreement means the WTO Agreement on Technical Barriers to Trade, as may be amended; and

verify means to take action to confirm the veracity of individual conformity assessment results, such as requesting information from the conformity assessment body or the body that accredited, approved, licensed or otherwise recognised the conformity assessment body, but does not include requirements that subject a product to conformity assessment in the territory of the importing Party that duplicate the conformity assessment procedures already conducted with respect to the product in the territory of the exporting Party or a third party, except on a random or infrequent basis for the purpose of surveillance, or in response to information indicating non-compliance.

Article 8.2. Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 8.3. Scope

1. This Chapter shall apply to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures of central level of government bodies (and, where explicitly provided for, technical regulations, standards and conformity assessment procedures of government bodies at the level directly below that of the central level of government) that may affect trade in goods between the Parties, except as provided in paragraphs 4 and 5.

2. Each Party shall take reasonable measures that are within its authority to encourage observance by regional or local government bodies, as the case may be, on the level directly below that of the central level of government within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, of Article 8.5 (International Standards, Guides and Recommendations), Article 8.6 (Conformity Assessment), Article 8.8 (Compliance Period for Technical Regulations and Conformity Assessment Procedures) and each of the Annexes to this Chapter.

3. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards and procedures, except amendments and additions of an insignificant nature.

4. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements. These specifications are covered by Chapter 15 (Government Procurement).

5. This Chapter shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

6. For greater certainty, nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement and any other relevant international agreement.

Article 8.4. Incorporation of Certain Provisions of the TBT Agreement

1. The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, mutatis mutandis:

(a) Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;

(b) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and

(c) paragraphs D, E and F of Annex 3.

2. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a dispute that exclusively alleges a violation of the provisions of the TBT Agreement incorporated under paragraph 1.

Article 8.5. International Standards, Guides and Recommendations

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall apply the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 8.6. Conformity Assessment

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of another Party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria or other conditions as set out in paragraph 1 and requires test results, certifications or inspections as positive assurance that a product conforms to a technical regulation or standard, the Party:

(a) shall not require the conformity assessment body that tests or certifies the product, or the conformity assessment body conducting an inspection, to be located within its territory;

(b) shall not impose requirements on conformity assessment bodies located outside its territory that would effectively require those conformity assessment bodies to operate an office in that Party's territory; and

(c) shall permit conformity assessment bodies in other Parties' territories to apply to the Party for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection.

3. Paragraphs 1 and 2 shall not preclude a Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in another Party's territory, in a manner consistent with its obligations under the TBT Agreement.

4. If a Party undertakes conformity assessment under paragraph 3, and further to Articles 5.2 and 5.4 of the TBT Agreement concerning limitation on information requirements, the protection of legitimate commercial interests and the adequacy of review procedures, the Party shall, on the request of another Party, explain:

(a) how the information required is necessary to assess conformity and determine fees;

(b) how the Party ensures that the confidentiality of the information required is respected in a manner that ensures legitimate commercial interests are protected; and

(c) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

5. Paragraphs 1 and 2(c) shall not preclude a Party from using mutual recognition agreements to accredit, approve, license or otherwise recognise conformity assessment bodies located outside its territory.

6. Nothing in paragraphs 1, 2 and 5 precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

7. Further to paragraph 6, in order to enhance confidence in the continued reliability of conformity assessment results from the Parties' respective territories, a Party may request information on matters pertaining to conformity assessment bodies located outside its territory.

8. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. (1) The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

9. Further to Article 9.2 of the TBT Agreement no Party shall refuse to accept conformity assessment results from a conformity assessment body or take actions that have the effect of, directly or indirectly, requiring or encouraging another Party or person to refuse to accept conformity assessment results from a conformity assessment body because the accreditation body that accredited the conformity assessment body:

(a) operates in the territory of a Party where there is more than one accreditation body;

(b) is a non-governmental body;

(c) is domiciled in the territory of a Party that does not maintain a procedure for recognising accreditation bodies, provided that the accreditation body is recognised internationally, consistent with the provisions in paragraph 8;

(d) does not operate an office in the Party's territory; or

(e) is a for-profit entity.

10. Nothing in paragraph 9 prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body on grounds other than those set out in paragraph 9 if that Party can substantiate those grounds for the refusal, and that refusal is not inconsistent with the TBT Agreement and this Chapter.

11. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

12. If a Party:

(a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of another Party; or

(b) declines to use a mutual recognition arrangement, it shall, on request of the other Party, explain the reasons for its decision.

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

14. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of another Party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of that other Party, explain the reasons for its decision.

15. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

16. No Party shall require consular transactions, including related fees and charges, in connection with conformity assessment. (2)

(1) The Committee shall be responsible for developing and maintaining a list of such arrangements.

(2) For greater certainty, this paragraph shall not apply to a Party verifying conformity assessment documents during a marketing authorisation

Article 8.7. Transparency

1. Each Party shall allow persons of another Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies (3) on terms no less favourable than those that it accords to its own persons.

2. Each Party is encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

3. If appropriate, each Party shall encourage non-governmental bodies in its territory to observe the obligations in paragraphs 1 and 2.

4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.

5. A Party may determine the form of proposals for technical regulations and conformity assessment procedures, which may take the form of: policy proposals; discussion documents; summaries of proposed technical regulations and conformity assessment procedures; or the draft text of proposed technical regulations and conformity assessment procedures. Each Party shall ensure that its proposals contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures to adequately inform interested persons and other Parties about whether and how their trade interests might be affected.

6. Each Party shall publish preferably by electronic means, in a single official journal or website all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade. (4)

7. Each Party shall take such reasonable measures as may be available to it to ensure that all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of regional or local governments, as the case may be, on the level directly below that of the central level of government, are published.

8. Each Party shall ensure that all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, and to the extent practicable, all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, of regional or local governments on the level directly below that of the central level of government are accessible through official websites or journals, preferably consolidated into a single website.

9. Each Party shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

10. Notwithstanding paragraph 9, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

11. Each Party shall endeavour to notify proposals for new technical regulations and conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central level of government that are in accordance with the technical content of relevant international standards, guides and recommendations, if any, and that may have a significant effect on trade according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

12. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev. 12), as may be revised.

(3) A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

(4) For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO's official website.

13. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

(a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and

(b) transmit the notification and the proposal electronically to the other Parties through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

14. Each Party shall normally allow 60 days from the date it transmits a proposal under paragraph 13 for another Party or an interested person of another Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from another Party or an interested person of another Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

15. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

16. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

17. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this Chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Parties through the enquiry points referred to in paragraph 13(b).

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

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

(b) provide as soon as possible, but no later than 60 days after receiving a request from another Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected; (5)

(c) make publicly available the Party's responses to significant or substantive issues presented in comments received on the proposal for the technical regulation or conformity assessment procedure; and

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

19. Further to paragraph J of Annex 3 of the TBT Agreement, each Party shall ensure that its central government standardising body's work programme, containing the standards it is currently preparing and the standards it has adopted, is available through the central government standardising body's website or the website referred to in paragraph 6.

(5) For greater certainty, no Party shall be required to provide a description of alternative approaches or significant revisions under subparagraph (b) or (d) prior to the date of publication of the final technical regulation or conformity assessment procedure.

Article 8.8. Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement the term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.

2. If feasible and appropriate, each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

3. In addition to paragraphs 1 and 2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, each Party shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavour to take into account the resources available to suppliers.

Article 8.9. Cooperation and Trade Facilitation

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:

(a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and another Party's territory with respect to specific technical regulations;

(b) recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;

(c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

(d) designate conformity assessment bodies or recognise another Party's designation of conformity assessment bodies;

(e) unilaterally recognise the results of conformity assessment procedures performed in another Party's territory; and

(f) accept a supplier's declaration of conformity.

2. The Parties recognise that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

(a) regulatory dialogue and cooperation to, among other things:

(i) exchange information on regulatory approaches and practices;

(ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;

(iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or

(iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;

(b) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;

(c) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and

(d) promotion of the acceptance of technical regulations of another Party as equivalent.

3. With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region.

5. A Party shall, on request of another Party, give due consideration to any sector-specific proposal for cooperation under this Chapter.

6. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of another Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

7. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, with a view to addressing issues covered by this Chapter.

Article 8.10. Information Exchange and Technical Discussions

1. A Party may request another Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. A Party may request technical discussions with another Party with the aim of resolving any matter that arises under this Chapter.

3. For greater certainty, with respect to technical regulations or conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central government that may have a significant effect on trade, a Party may request technical discussions with another Party regarding those matters.

4. The relevant Parties shall discuss the matter raised within 60 days of the date of the request. If a requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. The responding Party shall give positive consideration to that request.

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

6. Unless the Parties that participate in the technical discussions agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the participating Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

7. Requests for information or technical discussions and communications shall be conveyed through the respective contact points designated pursuant to Article 27.5 (Contact Points).

Article 8.11. Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (Committee), composed of government representatives of each Party.

2. Through the Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards and conformity assessment procedures with a view to facilitating trade between the Parties.

The Committee's functions may include:

(a) monitoring the implementation and operation of this Chapter, including any other commitments agreed under this Chapter, and identifying any potential amendments to or interpretations of those commitments pursuant to Chapter 27 (Administrative and Institutional Provisions);

(b) monitoring any technical discussions on matters that arise under this Chapter requested pursuant to paragraph 2 of Article 8.10 (information Exchange and Technical Discussions);

(c) deciding on priority areas of mutual interest for future work under this Chapter and considering proposals for new sector-specific initiatives or other initiatives;

(d) encouraging cooperation between the Parties in matters that pertains to this Chapter, including the development, review or modification of technical regulations, standards and conformity assessment procedures;

(e) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertains to this Chapter;

(f) facilitating the identification of technical capacity needs;

(g) encouraging the exchange of information between the Parties and their relevant non-governmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non-governmental, regional, plurilateral and multilateral bodies or systems that develop standards, guides, recommendations, policies or other procedures relevant to this Chapter;

(h) encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach;

(i) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement,

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

(k) reporting to the Commission on the implementation and operation of this Chapter.

4. The Committee may establish working groups to carry out its functions.

5. To determine what activities the Committee will undertake, the Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the Committee do not unnecessarily duplicate that work.

6. The Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as decided by the Parties.

Article 8.12. Contact Points

1. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 27.5 (Contact Points).

2. A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.

3. The responsibilities of each contact point shall include:

(a) communicating with the other Parties' contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

(d) carrying out any additional responsibilities specified by the Committee.

Article 8.13. Annexes

1. The scope of the Annexes on Pharmaceuticals, Cosmetics, Medical Devices and Proprietary Formulas for Prepackaged Foods and Food Additives is set out in each respective Annex. The other Annexes to this Chapter have the same scope as that set out in Article 8.3 (Scope).

2. The rights and obligations set out in each Annex to this Chapter shall apply only with respect to the sector specified in that Annex, and shall not affect any Party's rights or obligations under any other Annex.

3. Unless the Parties agree otherwise, no later than five years after the date of entry into force of this Agreement and thereafter at least once every five years, the Committee shall:

(a) review the implementation of the Annexes, with a view to strengthening or improving them and if appropriate, make recommendations to enhance alignment of the Parties' respective technical regulations, standards and conformity assessment procedures in the sectors covered by the Annexes; and

(b) consider whether the development of Annexes concerning other sectors would further the objectives of this Chapter or the Agreement and decide whether to recommend to the Commission that the Parties initiate negotiations to conclude Annexes covering those sectors.

ANNEX 8-B. INFORMATION AND COMMUNICATIONS TECHNOLOGY PRODUCTS

Section A. Information and Communication Technology (ICT) Products That Use Cryptography

1. This section shall apply to information and communication technology (ICT) products that use cryptography. (10)

2. For the purposes of this section:

cryptography means the principles, means or methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;

encryption means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm;

cryptographic algorithm or cipher means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext; and

key means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot.

3. With respect to a product that uses cryptography and is designed for commercial applications, no Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer or supplier of the product, as a condition of the manufacture, sale, distribution, import or use of the product, to:

(a) transfer or provide access to a particular technology, production process or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product, to the Party or a person in the Party's territory;

(b) partner with a person in its territory; or

(c) use or integrate a particular cryptographic algorithm or cipher,

other than where the manufacture, sale, distribution, import or use of the product is by or for the government of the Party.

4. Paragraph 3 shall not apply to:

(a) requirements that a Party adopts or maintains relating to access to networks that are owned or controlled by the government of that Party, including those of central banks; or

(b) measures taken by a Party pursuant to supervisory, investigatory or examination authority relating to financial institutions or markets.

5. For greater certainty, this Section shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, unencrypted communications.

(10) For greater certainty, for the purposes of this section, a "product" is a good and does not include a financial instrument.

Section B. Electromagnetic Compatibility of Information Technology Equipment (ITE) Products

1. This section shall apply to the electromagnetic compatibility of information technology equipment (ITE) products.

2. For the purposes of this section:

ITE product means any device or system or component thereof that has a primary function of entry, storage, display, retrieval, transmission, processing, switching or control (or combinations thereof) of data or telecommunication messages by means other than radio transmission or reception and, for greater certainty, excludes any product or component thereof that has a primary function of radio transmission or reception;

electromagnetic compatibility means the ability of an equipment or system to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances with respect to any other device or system in that environment; and

supplier's declaration of conformity means an attestation by a supplier that a product meets a specified standard or technical regulation based on an evaluation of the results of conformity assessment procedures.

3. If a Party requires positive assurance that an ITE product meets a standard or technical regulation for electromagnetic compatibility, it shall accept a supplier's declaration of conformity. (11)

4. The Parties recognise that a Party may require testing, for example, by an independent accredited laboratory, in support of a supplier's declaration of conformity, registration of the supplier's declaration of conformity, or submission of evidence necessary to support the supplier's declaration of conformity.

5. Nothing in paragraph 3 shall prevent a Party from verifying a supplier's declaration of conformity.

6. Paragraph 3 shall not apply with respect to a product:

(a) that a Party regulates as a medical device, a medical device system or a component of a medical device or medical device system; or

(b) for which the Party demonstrates that there is a high risk that the product will cause harmful electromagnetic interference with a safety or radio transmission or reception device or system.

(11) Nothing in this paragraph shall be construed to require Mexico to apply this paragraph in a manner inconsistent with its Ley Federal Sobre Metrologia y Normalización.

Section C. Regional Cooperation Activities on Telecommunications Equipment

1. This section shall apply to telecommunications equipment.

2. The Parties are encouraged to implement the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 (MRA-TEL) and the APEC Mutual Recognition Arrangement for Equivalence of Technical Requirements of October 31, 2010 (MRA-ETR) with respect to each other or other arrangements to facilitate trade in telecommunications equipment.

Chapter 9. INVESTMENT

Section 9.1. Definitions

For the purposes of this Chapter:

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

claimant means an investor of a Party that is a party to an investment dispute with another Party. If that investor is a natural person, who is a permanent resident of a Party and a national of another Party, that natural person may not submit a claim to arbitration against that latter Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;

disputing parties means the claimant and the respondent; disputing party means either the claimant or the respondent;

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

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

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

ICC Arbitration Rules means the arbitration rules of the International Chamber of Commerce;

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

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

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

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

(a) an enterprise;

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

(c) bonds, debentures, other debt instruments and loans; (2) (3)

(d) futures, options and other derivatives;

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

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law; (4) and

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

but investment does not mean an order or judgment entered in a judicial or administrative action.

investor of a non-Party means, with respect to a Party, an investor that attempts to make, (12) is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party;

LCIA Arbitration Rules means the arbitration rules of the London Court of International Arbitration;

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (a) a modification or amendment of that debt instrument, as provided for under its terms, or (b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process;

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

non-disputing Party means a Party that is not a party to an investment dispute; protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

respondent means the Party that is a party to an investment dispute; Secretary-General means the Secretary-General of ICSID; and

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

(1) For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's

ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

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

(3) A loan issued by one Party to another Party is not an investment.

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

(12) For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

Article 9.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of another Party;

(b) covered investments; and

(c) with respect to Article 9.10 (Performance Requirements) and Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives), all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

(a) the central, regional or local governments or authorities of that Party; and

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party. (13)

3. For greater certainty, this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

(13) For greater certainty, governmental authority is delegated under the Partyâs law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

Article 9.3. Relation to other Chapters

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

2. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

Article 9.4. National Treatment (14)

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

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

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

(14) For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

Article 9.5. Most-Favoured-Nation Treatment

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

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

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B (Investor-State Dispute Settlement).

Article 9.6. Minimum Standard of Treatment (15)

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

(15) Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9- A (Customary International Law).

Article 9.7. Treatment In Case of Armed Conflict or Civil Strife

1, Notwithstanding Article 9.12.6(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

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

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.4 (National Treatment) but for Article 9.12.6(b) (Non-Conforming Measures).

Article 9.8. Expropriation and Compensation (16)

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose; (17) (18)

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

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

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

(d) be fully realisable and freely transferable.

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

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

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

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

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with Chapter 18 (Intellectual Property) and the TRIPS Agreement. (19)

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant, standing alone, does not constitute an expropriation.

(16) Article 9.8 (Expropriation and Compensation) shall be interpreted in accordance with Annex 9- B (Expropriation) and is subject to Annex 9-C (Expropriation Relating to Land).

(17) For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use".

(18) For the avoidance of doubt: (i) if Brunei Darussalam is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the Land Code (Cap. 40) and the Land Acquisition Act (Cap. 41), as of the date of entry into force of the Agreement for it; and (ii) if Malaysia is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the Land Acquisitions Act 1960, Land Acquisition Ordinance 1950 of the State of Sabah and the Land Code 1958 of the State of Sarawak, as of the date of entry into force of the Agreement for it.

(19) For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

Article 9.9. Transfers (20)

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

(a) contributions to capital; (21)

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 9.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 9.8 (Expropriation and Compensation); and

3) payments arising out of a dispute.

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

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

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws (22) relating to:

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

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

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

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

(20) For greater certainty, this Article is subject to Annex 9-E (Transfers).

(21) For greater certainty, contributions to capital include the initial contribution.

(22) For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

Article 9.10. Performance Requirements

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:

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

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

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

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

(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

(h) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party; or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or

(i) to adopt:

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract (25) freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of non- judicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the licence contract is concluded between the investor and a Party.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

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

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

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

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

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

(b) Paragraphs 1(f), 1(h) and 1(i) shall not apply:

(i) if a Party authorises use of an intellectual property right in accordance with Article 31 (26) of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws. (27) (28)

(c) Paragraph 1(i) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.

(d) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a) and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

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

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

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

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

(f) Paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1@, 2(a) and 2(b) shall not apply to government procurement.

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

(h) Paragraphs (1)(h) and (1)(i) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.

4. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

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

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

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

(24) For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

(25) A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(26) The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).

(27) The Parties recognise that a patent does not necessarily confer market power.

(28) In the case of Brunei Darussalam, for a period of 10 years after the entry into force of this Agreement for it or until it establishes a competition authority or authorities, whichever occurs earlier, the reference to the Party's competition laws includes competition regulations.

Article 9.11. Senior Management and Boards of Directors

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

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

Article 9.12. Non-Conforming Measures

1. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors) (29)

2. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex IL.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in paragraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate. (30)

4. No Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. (a) Article 9.4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

(b) Article 9.5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 4 of the TRIPS Agreement.

6. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

(a) government procurement; or

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

7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex I, pursuant to this Article, shall be made in accordance with Article 30.2 (Amendments).

(29) With respect to Viet Nam, Annex 9-I (Non-Conforming Measures Ratchet Mechanism) applies.

(30) For greater certainty, any Party may request consultations with another Party regarding a non-conforming measure applied by a central level of government, as referred to in paragraph 1(a)(i).

Article 9.13. Subrogation

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any tights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 9.14. Special Formalities and Information Requirements

1. Nothing in Article 9.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 9.4 (National Treatment) and Article 9.5 (Most- Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 9.15. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of any Party other than the denying Party.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 9.16. Investment and Environmental, Health and other Regulatory Objectives

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

Article 9.17. Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

Section B. Investor-State Dispute Settlement

Article 9.18. Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.

2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.

3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 9.19. Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation):

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

(i) that the respondent has breached:

(A) an obligation under Section A;

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

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

(i) that the respondent has breached:

(A) an obligation under Section A;

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

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

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

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

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

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

4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

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

(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID

Convention;

(c) the UNCITRAL Arbitration Rules; or

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

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

(a) referred to in the ICSID Convention is received by the Secretary- General;

(b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;

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

(d) referred to under any arbitral institution or arbitration rules selected under paragraph 4(d) is received by the respondent.

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

6. The arbitration rules applicable under paragraph 4 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

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

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

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

Article 9.20. Consent of Each Party to Arbitration

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

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

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

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

(c) Article I of the Inter-American Convention for an "agreement".

Article 9.21. Conditions and Limitations on Consent of Each Party

1, No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.

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

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

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19

(Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.19.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.19.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 9.22. Selection of Arbitrators

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

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

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.

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

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

(b) a claimant referred to in Article 9.19.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 9.19.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.

Article 9.23. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 9.19.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

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

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards) or that a claim is manifestly without legal merit.

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

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

(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

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

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

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

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

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.29 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.24 (Transparency of Arbitral Proceedings).

Article 9.24. Transparency of Arbitral Proceedings

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

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation);

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

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

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information). (33)

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

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

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(i) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

(33) For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

Article 9.25. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. (34)

3. A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

(34) For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

Article 9.26. Interpretation of Annexes

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex H, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f) (Functions of the Commission) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 9.27. Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

Article 9.28. Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

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

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

(b) the nature of the order sought; and

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

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

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

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

(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or

arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

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

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

(c) instruct a tribunal previously established under Article 9.22 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

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

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

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

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

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

9. A tribunal established under Article 9.22 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 9.22 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 9.29. Awards

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

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:

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

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

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

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until:

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

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

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

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 9.19.4(d) (Submission of a Claim to Arbitration):

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

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

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 28.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:

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

(b) in accordance with Article 28.17 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.

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

Article 9.30. Service of Documents

Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 9-D (Service of Documents on a Party Under Section B). A Party shall promptly make publicly available and notify the other Parties of any change to the place referred to in that Annex.

ANNEX 9-A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 9-B. EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 9.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 9.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; (36) and

(iii) the character of the government action.

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, (37) safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

(36) For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

(37) For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

ANNEX 9-C. EXPROPRIATION RELATING TO LAND

1. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Singapore is the expropriating Party, any measure of direct expropriation relating to land shall be for a purpose and upon payment of compensation at market value, in accordance with the applicable domestic legislation (38) and any subsequent amendments thereto relating to the amount of compensation where such amendments provide for the method of determination of the compensation which is no less favourable to the investor for its expropriated investment than such method of determination in the applicable domestic legislation as at the time of entry into force of this Agreement for Singapore.

2. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be:

(i) for a purpose in accordance with the applicable domestic legislation; (39) and

(ii) upon payment of compensation equivalent to the market value, while recognising the applicable domestic legislation.

(38) The applicable domestic legislation is the Land Acquisition Act (Cap. 152) as at the date of entry into force of this Agreement for Singapore.

(39) The applicable domestic legislation is Viet Nam's Land Law, Law No. 45/2013/QH13 and Decree 44/2014/ND-CP Regulating Land Prices, as at the date of entry into force of this Agreement for Viet Nam.

ANNEX 9-D. SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B (INVESTOR-STATE DISPUTE SETTLEMENT)

Australia

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade R.G. Casey Building

John McEwen Crescent

Barton ACT 0221

Australia

Brunei Darussalam

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Brunei Darussalam by delivery to:

The Permanent Secretary (Trade) Ministry of Foreign Affairs and Trade Jalan Subok

Bandar Seri Begawan, BD 2710 Brunei Darussalam

Canada

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Canada by delivery to:

Office of the Deputy Attorney General of Canada Justice Building

239 Wellington Street

Ottawa, Ontario

K1A 0H8

Canada

Chile

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Chile by delivery to:

Dirección de Asuntos Juridicos del Ministerio de Relaciones Exteriores de la Reptiblica de Chile

Teatinos 180

Santiago

Chile

Japan

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Japan by delivery to:

Economic Affairs Bureau Ministry of Foreign Affairs 2-2-1 Kasumigaseki, Chiyoda-ku Tokyo

Japan

Malaysia

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Malaysia by delivery to:

Attorney General-s Chambers

Level 16, No. 45 Persiaran Perdana Precint 4

Federal Government Administrative Centre 62100 Putrajaya

Malaysia

Mexico

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Mexico by delivery to:

Dirección General de Consultoría Jurídica de Comercio Internacional Secretaría de Economía

Alfonso Reyes #30, piso 17

Col. Hipódromo Condesa

Del. Cuauhtémoc

México D.F.

C.P. 06140

New Zealand

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on New Zealand by delivery to:

The Secretary

Ministry of Foreign Affairs and Trade 195 Lambton Quay

Wellington 6011

New Zealand

Peru

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Peru by delivery to:

Dirección General de Asuntos de Economía Internacional, Competencia y Productividad

Ministerio de Economía y Finanzas

Jirón Lampa 277, piso 5

Lima, Perú

Singapore

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to:

Permanent Secretary Ministry of Trade & Industry 100 High Street #09-01 Singapore 179434

Singapore

United States

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on the United States by delivery to:

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

Viet Nam

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Viet Nam by delivery to:

General Director

Department of International Law Ministry of Justice

60 Tran Phu Street

Ba Dinh District

Ha Noi

Viet Nam

ANNEX 9-E. TRANSFERS (40)

Chile

1. Notwithstanding Article 9.9 (Transfers), Chile reserves the right of the Central Bank of Chile (Banco Central de Chile) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (Ley 18.840, Ley Organica Constitucional del Banco Central de Chile), and Decreto con Fuerza de Ley NÂ°3 de 1997, Ley General de Bancos (General Banking Act) and Ley 18.045, Ley de Mercado de Valores (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, inter alia, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (encaje).

2. Notwithstanding paragraph 1, the reserve requirements that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

(40) For greater certainty, this Annex shall apply to transfers covered by Article 9.9 (Transfers) and payments and transfers covered by Article 10.12 (Payments and Transfers).

ANNEX 9-F. DL 600. Chile

1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (Decreto Ley 600, Estatuto de la Inversion Extranjera) (hereinafter referred to in this Annex as "DL 600"), or its successors, and to Law 18.657, Foreign Capital Investment Fund Law (Ley 18.657, Ley de Fondos de Inversion de Capital Extranjero), with respect to:

(a) The right of the Foreign Investment Committee of Chile (Comité de Inversiones Extranjeras) or its successor to accept or reject applications to invest through an investment contract under DL 600 (41) and the tight to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657.

(b) The right to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of a Party or from the partial or complete liquidation of the investment which may not take place until a period not to exceed:

(i) in the case of an investment made pursuant to DL 600, one year from the date of transfer to Chile; or

(ii) in the case of an investment made pursuant to Law 18.657, five years from the date of transfer to Chile. (42)

(c) The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programmes in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of another Party or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile.

2. For greater certainty, except to the extent that paragraph 1(b) or (c) provides an exception to Article 9.9 (Transfers), the investment entered through an investment contract under DL 600, through Law 18.657 or through any future special voluntary investment programme, will be subject to the obligations and commitments of this Chapter, to the extent that the investment is a covered investment under Chapter 9 (Investment).

(41) The authorisation and execution of an investment contract under DL 600 by an investor of a Party or a covered investment does not create any right on the part of the investor or the covered investment to engage in particular activities in Chile.

(42) Law 18.657 was derogated on May 1, 2014 by law 20.712. The transfer requirement established under subparagraph (b)(ii) will only be applicable to investments made pursuant to Law 18.657 prior to May 1, 2014 and not to investments made pursuant to Law 20.712.

ANNEX 9-G. PUBLIC DEBT

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation pursuant to Article 9.8 (Expropriation and Compensation).

2. No claim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B (Investor-State Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 9.4 (National Treatment) or Article 9.5 (Most- Favoured-Nation Treatment).

3. Notwithstanding Article 9.19.4 (Submission of a Claim to Arbitration), and subject to paragraph 2, an investor of another Party shall not submit a claim under Section B (Investor-State Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment), unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation). (43)

(43) Paragraphs 2 and 3 of this Annex do not apply to any claim under Section B (Investor-State Dispute Settlement) against Singapore or the United States.

ANNEX 9-H.

1. A decision under Australia's foreign investment policy, which consists of the Foreign Acquisitions and Takeovers Act 1975, Foreign Acquisitions and Takeovers Regulations 1989, Financial Sector (Shareholdings) Act 1998 and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

2. A decision by Canada following a review under the Investment Canada Act (R.S.C. 1985, c.28 (1st Supp.)), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

3. A decision by the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras) following a review pursuant to the entry at Annex I - Mexico - 6 with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

4. A decision under New Zealand's Overseas Investment Act 2005 to grant consent, or to decline to grant consent, to an overseas investment transaction that requires prior consent under that Act shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

ANNEX 9-I. NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 9.12.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 9.4 (National Treatment), Article 9.5 (Most-FavouredNation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors);

(b) Viet Nam shall not withdraw a right or benefit from an investor or covered investment of another Party, in reliance on

which the investor or covered investment has taken any concrete action, (44) through an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to a non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

(44) Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

ANNEX 9-J. SUBMISSION OF A CLAIM TO ARBITRATION

1. An investor of a Party may not submit to arbitration under Section B (Investor-State Dispute Settlement) a claim that Chile, Mexico, Peru or Viet Nam has breached an obligation under Section A either:

(a) on its own behalf under Article 9.19.1(a) (Submission of a Claim to Arbitration); or

(b) on behalf of an enterprise of Chile, Mexico, Peru, or Viet Nam, that is a juridical person that the investor owns or controls directly or indirectly under 9.19.1(b) (Submission of a Claim to Arbitration),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B (Investor-State Dispute Settlement).

ANNEX 9-K. SUBMISSION OF CERTAIN CLAIMS FOR THREE YEARS AFTER ENTRY INTO FORCE

Malaysia

Without prejudice to a claimant's right to submit other claims to arbitration pursuant to Article 9.19 (Submission of a Claim to Arbitration), Malaysia does not consent to the submission of a claim that Malaysia has breached a government procurement contract with a covered investment, below the specified contract value, for a period of three years after the date of entry into force of this Agreement for Malaysia. The specified contract values are:

(a) for goods, SDR 1,500,000;

(b) for services, SDR 2,000,000; and

(c) for construction, SDR 63,000,000.

Chapter 10. CROSS-BORDER TRADE IN SERVICES

Article 10.1. Definitions

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

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

cross-border trade in services or cross-border supply of services means the supply of a service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party to a person of another Party; or (c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

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

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

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; 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;

measures adopted or maintained by a Party means measures adopted or maintained by:

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

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

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 or the applicable conditions;

service supplied in the exercise of governmental authority means, for cach Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

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

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 10.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party.

Such measures include measures affecting:

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

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

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence in the Party's territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1:

(a) Article 10.5 (Market Access), Article 10.8 (Domestic Regulation) and Article 10.11 (Transparency) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment (1); and

(b) Annex 10-B (Express Delivery Services) shall also apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment.

3. This Chapter shall not apply to:

(a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party's territory;

(b) government procurement;

(c) services supplied in the exercise of governmental authority; or

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

4. This Chapter does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

(b) selling and marketing of air transport services;

(c) computer reservation system services;

(d) specialty air services;

(e) airport operation services; and

(f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.

7. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the Annex on Air Transport Services of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

(1) For greater certainty, nothing in this Chapter, including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-Conforming Measures Ratchet Mechanism), is subject to investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment).

Article 10.3. National Treatment (2)

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

(2) For greater certainty, whether treatment is accorded in âlike circumstancesâ under Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 10.4. Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.

Article 10.5. Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures

that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (3) or

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

(v) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

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

Article 10.6. Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 10.7. Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

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

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

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence). (4)

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3 If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate. (5)

(4) With respect to Viet Nam, Annex 10-C (Non-Conforming Measures Ratchet Mechanism) applies.

(5) For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

Article 10.8. Domestic Regulation

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

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

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

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

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

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

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

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service. (7)

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of another Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

(6) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

(7) For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

Article 10.9. Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to another Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

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

5. As set out in Annex 10-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 10.10. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of any Party other than the denying Party.

Article 10.11. Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapte. (8)

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 26.2.2 (Publication) with respect to regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, cach Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

(8) The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

Article 10.12. Payments and Transfers (9)

1. Each Party shall permit all transfers and payments that relate to the cross- border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross- border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws 10 that relate to:

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

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; or

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

(9) For greater certainty, this Article is subject to Annex 9-E (Transfers). 10 For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Partyâs laws relating to its social security, public retirement or compulsory savings programmes.

Article 10.13. Other Matters

The Parties recognise the importance of air services in facilitating the expansion of trade and enhancing economic growth. Each Party may consider working with other Parties in appropriate fora toward liberalising air services, such as through agreements allowing air carriers to have flexibility to decide on their routing and frequencies.

ANNEX 10-A. PROFESSIONAL SERVICES

General Provisions

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.

2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures.

3. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

4. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplierâs home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Engineering and Architectural Services

5. Further to paragraph 3, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

6. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

7. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers.

Temporary Licensing or Registration of Engineers

8. Further to paragraph 4, in taking steps to implement a temporary or project-specific licensing or registration regime for engineers, a Party shall consult with its relevant professional bodies with respect to any recommendations for:

(a) the development of procedures for the temporary licensing or registration of engineers of another Party to permit them to practise their engineering specialties in its territory;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing or registration of those engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing or registration procedures; and

(d) other matters relating to the temporary licensing or registration of engineers identified in the consultations.

Legal Services

9. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

10. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

(a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;

(b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;

(c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;

(d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional indemnity insurance or alternatively disclose to clients that they lack that insurance;

(e) the following modes of providing transnational legal services are accommodated:

(i) on a temporary fly-in, fly-out basis;

(ii) through the use of web-based or telecommunications technology;

(iii) by establishing a commercial presence; and

(iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);

(f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and

(g) a foreign law firm may use the firm name of its choice.

Professional Services Working Group

11. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party, to facilitate the activities listed in paragraphs 1 through 4.

12. The Working Group shall liaise, as appropriate, to support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 4. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in the Parties' territories.

13. The Working Group shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in paragraphs 1 through 4. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Group.

14. The Working Group shall report to the Commission on its progress and on the future direction of its work, within two years of the date of entry into force of this Agreement.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

(a) otherwise agreed by all Parties; or

(b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

Chapter 11. FINANCIAL SERVICES

Article 11.1. Definitions

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;

cross-border trade in financial services or cross-border supply of financial services means the supply of a financial service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

(i) life;

(ii) non-life;

(b) reinsurance and retrocession;

(c) insurance intermediation, such as brokerage and agency; and

(d) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(e) acceptance of deposits and other repayable funds from the public;

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

(g) financial leasing;

(h) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(i) guarantees and commitments;

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

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

(ii) foreign exchange;

(iii) derivative products, including futures and options;

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

(v) transferable securities; and

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

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

(l) money broking;

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

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

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

(p) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (e) through (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 9.1 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 9 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 9.1 (Definitions);

investor of a Party means a Party, or a person of a Party, that attempts to make (1), is making, or has made an investment in the territory of another Party;

new financial service means a financial service not supplied in the Partyâ's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party; and

self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government.

(1) For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.

Article 11.2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) financial institutions of another Party;

(b) investors of another Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapter 9 (Investment) and Chapter 10 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.

(a) Article 9.6 (Minimum Standard of Treatment), Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements), Article 9.15 (Denial of Benefits), Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives) and Article 10.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter 9 (Investment) is hereby incorporated into and made a part of this Chapter (2) solely for claims that a Party has breached Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements) and Article 9.15 (Denial of Benefits) incorporated into this Chapter under subparagraph (a). (4)

(c) Article 10.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 11.6 (Cross-Border Trade).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

(2) For greater certainty, Section B of Chapter 9 (Investment) shall not apply to cross-border trade in financial services.

(4) For greater certainty, if an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment): (1) as referenced in Article 9.23.7 (Conduct of the Arbitration), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international investment arbitration; (2) pursuant to Article 9.23.4, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards); and (3) pursuant to Article 9.23.6, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection and, in determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.

Article 11.3. National Treatment (5)

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of another Party, and to investments of investors of another Party in financial institutions, treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 11.6.1 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of another Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

(5) For greater certainty, whether treatment is accorded in "like circumstances" under Article 11.3 (National Treatment) or Article 11.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

Article 11.4. Most-Favoured-Nation Treatment

1. Each Party shall accord to:

(a) investors of another Party, treatment no less favourable than that it accords to investors of any other Party or of a non-Party, in like circumstances;

(b) financial institutions of another Party, treatment no less favourable than that it accords to financial institutions of any other Party or of a non-Party, in like circumstances;

(c) investments of investors of another Party in financial institutions, treatment no less favourable than that it accords to investments of investors of any other Party or of a non-Party in financial institutions, in like circumstances; and

(d) cross-border financial service suppliers of another Party, treatment no less favourable than that it accords to cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 11.2.2(b) (Scope).

Article 11.5. Market Access for Financial Institutions

No Party shall adopt or maintain with respect to financial institutions of another Party or investors of another Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;(6) or

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

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(6) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

Article 11.6. Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the financial services specified in Annex 11-A (Cross-Border Trade).

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may

define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of another Party and of financial instruments.

Article 11.7. New Financial Services (7)

Each Party shall permit a financial institution of another Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. (8) Notwithstanding Article 11.5(b) (Market Access for Financial Institutions), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

(7) The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to another Party to request that it authorise the supply of a financial service that is not supplied in the territory of any Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

(8) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Article 11.8. Treatment of Certain Information

Nothing In this Chapter shall require a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 11.9. Senior Management and Boards of Directors

1. No Party shall require financial institutions of another Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. No Party shall require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 11.10. Non-Conforming Measures

1. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

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

(iii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed: (9)

(i) immediately before the amendment, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation

Treatment), Article 11.5 (Market Access for Financial Institutions) or Article 11.9 (Senior Management and Boards of Directors); or

(ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 11.6 (Cross-Border Trade).

2. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 9.4 (National Treatment), Article 9.5 (Most-Favoured- Nation Treatment), Article 9.11 (Senior Management and Boards of Directors), Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment) or Article 11.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. (a) Article 11.3 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

(b) Article 11.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

ii) Article 4 of the TRIPS Agreement.

(9) With respect to Viet Nam, Annex 11-C (Non-Conforming Measures Ratchet Mechanism) applies.

Article 11.11. Exceptions

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textiles and Apparel), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (10) (11) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 9 (Investment), Chapter 10 (Cross- Border Trade in Services), Chapter 13 (Telecommunications) including specifically Article 13.24 (Relation to Other Chapters), or Chapter 14 (Electronic Commerce), shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9.10 (Performance Requirements) with respect to measures covered by Chapter 9 (Investment), under Article 9.9 (Transfers) or Article 10.12 (Payments and Transfers).

3. Notwithstanding Article 9.9 (Transfers) and Article 10.12 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures

necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

(10) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross- border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

(11) For greater certainty, if a measure challenged under Section B of Chapter 9 (Investment) is determined to have been adopted or maintained by a Party for prudential reasons in accordance with procedures in Article 11.22 (Investment Disputes in Financial Services), a tribunal shall find that the measure is not inconsistent with the Party's obligations in the Agreement and accordingly shall not award any damages with respect to that measure.

Article 11.12. Recognition

1. Party may recognise prudential measures of another Party or a non-Party in the application of measures covered by this Chapter. (12) That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

(12) For greater certainty, nothing in Article 11.4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of any other Party.

Article 11.13. Transparency and Administration of Certain Measures

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Paragraphs 2, 3 and 4 of Article 26.2 (Publication), shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

(a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and other Parties with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation. (13)

5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of another Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

(13) For greater certainty, a Party may address those comments collectively on an official government website.

Article 11.14. Self-Regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 11.3 (National Treatment) and Article 11.4 (Most- Favoured-Nation Treatment).

Article 11.15. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another 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.

Article 11.16. Expedited Availability of Insurance Services

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

Article 11.17. Performance of Back-Office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

Article 11.18. Specific Commitments

Annex 11-B (Specific Commitments) sets out certain specific commitments by each Party.

Article 11.19. Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-D (Authorities Responsible for Financial Services).

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 11.22 (Investment Disputes in Financial Services).

3. The Committee shall meet annually, or as it decides otherwise, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of any meeting.

Article 11.20. Consultations

1. A Party may request, in writing, consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The consulting Parties shall report the results of their consultations to the Committee.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in Article 11.10.1(a)(i) (Non-Conforming Measures):

(a) A Party may request information on any non-conforming measure at the regional level of government of another Party. Each Party shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

(b) If a Party considers that a non-conforming measure applied by a regional level of government of another Party creates a material impediment to trade or investment by a financial institution, an investor, investments in a financial institution or a cross-border financial service supplier, the Party may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

3. Consultations under this Article shall include officials of the authorities specified in Annex 11-D (Authorities Responsible for Financial Services).

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 11.21. Dispute Settlement

1. Chapter 28 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 28.9 (Composition of Panels) shall apply, except that:

(a) if the disputing Parties agree, each panellist shall meet the qualifications in paragraph 3; and

(b) in any other case:

(i) each disputing Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 28.10.1 (Qualifications of Panellists); and

(ii) if the responding Party invokes Article 11.11 (Exceptions), the chair of the panel shall meet the qualifications set out in

paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 28.10.1(b) to (d) (Qualifications of Panellists), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. A Party may request the establishment of a panel pursuant to Article 11.22.2(c) (investment Disputes in Financial Services) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to a claim without having to request consultations under Article 28.5 (Consultations). The panel shall endeavour to present its initial report pursuant to Article 28.17 (Initial Report) within 150 days after the last panellist is appointed.

5. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 28.20.5 (Non-Implementation â Compensation and Suspension of Benefits), shall seek the views of financial services experts, as necessary.

Article 11.22. Investment Disputes In Financial Services

1. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment) challenging a measure relating to regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any 11-18 particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment), and the respondent invokes Article 11.11 (Exceptions) as a defence, the following provisions of this Article shall apply.

(a) The respondent shall, no later than the date the tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Party of the claimant on the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, and the non- disputing Parties a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraph 4.(14)

(b) The authorities of the respondent and the Party of the claimant shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the tribunal. The determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination.

(c) If the authorities referred to in subparagraphs (a) and (b) have not made a determination within 120 days of the date of receipt of the respondentâs written request for a determination under subparagraph (a), the respondent or the Party of the claimant may request the establishment of a panel under Chapter 28 (Dispute Settlement) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The panel established under Article 28.7 (Establishment of a Panel) shall be constituted in accordance with Article 11.21 (Dispute Settlement). Further to Article 28.18 (Final Report), the panel shall transmit its final report to the disputing Parties and to the tribunal.

3. The final report of a panel referred to in paragraph 2(c) shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with the final report.

4. If no request for the establishment of a panel pursuant to paragraph 2(c) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(c), the tribunal established under Article 9.19 (Submission of a Claim to Arbitration) may proceed with respect to the claim.

(a) The tribunal shall draw no inference regarding the application of Article 11.11 (Exceptions) from the fact that the authorities have not made a determination as described in paragraphs 2(a), (b) and (c).

(b) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 11.11 that is not inconsistent with that of the respondent.

5. For the purposes of this Article, the definitions of the following terms set out in Article 9.1 (Definitions) are incorporated, mutatis mutandis: "claimant", "disputing parties", "disputing party", "non-disputing Party" and "respondent".

(14) For the purposes of this Article, "joint determination" means a determination by the authorities responsible for financial services of the respondent and of the Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services). If, within 14 days of the date of the receipt of a request for a joint determination, another Party provides a written notice to the respondent and the Party of the claimant indicating its substantial interest in the matter subject to the request, that other Party's authorities responsible for financial services may participate in discussions regarding the matter. The joint determination shall be made by the authorities responsible for financial services of the respondent and the Party of the claimant.

ANNEX 11-A. CROSS-BORDER TRADE

Australia Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Brunei Darussalam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession; and

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

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to:

(a) provision and transfer of financial information; and

(b) provision and transfer of financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions).

Canada (15)

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph

(a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, as described in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Cross-Border Trade), with respect to:

(a) provision and transfer of financial information, and financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

(15) For greater certainty, Canada requires that a cross-border financial services supplier maintain a local agent and records in Canada.

Chile

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping and international commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving there from; and

(ii) goods in international transit;

(b) brokerage of insurance of risks relating to subparagraphs (a)(i) and (a)(ii); and

(c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial and risk assessment services.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply with respect to:

(a) provision and transfer of financial information, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions);

(b) financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required; (16) and

advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

3. It is understood that a Party's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

(16) The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

Japan

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance, retrocession, and services auxiliary to insurance as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph. (17)

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) securities-related transactions with financial institutions and other entities in Japan as prescribed by the relevant laws and regulations of Japan;

(b) sales of a beneficiary certificate of an investment trust and an investment security, through securities firms in Japan; (18)

(c) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (0) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

(17) Insurance intermediation services may be supplied only for insurance contracts allowed to be supplied in Japan.

(18) Solicitation must be conducted by securities firms in Japan.

Malaysia Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; and

(b) reinsurance and retrocession; services auxiliary to insurance comprising consultancy services, actuarial, risk assessment, risk management and maritime loss adjusting; and brokerage services for risks relating to subparagraph (a) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to the provision and transfer of financial information and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions).

3. The commitment made by Malaysia under paragraph 2 does not extend to the supply of electronic payment services for payment card transactions. (19)

(19) For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

Mexico

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial services and risk assessment in connection with subparagraphs (a) and (b); and

(d) brokerage of insurance of risks relating to subparagraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required; (20) and

(b) advisory and other auxiliary financial services, (21) excluding intermediation, and credit reference and analysis, relating to banking and other financial services as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

(20) The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Mexican law regulating the protection of such data.

(21) The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (0) of the definition of "financial service" in Article 11.1 (Definitions).

New Zealand

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession, as referred to in subparagraph (b) of the definition of "financial service" in Article 11.1 (Definitions);

(c) services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance risks relating to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information and financial data processing and related software, as referred to in subparagraph (0) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Peru (22)

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks related to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial, risk assessment and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks relating to services listed in subparagraphs (a) and (b) in this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial services (24), excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).(25)

(22) Peru reserves the right to apply this Annex under conditions of reciprocity.

(23) The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peruâs law regulating the protection of such data and Section B of Annex 11-B (Specific Commitments).

(24) The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of "financial service" in Article 11.1 (Definitions).

(25) The Parties understand that a trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

Singapore

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of "MAT" risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services;

(d) reinsurance intermediation by brokerages; and

(e) MAT intermediation by brokerages. Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, as described in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) financial data processing and related software, as described in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required.(26)

(26) For greater certainty, if the financial information or financial data processing referred to in subparagraphs (a) and (b) pertain to outsourcing arrangements or involves personal data, the outsourcing arrangements and treatment of personal data shall be in accordance with the Monetary Authority of Singapore’s regulatory requirements and guidelines on outsourcing and Singapore’s law regulating the protection of such data, respectively. These regulatory requirements and guidelines shall not derogate from the commitments undertaken by Singapore in paragraph 2 and Section B of Annex 11-B (Specific Commitments).

United States

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; and

(b) reinsurance and retrocession; services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions).

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to insurance services.

Banking and other financial services (excluding insurance)

3. Article 11.6.1 shall apply only with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Viet Nam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping and international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession; and

(c) brokerage services, and services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required; (27) and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of financial service" in Article 11.1 (Definitions), to the extent that such services are permitted in the future by Viet Nam.

(27) The Parties understand that if the financial information or financial data processing referred to in subparagraph (a) involve personal data, the treatment of such personal data shall be in accordance with Vietnamese laws regulating the protection of such data.

ANNEX 11-B. SPECIFIC COMMITMENTS

Section A. Portfolio Management

1. A Party shall allow a financial institution organised in the territory of another Party to provide the following services to a collective investment scheme located in its territory: (28)

(a) investment advice; and

(b) portfolio management services, excluding:

(i) trustee services; and

(ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 11.6.3 (Cross-Border Trade). 3. For the purposes of paragraph 1, collective investment scheme means:

(a) For Australia, a "managed investment scheme" as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001 (Cth), or an entity that:

(i) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested.

(b) For Brunei Darussalam:

(i) A "collective investment scheme", defined under Section 203, of the Securities Market Order, 2013 as any investment arrangements with respect to assets of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(ii) The arrangements must be such that:

(A) the persons who are to participate (participants) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions;

(B) the arrangements must also have either or both of the following characteristics:

(1) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and

(2) the property is managed as a whole, by or on behalf of the operator of the collective investment scheme; and

(C) the arrangements must satisfy the condition set out in subparagraph (iii).

(iii) The condition referred to in subparagraph (ii)(B) is that the property belongs beneficially to, and is managed by or on behalf of, a company, the trustee of a trust or some other entity or arrangement having as its purpose the investment of its funds with the aim of spreading the investment risk and giving its members the benefit of the results of the management of those funds for or on behalf of that company, trust, entity or arrangement.

(c) For Canada, an "investment fund" as defined under the relevant Securities Act (29)

(d) For Chile, a "General Management Fund" (Administradora General de Fondos) as defined in Law 20.712 which is subject to supervision by the Superintendence of Securities and Insurance (Superintendencia de Valores y Seguros), excluding the provision of custodial services that are related to managing a collective investment scheme.

(e) For Japan, a "financial instruments business operator" engaged in investment management business under the Financial Instruments and Exchange Law (Law No. 25 of 1948).

(f) For Malaysia, any arrangement where:

(i) the investment is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (referred to as "scheme's assets") or sums paid out of such profits or income;

(ii) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and

(iii) the scheme's assets are managed by an entity that is responsible for the management of the scheme's assets and is approved, authorised or licensed by a relevant regulator to conduct fund management activities,

and includes, among others, unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.

(g) For Mexico, the "Managing Companies of Investment Funds" established under the Investment Funds Law (Ley de Fondos de Inversion). A financial institution organised in the territory of another Party will only be authorised to provide portfolio management services to a collective investment scheme located in Mexico if it provides the same services in the territory of the Party where it is established.

(h) For New Zealand, a "registered scheme" as defined under the Financial Markets Conduct Act 2013.(30)

(i) For Peru:

(i) mutual funds for investments and securities, pursuant to Single Ordered Text approved by Supreme Decree N° 093- 2002-EF (Texto Unico Ordenado de la Ley de Mercado de Valores aprobado mediante Decreto Supremo N° 093- 2002-EF); or

(ii) investment funds, pursuant to Legislative Decree N° 862 (Decreto Legislativo N° 862, Ley de Fondos de Inversion y sus Sociedades Administradoras).

(j) For Singapore, a "collective investment scheme" as defined under the Securities and Futures Act (Cap. 289), and includes the manager of the scheme, provided that the financial institution in paragraph 1 is authorised or regulated as a fund manager in the territory of the Party it is organised in and is not a trust company.

(k) For the United States, an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940. (31)

(l) For Viet Nam, a fund management company established and operated under the Securities Law of Viet Nam, and subject to regulation and supervision by the State Securities Commission of Viet Nam, in case the services in paragraph 1 are provided to manage an investment fund which invests in the assets located outside Viet Nam.

(28) For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.

(29) In Canada, a financial institution organised in the territory of another Party can only provide custodial services to a collective investment scheme located in Canada if the financial institution has shareholders equity equivalent to at least CAD $100 million.

(30) Custodial services are included in the scope of the specific commitment made by New Zealand under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

(31) Custodial services are included in the scope of the specific commitment made by the United States under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

Section B. Transfer of Information

Each Party shall allow a financial institution of another Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution's ordinary course of business. Nothing in this Section restricts the right of a Party to adopt or maintain measures to:

(a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or

(b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations, (32)

provided that this right is not used as a means of avoiding the Party's commitments or obligations under this Section.

(32) For greater certainty, this requirement is without prejudice to other means of prudential regulation.

Section C. Supply of Insurance by Postal Insurance Entities

1. This Section sets out additional disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. No Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

(a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or

(b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of those services.

The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Partyâs territory with respect to publicly traded private enterprises that supply like services.

5. If a panel under Chapter 28 (Dispute Settlement) finds that a Party is maintaining a measure that is inconsistent with any of the commitments in paragraphs 2, 3 and 4, the Party shall notify the complaining Party and provide an opportunity for consultations prior to allowing the postal insurance entity to:

(a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or

(b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.

6. This Section shall not apply to a postal insurance entity in the territory of a Party:

(a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantages that modify the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or

(b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of January 1, 2013.

7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date of signature of this Agreement by the Party, the Party shall ensure that the postal insurance entity is:

(a) regulated and subject to enforcement by the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and

(b) subject to the financial reporting requirements that apply to financial institutions supplying insurance services.

8. For the purposes of this Section, postal insurance entity means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of the Party.

Section D. Electronic Payment Card Services

1. A Party shall allow the supply of electronic payment services for payment card transactions (33) into its territory from the territory of another Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a services supplier of another Party:

(a) register with or be authorised (34) by relevant authorities;

(b) be asupplier who supplies such services in the territory of the other Party; or

(c) designate an agent office or maintain a representative or sales office in the Party's territory,

provided that such requirements are not used as a means to avoid a Party's obligation under this Section.

2. For the purposes of this Section, electronic payment services for payment card transactions does not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Section shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not used as a means to avoid the Party's obligation under this Section. For greater certainty, such measures may include:

(a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border services supplier of another Party, of information concerning cardholder names;

(b) the regulation of fees, such as interchange or switching fees; and

(c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

4. For the purposes of this Section, payment card means:

(a) For Australia, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.

(b) For Brunei Darussalam, in accordance with its laws and regulations, a payment instrument, whether in physical or electronic format, that enables a person to obtain money, goods or services, or to otherwise make payment, including credit card, charge card, debit card, cheque, automated teller machine (ATM) card, prepaid card or other instruments widely used for performing a similar function.

(c) For Canada, a "payment card" as defined under the Payment Card Networks Act as of January 1, 2015. For greater certainty, both the physical and electronic forms of credit and debit cards are included in the definition. For greater certainty, credit cards include pre-paid cards.

(d) For Chile, a credit card, a debit card and a prepaid card in physical form or electronic format, as defined under Chilean law.

(i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services referred to in this commitment, only the following cross-border financial services may be supplied:

(A) receiving and sending messages among acquirers and issuers or their agents and representatives through electronic or informatic channels for: authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;

(B) calculation of fees and balances derived from transactions of acquirers and issuers by means of automated or computerised systems, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives, provided that those calculations are subject to approval, recognition or confirmation by the acquiring and issuing parties involved;

(C) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions; and

(D) value-added services related to the main processing activities in subparagraphs (d)(i)(A), (d)(i)(B) and (d)(i(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.

Such cross-border financial services may only be supplied by a service supplier of another Party into the territory of Chile pursuant to this commitment, provided that such services are supplied to entities that are regulated by Chile in connection with their participation in card payment networks and that are contractually responsible for such services.

(ii) Nothing in this commitment restricts the right of Chile to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross-border supply of such electronic payment services into Chile by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established, authorised and regulated as a payments network participant under Chilean law in the territory of Chile, provided that such right is not used as a means of avoiding Chile's commitments or obligations under this Section.

(e) For Japan:

(i) a credit card and a prepaid card in physical or electronic form as defined under the laws and regulations of Japan; and

(ii) a debit card in physical or electronic form, provided that such a card is allowed within the framework of the laws and regulations of Japan.

(f) For Malaysia, a credit card, a debit card and a prepaid card as defined under Malaysian law.

(g) For Mexico, a credit card and a debit card in physical form or electronic format, as defined under Mexican law.

(i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services set forth in paragraph 1, only the following cross-border services may be supplied:

(A) receiving and sending messages for: authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;

(B) calculation of fees and balances derived from transactions of acquirers and issuers, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives;

(C) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions; and

(D) value-added services related to the main processing activities in subparagraphs (g)(i)(A), (g)(i)(B) and (g)(i)(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.

(ii) Such cross-border services may only be supplied by a service provider of another Party into the territory of Mexico pursuant to this commitment, provided that the services are supplied to entities that are regulated by Mexico in connection with their participation in card payment networks and that are responsible for such services.

(iii) Nothing in this commitment restricts the right of Mexico to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross- border supply of such electronic payment services into Mexico by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established and authorised as a payments network participant under Mexican law in the territory of Mexico, provided that such right is not used as a means of avoiding Mexico's commitments or obligations under this Section.

(h) For New Zealand, a credit or debit card in physical or electronic form.

(i) For Peru:

(i) credit and debit cards as defined under Peruvian laws and regulations; and

(ii) prepaid cards, as defined under Peruvian laws and regulations, that are issued by financial institutions.

(j) For Singapore:

(i) a credit card as defined in the Banking Act (Cap. 19), a charge card as defined in the Banking Act and a stored value facility as defined in the Payment Systems (Oversight) Act (Cap. 222A); and

(ii) a debit card and an automated teller machine (ATM) card.

For greater certainty, both the physical and electronic forms of the cards or facility as listed in subparagraphs (j)(i) and (j)(ii) above would be included as a payment card.

(k) For the United States, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.

(l) For Viet Nam, a credit card, debit card or prepaid card, in physical form or electronic format, as defined under the laws and regulations of Viet Nam for cards issued inside or outside the territory of Viet Nam using an international Issuer Identification Number or Bank Identification Number (international IIN or BIN).(35)

(i) Viet Nam shall allow the issuance of such cards using international IIN or BIN subject to conditions that are no more restrictive than the conditions applied to the issuance of such cards not using international IIN or BIN.

(ii) For greater certainty, nothing in this commitment restricts the right of Viet Nam to adopt or maintain measures, in addition to the measures set out in this Section, that condition the cross-border supply of such electronic payment services into Viet Nam by a service supplier of another Party on the provision of information and data to the Government of Viet Nam, for public policy purposes, regarding transactions that the supplier processes, provided that such measures are not used as a means of avoiding Viet Nam's obligation under this Section.

(33) For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (h) of the definition of "financial service" in Article 11.1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

(34) Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home country supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross-border supply of electronic payment services into the Party.

(35) For the purposes of this subparagraph, "international Issuer Identification Number or Bank Identification Number" and "international ITN or "BIN" mean a number that is assigned to a service supplier of another Party pursuant to the relevant standards adopted by the International Organization for Standardization.

Section E. Transparency Considerations

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or other Parties. These comments may include:

(a) submissions to a Party by another Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or

(b) submissions to a Party by interested persons, including other Parties or financial institutions of other Parties, with regard to the potential effects of the proposed regulation.

ANNEX 11-C. NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 11.10.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 11.3 (National Treatment), Article 11.4 (Most-Favoured- Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the time of entry into force of this Agreement for Viet Nam, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors);

(b) Viet Nam shall not withdraw a right or benefit from: 6D) a financial institution of another Party;

(i) investors of another Party, and investments of such investors, in financial institutions in Viet Nam's territory; or

(ii) cross-border financial service suppliers of another Party,

in reliance on which the investor or covered investment has taken any concrete action, (36) through an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non- Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

(36) Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

ANNEX 11-D. AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

(a) for Australia, the Treasury and the Department of Foreign Affairs and Trade;

(b) for Brunei Darussalam, the Monetary Authority of Brunei Darussalam (Autoriti Monetari Brunei Darussalam);

(c) for Canada, the Department of Finance of Canada;

(d) for Chile, the Ministry of Finance (Ministerio de Hacienda);

(e) for Japan, the Ministry of Foreign Affairs and the Financial Services Agency, or their successors;

(f) for Malaysia, Bank Negara Malaysia and the Securities Commission Malaysia;

(g) for Mexico, the Ministry of Finance and Public Credit (Secretaria de Hacienda y Crédito Publico);

(h) for New Zealand, the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators;

(i) for Peru, the Ministry of Economy and Finance (Ministerio de Economia y Finanzas), in coordination with financial regulators;

(j) for Singapore, the Monetary Authority of Singapore;

(k) for United States, the Department of the Treasury for purposes of Article 11.22 (Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, the Department of the Treasury, in cooperation with the Office of the U.S. Trade Representative, for insurance matters; and

(l) for Viet Nam, the State Bank of Viet Nam and the Ministry of Finance.

Chapter 12. TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 12.1. Definitions

For the purposes of this Chapter:

Business Person means:

(a) a natural person who has the nationality of a Party according to Annex 1-A (Party-Specific Definitions); or

(b) a permanent resident of a Party that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(9)(i)(2) of GATS that that Party accords substantially the same treatment to its permanent residents as it does to its nationals (1),

who is engaged in trade in goods, the supply of services or the conduct of investment activities;

immigration formality means a visa, permit, pass or other document or electronic authority granting temporary entry;

immigration measure means any measure affecting the entry and stay of foreign nationals; and

temporary entry means entry into the territory of a Party by a business person of another Party who does not intend to establish permanent residence.

(1) For the purposes of subparagraph (b), "nationals" has the meaning it bears in Article XXVII(k)(ii)(2) of GATS.

Article 12.2. Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of another Party.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, nationality, 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 of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to any Party under this Chapter.

4. The sole fact that a Party requires business persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

Article 12.3. Application Procedures

1. As expeditiously as possible after receipt of a completed application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party that has received a completed application for an immigration formality shall endeavour to promptly provide information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

Article 12.4. Grant of Temporary Entry

1. Each Party shall set out in Annex 12-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

(a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and

(b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

4. A Party may refuse to issue an immigration formality to a business person of another Party if the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any natural person who is involved in such dispute.

5. When a Party refuses pursuant to paragraph 4 to issue an immigration formality, it shall inform the applicant accordingly.

Article 12.5. Business Travel

The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through exploration and voluntary development of trusted traveller programmes, and their support for efforts to enhance the APEC Business Travel Card programme.

Article 12.6. Provision of Information

Further to Article 26.2 (Publication) and Article 26.5 (Provision of Information), cach Party shall:

(a) promptly publish online if possible or otherwise make publicly available, information on:

(i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Parties to become acquainted with those requirements; and

(ii) the typical timeframe within which an application for an immigration formality is processed; and

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

Article 12.7. Committee on Temporary Entry for Business Persons

1. The Parties hereby establish a Committee on Temporary Entry for Business Persons (Committee), composed of government representatives of each Party.

2. The Committee shall meet once every three years, unless otherwise agreed by the Parties, to:

(a) review the implementation and operation of this Chapter;

(b) consider opportunities for the Parties to further facilitate temporary entry of business persons, including through the development of activities undertaken pursuant to Article 12.8 (Cooperation); and

(c) consider any other matter arising under this Chapter.

3. A Party may request discussions with one or more other Parties with a view to advancing the objectives set out in paragraph 2. Those discussions may take place at a time and location agreed by the Parties involved in those discussions.

Article 12.8. Cooperation

Recognising that the Parties can benefit from sharing their diverse experience in developing and applying procedures related to visa processing and border security, the Parties shall consider undertaking mutually agreed cooperation activities, subject to available resources, including by:

(a) providing advice on the development and implementation of electronic processing systems for visas;

(b) sharing experiences with regulations, and the implementation of programmes and technology related to:

(i) border security, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programmes and security in travel documents; and

(ii) the expediting of certain categories of applicants in order to reduce facility and workload constraints; and

(c) cooperating in multilateral fora to promote processing enhancements, such as those listed in subparagraphs (a) and (b).

Article 12.9. Relation to other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 27 (Administrative and Institutional Provisions), Chapter 28 (Dispute Settlement), Chapter 30 (Final Provisions), Article 26.2 (Publication) and Article 26.5 (Provision of Information), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 12.10. Dispute Settlement

1. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

(a) the matter involves a pattern of practice; and

(b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.

Chapter 13. TELECOMMUNICATIONS

Article 13.1. Definitions

Ffor the purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

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

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

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

essential facilities means facilities of a public telecommunications network or service that:

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

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

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

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

leased circuit means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user and supplied by a supplier of a fixed telecommunications service;

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

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

(a) control over essential facilities; or

(b) use of its position in the market;

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

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

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

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

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. These services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

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

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

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

user means a service consumer or a service supplier; and

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

Article 13.2. Scope

1. This Chapter shall apply to:

(a) any measure relating to access to and use of public telecommunications services;

(b) any measure relating to obligations regarding suppliers of public telecommunications services; and

(c) any other measure relating to telecommunications services.

2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:

(a) Article 13.4.1 (Access to and Use of Public Telecommunications Services) shall apply with respect to a cable or broadcast service supplier's access to and use of public telecommunications services; and

(b) Article 13.22 (Transparency) shall apply to any technical measure to the extent that the measure also affects public telecommunications services.

3. Nothing in this Chapter shall be construed to: (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public generally; (1)

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

4. Annex 13-A (Rural Telephone Suppliers - United States) and Annex 13-B (Rural Telephone Suppliers - Peru) include additional provisions relating to the scope of this Chapter.

(1) For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of another Party to establish, construct, acquire, lease, operate or supply public telecommunications services, unless otherwise provided for in this Agreement.

Article 13.3. Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities; (2) or

(c) use any other appropriate means that benefit the long-term interest of end-users.

3. When a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying that regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body or other competent body determines that:

(a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of the regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

(2) Consistent with this subparagraph, the United States, based on its evaluation of the state of competition of the U.S. commercial mobile market, has not applied major supplier-related measures pursuant to Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.9.2 (Resale), Article 13.11 (Interconnection with Major Suppliers), Article 13.13 (Co-Location by Major Suppliers) or Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-Way Owned or Controlled by Major Suppliers) to the commercial mobile market.

Article 13.4. Access to and Use of Public Telecommunications Services (3)

1. Each Party shall ensure that any enterprise of another Party has access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any service supplier of another Party is permitted to:

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

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

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise; (4)

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

(e) use operating protocols of their choice.

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

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

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

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in

particular their ability to make their networks or services generally available to the public; or

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

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, when necessary, for the interoperability of those networks and services;

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

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with a Party's laws or regulations.

(3) For preater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

(4) In Viet Nam, networks authorised to establish for the purpose of carrying out, on a non-commercial basis, voice and data telecommunications between members of a closed user group can only directly interconnect with each other where approved in writing by the telecommunications regulatory body. Viet Nam shall ensure that upon request an applicant receives the reasons for the denial of an authorisation. Viet Nam shall review this requirement to obtain written approval within two years of the date of entry into force of this Agreement.

Article 13.5. Obligations Relating to Suppliers of Public Telecommunications Services

Interconnection (5)

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly within the same territory, interconnection with suppliers of public telecommunications services of another Party.

2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.

3. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Number Portability

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions. (6)

Access to Numbers

5. Each Party shall ensure that suppliers of public telecommunications services of another Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis. (7)

(5) For greater certainty, the term "interconnection", as used in this Chapter, does not include access to unbundled network elements.

(6) With respect to certain Parties, this paragraph shall apply as follows: (a) for Brunei Darussalam, this paragraph shall not apply until such time as it determines, pursuant to periodic review, that it is economically feasible to implement number portability in Brunei Darussalam; (b) for Malaysia, this paragraph shall apply only with respect to commercial mobile services until such time as it determines that it is economically feasible to apply number portability to fixed services; and (c) for Viet Nam, this paragraph shall apply to fixed services at such time as it determines that it is technically and economically feasible. Within four years of the date of entry into force of this Agreement for Viet Nam, it

shall conduct a review for it to determine the economic feasibility of applying number portability to fixed services. With respect to commercial mobile services, this paragraph shall apply to Viet Nam no later than 2020.

(7) For Viet Nam, this paragraph shall not apply with respect to blocks of numbers that have been allocated prior to entry into force of this Agreement.

Article 13.6. International Mobile Roaming

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

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

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

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

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

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which: (8)

(a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the two Parties; (9) or

(b) in the absence of an arrangement of the type referred to in subparagraph (a), the supplier of public telecommunications services of the second Party, of its own accord:

(i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions; (10) and

(ii) meets any additional requirements (11) that the first Party imposes with respect to the availability of the regulated rates or conditions.

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

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 10.4 (Most-Favoured-Nation Treatment), Article 13.4.1 (Access to and Use of Public Telecommunications Services), and Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services) with respect to international mobile roaming services.

6. Each Party shall provide to the other Parties information on rates for retail international mobile roaming services for voice, data and text messages offered to consumers of the Party when visiting the territories of the other Parties. A Party shall provide that information no later than one year after the date of entry into force of this Agreement for the Party. Each Party shall update that information and provide it to the other Parties on an annual basis or as otherwise agreed. Interested Parties shall endeavour to cooperate on compiling this information into a report to be mutually agreed by the Parties and to be made publicly available.

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

(8) For greater certainty, no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non- discrimination provision, in any existing international trade agreement, seek or obtain

for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

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

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

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

Article 13.7. Treatment by Major Suppliers of Public Telecommunications Services

Each Party shall ensure that a major supplier in its territory accords suppliers of public telecommunications services of another Party treatment no less favourable than that major supplier accords in like circumstances to its subsidiaries, its affiliates or non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 13.8. Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include in particular:

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

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

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

Article 13.9. Resale

1. No Party shall prohibit the resale of any public telecommunications service. (12)

2. Each Party shall ensure that a major supplier in its territory:

(a) offers for resale, at reasonable rates (13), to suppliers of public telecommunications services of another Party, public telecommunications services that the major supplier provides at retail to end-users; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services. (14)

3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers pursuant to paragraph 2, based on the need to promote competition or to benefit the long-term interests of end-users.

4. If a Party does not require that a major supplier offer a specific public telecommunications service for resale, it nonetheless shall allow service suppliers to request that the service be offered for resale consistent with paragraph 2, without prejudice to the Party's decision on the request.

(12) Brunei Darussalam may require that licensees who purchase public telecommunications services on a wholesale basis only resell their services to an end-user.

(13) For the purposes of this Article, each Party may determine reasonable rates through any methodology it considers appropriate.

(14) Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Article 13.10. Unbundling of Network Elements by Major Suppliers

Each Party shall provide its telecommunications regulatory body or another appropriate body with the authority to require a major supplier in its territory to offer to public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

Article 13.11. Interconnection with Major Suppliers General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

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

(d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and

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

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through the following options:

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

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

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall provide means for suppliers of another Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

(a) the public availability of interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory;

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

(c) the public availability of a reference interconnection offer.

Services for which those rates, terms and conditions are made publicly available do not have to include all interconnection-related services offered by a major supplier, as determined by a Party under its laws and regulations.

Article 13.12. Provisioning and Pricing of Leased Circuits Services by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides to service suppliers of another Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of another Party at capacity- based and cost-oriented prices.

Article 13.13. Co-Location by Major Suppliers

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of another Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

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

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

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

Article 13.14. Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers (15)

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

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

(15) Chile may comply with this obligation by maintaining appropriate measures for the purpose of preventing a major supplier in its territory from denying access to poles, ducts, conduits and rights-of-way, owned or controlled by the major supplier.

Article 13.15. International Submarine Cable Systems (16) (17)

Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, consistent with the provisions of Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers) and Article 13.13 (Co-Location by Major Suppliers), to public telecommunications suppliers of another Party.

(16) For Chile, this provision shall apply when its telecommunications regulatory body obtains the authority to implement this provision. Nonetheless, Chile shall ensure reasonable and non- discriminatory access to international submarine cable systems including landing stations in its territory.

(17) For Viet Nam, co-location for international submarine landing stations owned or controlled by the major supplier in the territory of Viet Nam excludes physical co-location.

Article 13.16. Independent Regulatory Bodies and Government Ownership

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest (18) or maintain an operating or management role (19) in any supplier of public telecommunications services.

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

3. No Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

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

(19) Viet Nams telecommunications regulatory body assumes the role of representing the government as owner of certain telecommunications suppliers. In this context, Viet Nam shall comply with this provision by ensuring that any regulatory actions with respect to those suppliers do not materially disadvantage any competitor.

Article 13.17. Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.18. Licensing Process

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall ensure the public availability of:

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

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

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

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

(a) denial of a licence;

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

(c) revocation of a licence; or

(d) refusal to renew a licence.

Article 13.19. Allocation and Use of Scarce Resources

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

2. Each Party shall make publicly available the current state of frequency bands allocated and assigned to specific suppliers (20) but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a Partyâs measures allocating and assigning spectrum and managing frequency are not per se inconsistent with Article 10.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.2.2 (Scope) to an investor or covered investment of another Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

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

(20) For Peru, the commitment to make publicly available assigned bands shall apply only to bands used to provide access to end-users.

Article 13.20. Enforcement

Each Party shall provide its competent authority with the authority to enforce the Partyâs measures relating to the obligations set out in Article 13.4 (Access to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of- way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

Article 13.21. Resolution of Telecommunications Disputes

1. Further to Article 26.3 (Administrative Proceedings) and Article 26.4 (Review and Appeal), cach Party shall ensure that:

Recourse

(a) enterprises have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Article 13.4 (Access to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.6 (International Mobile Roaming), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems),

(b) if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon

request, provide a written explanation for its decision within a reasonable period of time; (21)

(c) suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier; and

Judicial Review

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

(21) For the United States, this subparagraph applies only to the national regulatory body.

Article 13.22. Transparency

1. Further to Article 26.2.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input (23) for a proposal for a regulation, that body shall:

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

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

(c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;

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

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation. (24)

2. Further to Article 26.2.1 (Publication), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

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

(b) specifications of technical interfaces;

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

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

(e) general procedures relating to resolution of telecommunications disputes provided for in Article 13.21 (Resolution of Telecommunications Disputes); and

(f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending and adopting standards-related measures affecting access and use.

(23) For greater certainty, seeking input does not include internal governmental deliberations.

(24) For greater certainty, a Party may consolidate its responses to the comments received from interested persons. Viet Nam may comply with this obligation by responding to any questions regarding its decisions upon request.

Article 13.23. Flexibility In the Choice of Technology

1. No Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so consistent with Article 13.22 (Transparency).

2. When a Party finances the development of advanced networks (25), it may make its financing conditional on the use of technologies that meet its specific public policy interests.

(25) For preater certainty, "advanced networks" includes broadband networks.

Article 13.24. Relation to other Chapters

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

Article 13.25. Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

Article 13.26. Committee on Telecommunications

1. The Parties hereby establish a Committee on Telecommunications (Committee) composed of government representatives of each Party.

2. The Committee shall:

(a) review and monitor the implementation and operation of this Chapter, with a view to ensuring the effective implementation of the Chapter by enabling responsiveness to technological and regulatory developments in telecommunications to ensure the continuing relevance of this Chapter to Parties, service suppliers and end users;

(b) discuss any issues related to this Chapter and any other issues relevant to the telecommunications sector as may be decided by the Parties;

(c) report to the Commission on the findings and the outcomes of discussions of the Committee; and

(d) carry out other functions delegated to it by the Commission.

3. The Committee shall meet at such venues and times as the Parties may decide.

4. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of private sector entities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Committee.

Chapter 14. ELECTRONIC COMMERCE

Article 14.1. Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person (1) means:

(a) a covered investment as defined in Article 9.1 (Definitions);

(b) an investor of a Party as defined in Article 9.1 (Definitions), but does not include an investor in a financial institution; or

(c) a service supplier of a Party as defined in Article 10.1 (Definitions),

but does not include a "financial institution" or a "cross-border financial service supplier of a Party" as defined in Article 11.1 (Definitions);

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically; (2) (3)

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

electronic transmission or transmitted electronically means a transmission made using any electromagnetic means, including by photonic means;

personal information means any information, including data, about an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

(1) For Australia, a covered person does not include a credit reporting body.

(2) For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

(3) The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

Article 14.2. Scope and General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

(a) government procurement; or

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

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services), including any exceptions or non- conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations contained in Article 14.4 (Non- Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means), Article 14.13 (Location of Computing Facilities) and Article 14.17 (Source Code) are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services); and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 9.12 (Non-Conforming Measures), Article 10.7 (Non- Conforming Measures) or Article 11.10 (Non-Conforming Measures).

Article 14.3. Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a

person of one Party and a person of another Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 14.4. Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products. (4)

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 18 (Intellectual Property).

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

4. This Article shall not apply to broadcasting.

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

Article 14.5. Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York, November 23, 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

Article 14.6. Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

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

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

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

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

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

Article 14.7. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 16.6.2 (Consumer Protection) when they engage in electronic commerce.

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

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 16.6.5 and Article 16.6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 14.8. Personal Information Protection (5)

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

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies. (6)

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

(5) Brunei Darussalam and Viet Nam are not required to apply this Article before the date on which that Party implements its legal framework that provides for the protection of personal data of the users of electronic commerce.

(6) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 14.9. Paperless Trading

Each Party shall endeavour to:

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

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

Article 14.10. Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management; (7)

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumer's Internet access service supplier.

(7) The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

Article 14.11. Cross-Border Transfer of Information by Electronic Means

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

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

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 14.12. Internet Interconnection Charge Sharing

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of another Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

Article 14.13. Location of Computing Facilities

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

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

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 14.14. Unsolicited Commercial Electronic Messages (8)

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of cach Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

(8) Brunei Darussalam is not required to apply this Article before the date on which it implements its legal framework regarding unsolicited

commercial electronic messages.

Article 14.15. Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist SMEs to overcome obstacles to its use;

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

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) exchange information and share views on consumer access to products and services offered online among the Parties;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(e) encourage development by the private sector of methods of self- regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 14.16. Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

(a) building the capabilities of their national entities responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

Article 14.17. Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

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

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 14.18. Dispute Settlement

1. With respect to existing measures, Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this

Agreement for Malaysia.

2. With respect to existing measures, Viet Nam shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) for a period of two years after the date of entry into force of this Agreement for Viet Nam.

Chapter 15. GOVERNMENT PROCUREMENT

Article 15.1. Definitions

For the purposes of this Chapter:

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

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

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

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

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

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender or both;

offset means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to

improve a Party's balance of payments accounts;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

procuring entity means an entity listed in Annex 15-A;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

selective tendering means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

services includes construction services, unless otherwise specified;

supplier means a person or group of persons that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of:

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

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

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

Article 15.2. Scope Application of Chapter

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

2. For the purposes of this Chapter, covered procurement means government procurement:

(a) of a good, service or any combination thereof as specified in cach Party's Schedule to Annex 15-A;

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

(c) for which the value, as estimated in accordance with paragraphs 8 and 9, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 15-A, at the time of publication of a notice of intended procurement;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

Activities Not Covered

3. Unless otherwise provided in a Partyâ's Schedule to Annex 15-A, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;

(c) the procurement or acquisition of: fiscal agency or depository services; liquidation and management services for regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts; procurement:

(i) conducted for the specific purpose of providing international assistance, including development aid;

(ii) funded by an international organisation or foreign or international grants, loans or other assistance to which procurement procedures or conditions of the international organisation or donor apply. If the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall be subject to Article 15.4.1 (General Principles); or

(iii) conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; and

(f) procurement of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party.

Schedules

4. Each Party shall specify the following information in its Schedule to Annex 15-A:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter,

(e) in Section E, the services, other than construction services, covered. by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes;

(h) in Section H, the applicable Threshold Adjustment Formula;

(i) in Section I, the publication information required under Article 15.6.2 (Publication of Procurement Information); and

(j) in Section J, any transitional measures in accordance with Article 15.5 (Transitional Measures).

Compliance

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

6. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

Valuation

8. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

9. If the total estimated maximum value of a procurement over its entire

duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

Article 15.3. Exceptions

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

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

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

(c) necessary to protect intellectual property; or

(d) relating to the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.

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

Article 15.4. General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to:

(a) domestic goods, services and suppliers; and

(b) goods, services and suppliers of any other Party.

For greater certainty, this obligation refers only to the treatment accorded by a Party to any good, service or supplier of any other Party under this Agreement.

2. With respect to any measure regarding covered procurement, no Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of any other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

Procurement Methods

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 15.9 (Qualification of Suppliers) or Article 15.10 (Limited Tendering) applies.

Rules of Origin

5. Each Party shall apply to covered procurement of a good the rules of origin that it applies in the normal course of trade to that good.

Offsets

6. With regard to covered procurement, no Party, including its procuring entities, shall seck, take account of, impose or enforce any offset, at any stage of a procurement.

Measures Not Specific to Procurement

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

Use of Electronic Means

8. The Parties shall seck to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders.

9. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

Article 15.5. Transitional Measures

1. A Party that is a developing country (developing country Party) may, with the agreement of the other Parties, adopt or maintain one or more of the following transitional measures, during a transition period set out in, and in accordance with, Section J of the Party's Schedule to Annex 15-A:

(a) a price preference programme, provided that the programme:

(i) provides a preference only for the part of the tender incorporating goods or services originating in that developing country Party; and

(ii) is transparent, and that the preference and its application in the procurement are clearly described in the notice of intended procurement;

(b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;

(c) the phased-in addition of specific entities or sectors; and

(d) a threshold that is higher than its permanent threshold.

A transitional measure shall be applied in a manner that does not discriminate between the other Parties.

2. The Parties may agree to the delayed application of any obligation in this Chapter, other than Article 15.4.1(b) (General Principles), by the developing country Party while that Party implements the obligation. The implementation period shall be only the period necessary to implement the obligation.

3. Any developing country Party that has negotiated an implementation period for an obligation under paragraph 2 shall list in its Schedule to Annex 15-A the agreed implementation period, the specific obligation subject to the implementation period and any interim obligation with which it has agreed to comply during the implementation period.

4. After this Agreement has entered into force for a developing country Party, the other Parties, on request of that developing country Party, may:

(a) extend the transition period for a measure adopted or maintained under paragraph 1 or any implementation period negotiated under paragraph 2; or

(b) approve the adoption of a new transitional measure under paragraph 1, in special circumstances that were unforeseen.

5. A developing country Party that has negotiated a transitional measure under paragraphs 1 or 4, an implementation period under paragraph 2, or any extension under paragraph 4, shall take those steps during the transition period or implementation period that may be necessary to ensure that it is in compliance with this Chapter at the end of any such period. The developing country Party shall promptly notify the other Parties of each step in accordance with Article 27.7 (Reporting in relation to Party-specific Transition Periods).

6. Each Party shall give consideration to any request by a developing country Party for technical cooperation and capacity building in relation to that Party's implementation of this Chapter.

Article 15.6. Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.

2. Each Party shall list in Section I of its Schedule to Annex 15-A the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 15.7 (Notices of Intended Procurement), Article 15.9.3 (Qualification of Suppliers) and Article 15.16.3 (Post-Award Information).

3. Each Party shall, on request, respond to an inquiry relating to the information referred to in paragraph 1.

Article 15.7. Notices of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 15.10 (Limited Tendering), a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 15-A. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.

2. The notices shall, if accessible by electronic means, be provided free of charge:

(a) for central government entities that are covered under Annex 15-A, through a single point of access; and

(b) for sub-central government entities and other entities covered under Annex 15-A, through links in a single electronic portal.

3. Unless otherwise provided in this Chapter, cach notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and the cost and terms of payment to obtain the relevant documents, if any;

(b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known;

(c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;

(d) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(e) the address and the final date for the submission of tenders;

(f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide;

(h) if, pursuant to Article 15.9 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 15.6.2 (Publication of Procurement Information).

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

5. For the purposes of this Chapter, each Party shall endeavour to use English as the language for publishing the notice of intended procurement.

Notice of Planned Procurement

6. Procuring entities are encouraged to publish as early as possible in cach fiscal year a notice regarding their future procurement plans (notice of planned procurement), which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

Article 15.8. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting material, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts; or

(d) failure to pay taxes.

Article 15.9. Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. No Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of other Parties on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

Selective Tendering

3. If a Party's measures authorise the use of selective tendering, and if a procuring entity intends to use selective tendering, the procuring entity shall:

(a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and

(b) include in the notice of intended procurement the information specified in Article 15.7.3(a), (b), (d), (g), (h) and (i) (Notices of Intended Procurement).

4. The procuring entity shall:

(a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;

(b) provide, by the commencement of the time period for tendering, at least the information in Article 15.7.3 (c), (e) and (f) (Notices of Intended Procurement) to the qualified suppliers that it notifies as specified in Article 15.14.3(b) (Time Periods); and

(c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

5. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 4(c).

Multi-Use Lists

6. A Party, including its procuring entities, may establish or maintain a multi- use list provided that it publishes annually, or otherwise makes continuously available by electronic means, a notice inviting interested suppliers to apply for inclusion on the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of those conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list;

(e) the deadline for submission of applications for inclusion on the list, if applicable; and

(f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 15.6.2 (Publication of Procurement Information).

7. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

8. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on the

multi-use list and submits all required documents, within the time period provided for in Article 15.14.2 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement unless the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Information on Procuring Entity Decisions

9. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

10. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and on request of the supplier, promptly provide the supplier with a written explanation of the reason for its decision.

Article 15.10. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers or in a manner that discriminates against suppliers of any other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Article 15.7 (Notices of Intended Procurement), Article 15.8 (Conditions for Participation), Article 15.9 (Qualification of Suppliers), Article 15.11 (Negotiations), Article 15.12 (Technical Specifications), Article 15.13 (Tender Documentation), Article 15.14 (Time Periods) or Article 15.15 (Treatment of Tenders and Awarding of Contracts). A procuring entity may use limited tendering only under the following circumstances:

(a) if, in response to a prior notice, invitation to participate or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

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

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted were collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

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

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorised agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for a good purchased on a commodity market or exchange;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial

viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(f) if additional construction services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the value of the initial contract;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;

(h) if a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or

(i) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

Article 15.11. Negotiations

1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 15.7 (Notices of Intended Procurement); or

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any climination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 15.12. Technical Specifications

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

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

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognised national standards or building codes.

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

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

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

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

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside the territory of the Party.

Article 15.13. Tender Documentation

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;

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

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

(d) if there will be a public opening of tenders, the date, time and place for the opening;

(e) any other terms or conditions relevant to the evaluation of tenders; and

(f) any date for delivery of a good or supply of a service.

2. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such as the complexity of the procurement.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

Modifications

4. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends or re-issues a notice or tender documentation, it shall publish or provide those modifications, or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

Article 15.14. Time Periods General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement; and

(b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

Deadlines

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement.

If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 15.7 (Notices of Intended Procurement) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) the address from which documents relating to the procurement may be obtained; and

(iv) as much of the information that is required for the notice of intended procurement as is available;

(b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

Article 15.15. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

3. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that,

based solely on the evaluation criteria specified in the notice and tender documentation, submits:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

5. A procuring entity shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

Article 15.16. Post-Award Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing or through the prompt publication of the notice in paragraph 3, provided that the notice includes the date of award. If a supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 15.17 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender.

Publication of Award Information

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

(a) a description of the good or service procured;

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

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

(d) the value of the contract award;

(e) the date of award or, if the procuring entity has already informed suppliers of the date of the award under paragraph 1, the contract date; and

(f) the procurement method used and, if a procedure was used pursuant to Article 15.10 (Limited Tendering), a brief description of the circumstances justifying the use of that procedure.

Maintenance of Records

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 15.10.3 (Limited Tendering), for at least three years after the award of a contract.

Article 15.17. Disclosure of Information

Provision of Information to Parties

1. On request of any other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review

bodies, to disclose confidential information if that disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

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

(d) would otherwise be contrary to the public interest.

Article 15.18. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, cither indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 15.19. Domestic Review

1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent and effective manner, a challenge or complaint (complaint) by a supplier that there has been:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage, if appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. If a body other than the review authority initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity that is the subject of the complaint.

4. If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to cither the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

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

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

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

(d) the review authority shall provide its decision on a supplier's complaint in a timely fashion, in writing, with an explanation of the basis for the decision.

6. Each Party shall adopt or maintain procedures that provide for:

(a) prompt interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter; and

(b) corrective action that may include compensation under paragraph 4.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

Article 15.20. Modifications and Rectifications of Annex

1. A Party shall notify any proposed modification or rectification (modification) to its Schedule to Annex 15-A by circulating a notice in writing to the other Parties through the overall contact points designated under Article 27.5 (Contact Points). A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Parties if the proposed modification concerns one of the following:

(a) a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 15-A, such as:

(i) changes in the name of a procuring entity;

(ii) the merger of one or more procuring entities listed in its Schedule;

(iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the procuring entities listed in the same Section of the Annex; and

(iv) changes in website references, and no Party objects under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or (b).

3. Any Party whose rights under this Chapter may be affected by a proposed modification that is notified under paragraph 1 shall notify the other Parties of any objection to the proposed modification within 45 days of the date of circulation of the notice.

4. If a Party objects to a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, that Party may request additional information, including information on the nature of any government control or influence, with a view to clarifying and reaching agreement on the proposed modification, including the procuring entity's continued coverage under this Chapter. The modifying Party and any objecting Party shall make every attempt to resolve the objection through consultations.

5. If the modifying Party and any objecting Party resolve the objection through consultations, the modifying Party shall notify the other Parties of the resolution.

6. The Commission shall modify Annex 15-A to reflect any agreed modification.

Article 15.21. Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

3. To facilitate participation by SMEs in covered procurement, cach Party shall, to the extent possible and if appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) endeavour to make all tender documentation available free of charge;

(c) conduct procurement by electronic means or through other new information and communication technologies; and

(d) consider the size, design and structure of the procurement, including the use of subcontracting by SMEs.

Article 15.22. Cooperation

1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets.

2. The Parties shall endeavour to cooperate in matters such as:

(a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;

(b) exchanging experiences and information, such as regulatory frameworks, best practices and statistics;

(c) developing and expanding the use of electronic means in government procurement systems;

(d) building capability of government officials in best government procurement practices;

(e) institutional strengthening for the fulfilment of the provisions of this Chapter; and

(f) enhancing the ability to provide multilingual access to procurement opportunities.

Article 15.23. Committee on Government Procurement

The Parties hereby establish a Committee on Government Procurement (Committee), composed of government representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation and operation of this Chapter, such as:

(a) cooperation between the Parties, as provided for in Article 15.22 (Cooperation);

(b) facilitation of participation by SMEs in covered procurement, as provided for in Article 15.21 (Facilitation of Participation by SMEs);

(c) use of transitional measures; and

(d) consideration of further negotiations as provided for in Article 15.24 (Further Negotiations).

Article 15.24. Further Negotiations

1. The Committee shall review this Chapter and may decide to hold further negotiations with a view to:

(a) improving market access coverage through enlargement of procuring entity lists and reduction of exclusions and exceptions as set out in Annex 15-A;

(b) revising the thresholds set out in Annex 15-A;

(c) revising the Threshold Adjustment Formula in Section H of Annex 15-A; and

(d) reducing and eliminating discriminatory measures.

2. The Parties shall commence negotiations with a view to achieving expanded coverage, including sub-central coverage (2). Parties may also agree to cover sub-central government procurement prior to or following the start of those negotiations.

(2) For those Parties that administer at the central level of government the kinds of procurement that other Parties may administer by sub-central entities, those negotiations may involve commitments at the central government level rather than at the sub-central government level.

Chapter 16. COMPETITION POLICY

Article 16.1. Competition Law and Authorities and Anticompetitive Business Conduct (1)

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the APEC Principles to Enhance Competition and Regulatory Reform, done at Auckland, September 13, 1999.

2. Each Party shall endeavour to apply its national competition laws to all commercial activities in its territory. (2) However, each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in paragraph 1 and not to discriminate on the basis of nationality.

(1) This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

(2) For greater certainty, nothing in paragraph 2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

Article 16.2. Procedural Fairness In Competition Law Enforcement (3)

1. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its national competition laws, it affords that person:

(a) information about the national competition authority's competition concerns;

(b) a reasonable opportunity to be represented by counsel; and

(c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy.

In particular, each Party shall afford that person a reasonable opportunity to present evidence or testimony in its defence, including: if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding. (4)

2. Each Party shall adopt or maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its national competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all parties to a proceeding.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. Each Party shall authorise its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to judicial or independent tribunal approval or a public comment period before becoming final.

6. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition laws.

7. If a Party's national competition authority alleges a violation of its national competition laws, that authority shall be responsible for establishing the legal and factual basis for the alleged violation in an enforcement proceeding. (5)

8. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the national competition authority's allegations.

9. Each Party shall ensure that its national competition authorities afford a person under investigation for possible violation of the national competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

(3) This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

(4) For the purposes of this Article, "enforcement proceedings" means judicial or administrative proceedings following an investigation into the alleged violation of the competition laws.

(5) Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

Article 16.3. Private Rights of Action (6)

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of national competition laws, either independently or following a finding of violation by a national competition authority.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

(a) to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and

(b) to seek redress from a court or other independent tribunal following a finding of violation by the national competition authority.

4. Each Party shall ensure that a right provided pursuant to paragraph 2 or 3 is available to persons of another Party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

(6) This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

Article 16.4. Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, each Party shall:

(a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and

(b) cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation and the exchange of information.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of another Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

Article 16.5. Technical Cooperation

Recognising that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to available resources, including:

(a) providing advice or training on relevant issues, including through the exchange of officials;

(b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition; and

(c) assisting a Party as it implements a new national competition law.

Article 16.6. Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

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

(a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;

(b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities. (7)

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.

5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

(7) For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

Article 16.7. Transparency

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. Recognising the value of the APEC Competition Law and Policy Database in enhancing the transparency of national competition laws, policies and enforcement activities, each Party shall endeavour to maintain and update its information on that database.

3. On request of another Party, a Party shall make available to the requesting Party public information concerning:

(a) its competition law enforcement policies and practices; and

(b) exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or

investment between the Parties.

4. Each Party shall ensure that a final decision finding a violation of its national competition laws is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and other Parties to become acquainted with them. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 16.8. Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of another Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 16.9. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

ANNEX 16-A. APPLICATION OF ARTICLE 16.2 (PROCEDURAL FAIRNESS IN COMPETITION LAW ENFORCEMENT), ARTICLE 16.3 (PRIVATE RIGHTS OF ACTION) AND ARTICLE 16.4 (COOPERATION) TO BRUNEI DARUSSALAM

1. If as of the date of entry into force of this Agreement, Brunei Darussalam does not have a national competition law which is in force and has not established a national competition authority, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall not apply to Brunei Darussalam for a period of no longer than 10 years after that date.

2. If Brunei Darussalam establishes a national competition authority or authorities before the end of the 10-year period, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall apply to Brunei Darussalam from the date of establishment.

3. During the 10 year period, Brunei Darussalam shall take such steps as may be necessary to ensure that it is in compliance with Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) at the end of the 10-year period and shall endeavour to comply with these obligations before the end of such period. Upon request of a Party, Brunei Darussalam shall inform the Parties of its progress since entry into force of the Agreement in developing and implementing an appropriate national competition law and establishing a national competition authority or authorities.

Chapter 17. STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Article 17.1. Definitions

For the purposes of this Chapter:

Arrangement means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Co-operation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of January 1, 1979;

commercial activities means activities which an enterprise undertakes with an orientation toward profit-making (1) and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise; (2)

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 a privately owned enterprise in the relevant business or industry;

designate means to establish, designate or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

independent pension fund means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

(i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is free from investment direction from the government of the Party; market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider 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 the grant;

non-commercial assistance (4) means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

(a) "assistance" means:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness;

(B) loans, loan guarantees or other types of financing on terms more favourable than those commercially available to that enterprise; or

(C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors; or

(ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise;

(b) "by virtue of that state-owned enterprise's government ownership or control" (5) means that the Party or any of the Party's state enterprises or state-owned enterprises:

(i) explicitly limits access to the assistance to the Party's state-owned enterprises;

(ii) provides assistance which is predominately used by the Party's state-owned enterprises;

(iii) provides a disproportionately large amount of the assistance to the Party's state-owned enterprises; or

(iv) otherwise favours the Party's state-owned enterprises through the use of its discretion in the provision of assistance;

public service mandate means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory; (6)

sovereign wealth fund means an enterprise owned, or controlled through ownership interests, by a Party that:

(a) serves solely as a special purpose investment fund or arrangement (7) for asset management, investment, and related activities, using financial assets of a Party; and

(b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the Generally Accepted Principles and Practices ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

and includes any special purpose vehicles established solely for such activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

state-owned enterprise means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

(1) For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

(2) For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

(3) Investment direction from the government of a Party: (a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

(4) For greater certainty, non-commercial assistance does not include: (a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions; (b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or (c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

(5) In determining whether the assistance is provided "by virtue of that state-owned enterprise's government ownership or control", account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

(6) For greater certainty, a service to the general public includes: (a) the distribution of goods; and (b) the supply of general infrastructure services.

(7) For greater certainty, the Parties understand that the word "arrangement" as an alternative to "fund" allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

Article 17.2. Scope (8)

1. This Chapter shall apply with respect to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties within the free trade area. (9)

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises from undertaking activities for the purpose of the resolution of a failing or failed financial institution or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter shall not apply with respect to a sovereign wealth fund of a Party (10), except:

(a) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and

(b) Article 17.6.2 (Non-commercial Assistance) shall apply with respect to a sovereign wealth fund's provision of non-commercial assistance.

6. This Chapter shall not apply with respect to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and

(ii) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

7. This Chapter shall not apply to government procurement.

8. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.

9. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

10. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply to any service supplied in the exercise of governmental authority. (11)

11. Article 17.4.1(b), Article 17.4.1(c), Article 17.4.2(b) and Article 17.4.2(c) (Non-discriminatory Treatment and Commercial Considerations) shall not apply to the extent that a Party’s state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 9.12.1 (Non-Conforming Measures), Article 10.7.1 (Non-Conforming Measures) or Article 11.10.1 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section A of its Schedule to Annex III; or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 9.12.2 (Non-Conforming Measures), Article 10.7.2 (Non-Conforming Measures) or Article 11.10.2 (Non-Conforming Measures), as set out in its Schedule to Annex II or in Section B of its Schedule to Annex III.

(8) For the purposes of this Chapter, the terms "financial service supplier", "financial institution" and "financial services" have the same meaning as in Article 11.1 (Definitions).

(9) This Chapter also applies with respect to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-Party as provided in Article 17.7 (Adverse Effects).

(10) Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) with respect to enterprises owned or controlled by Khazanah Nasional Berhad for a period of two years following the entry into force of this Agreement for Malaysia, in light of ongoing development of state-owned enterprise reform legislation.

(11) For the purposes of this paragraph, "service supplied in the exercise of governmental authority" has the same meaning as in GATS,

including the meaning in the Financial Services Annex where applicable.

Article 17.3. Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises and designated monopolies exercise any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement. (12)

(12) Examples of regulatory, administrative or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

Article 17.4. Non-discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that cach of its state-owned enterprises, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (c)(ii);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(c) in its sale of a good or service:

(i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party. (13)

2. Each Party shall ensure that each of its designated monopolies:

(a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraph (b), (c) or (d);

(b) in its purchase of the monopoly good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries or other entities the Party or the designated monopoly owns,

anticompetitive practices in a non-monopolised market in its territory that negatively affect trade or investment between

the Parties. (14)

3. Paragraphs 1(b) and 1(c) and paragraphs 2(b) and 2(c) do not preclude a state-owned enterprise or designated monopoly from:

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

(b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

(12) Examples of regulatory, administrative or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

(13) Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

(14) For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

Article 17.5. Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory. (15) This shall not be construed to require a Party to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises. (16)

(15) This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

(16) For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

Article 17.6. Non-commercial Assistance

1. No Party shall cause (17) adverse effects to the interests of another Party through the use of non-commercial assistance that it provides, either directly or indirectly (18), to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of another Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

3. No Party shall cause injury to a domestic industry (19) of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of that other Party in circumstances where:

(a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

(b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party. (20)

4. A service supplied by a state-owned enterprise of a Party within that Party's territory shall be deemed not to cause adverse effects. (21)

(17) For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

(18) For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

(19) The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

(20) In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

(21) For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

Article 17.7. Adverse Effects

1. For the purposes of Article 17.6.1 and Article 17.6.2 (Non-commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

(a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the Party's market imports of a like good of another Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:

(i) the market of another Party sales of a like good produced by an enterprise that is a covered investment in the territory of that other Party, or imports of a like good of any other Party; or

(ii) the market of a non-Party imports of a like good of another Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of another Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression or lost sales in the same market; or

(i) the market of a non-Party as compared with the price in the same market of imports of a like good of another Party, or

significant price suppression, price depression or lost sales in the same market;

(d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of another Party a like service supplied by a service supplier of that other Party or any other Party; or

(e) a significant price undercutting by a service supplied in the market of another Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of that other Party or any other Party, or significant price suppression, price depression or lost sales in the same market. (22)

2. For the purposes of paragraphs 1(a), 1(b) and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following situations:

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned. enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of paragraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

(a) before the signing of this Agreement; or

(b) within three years after the signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of Article 17.6.1(b) and Article 17.6.2(b) (Non-commercial Assistance), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

(22) The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in Article 17.7.1 (Adverse Effects).

Article 17.8. Injury

1. For the purposes of Article 17.6.3 (Non-commercial Assistance), the term "injury" shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods. (23)

2. With regard to the volume of production by the covered investment that has received non-commercial assistance,

consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared. with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects (24) of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non- commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors (25) and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

(23) The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

(24) As set out in paragraphs 2. and 3.

(25) In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 28 (Dispute Settlement) should consider, among other things, such factors as: (a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (e) inventories of like goods.

Article 17.9. Party-Specific Annexes

1. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies that a Party lists in its Schedule to Annex IV in accordance with the terms of the Party's Schedule.

2. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.5 (Courts and Administrative Bodies), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 17-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).

3. (a) In the case of Singapore, Annex 17-E (Singapore) shall apply.

(b) In the case of Malaysia, Annex 17-F (Malaysia) shall apply.

Article 17.10. Transparency (26) (27)

1. Each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement for that Party, and thereafter shall update the list annually. (28) (29)

2. Each Party shall promptly notify the other Parties or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation. (30)

3. On the written request of another Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

(a) the percentage of shares that the Party, its state-owned enterprises or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

(b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;

(c) the government titles of any government official serving as an officer or member of the entity's board of directors;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide, in writing, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

(a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

(b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the names of the state-owned enterprises that have received or are cligible to receive the non-commercial assistance;

(c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;

(h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and a description of the shares received, and any assessments that were conducted with

respect to the underlying investment decision;

(i) duration of the policy or programme or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non- commercial assistance on trade or investment between the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

(26) This Article shall not apply to Brunei Darussalam with respect to the Entities listed in the entry at Annex IV - Brunei Darussalam - 4 that engage in the non-conforming activities described in that entry.

(27) This Article shall not apply to Viet Nam with respect to the Entities listed in: (a) the entry at Annex IV - Viet Nam - 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and (b) the entry at Annex IV - Viet Nam -10 that engage in the non-conforming activities described in that entry.

(28) For Brunei Darussalam, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Brunei Darussalam. Separately, within three years after the date of entry into force of this Agreement, Brunei Darussalam shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

(29) For Viet Nam and Malaysia, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively. Separately, within six months after the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively, each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

(30) Paragraphs 2, 3 and 4 shall not apply to Viet Nam with respect to the Entities listed in the entry at Annex IV - Viet Nam - 9 that engage in the non-conforming activities described in that entry.

Article 17.11. Technical Cooperation

The Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

(a) exchanging information regarding Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;

(b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(c) organising international seminars, workshops or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

Article 17.12. Committee on State-Owned Enterprises and Designated

Monopolies (31)

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies (Committee), composed of government representatives of each Party.

2. The Committee's functions shall include:

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

(b) at a Party's request, consulting on any matter arising under this Chapter;

(c) developing cooperative efforts, as appropriate, to promote the principles underlying the disciplines contained in this Chapter in the free trade area and to contribute to the development of similar disciplines in other regional and multilateral institutions in which two or more Parties participate; and

(d) undertaking other activities as the Committee may decide.

3. The Committee shall meet within one year after the date of entry into force of this Agreement, and at least annually thereafter, unless the Parties agree otherwise.

(31) Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply to Viet Nam with respect to the Entities listed in: (a) the entry at Annex IV - Viet Nam - 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and (b) the entry at Annex IV - Viet Nam - 10 that engage in the non-conforming activities described in that entry.

Article 17.13. Exceptions

1. Nothing in Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance) shall be construed to:

(a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

(a) supports exports or imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; (32)

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing, or (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under Article17.6.1(b) (Non-commercial Assistance) or Article 17.6.2(b), or under Article 17.6.1(c) or Article 17.6.2(c) where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services: (33)

(a) supports exports and imports, provided that these services are: (i) not intended to displace commercial financing; or

(i) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 17.6 (Non-commercial Assistance) shall not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance), Article 17.10 (Transparency) and Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply with respect to a state-owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 17-A. (34) (35)

(32) In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2(a)(ii), 2(b)(ii), 3(a)(ii) and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)(i), 3(a)(i) and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing

(33) For the purposes of this paragraph, in cases where the country in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

(34) When a Party invokes this exception during consultations under Article 28.5 (Consultations), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

(35) Notwithstanding this paragraph, for a period of five years after the date of entry into force of this Agreement for Brunei Darussalam, Malaysia or Viet Nam, Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to a state-owned enterprise or designated monopoly of Brunei Darussalam, Malaysia or Viet Nam, respectively, if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the enterprise was less than SDR 500 million.

Article 17.14. Further Negotiations

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of the disciplines in this Chapter in accordance with Annex 17-C (Further Negotiations).

Article 17.15. Process for Developing Information

Annex 17-B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) shall apply in any dispute under Chapter 28 (Dispute Settlement) regarding a Party's conformity with Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non- commercial Assistance).

Chapter 18. INTELLECTUAL PROPERTY

Section A. General Provisions

Article 18.1. Definitions

1. For the purposes of this Chapter:

Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971;

Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980;

Declaration on TRIPS and Public Health means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on November 14, 2001;

geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

Madrid Protocol means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid, June 27, 1989;

Paris Convention means the Paris Convention for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967;

performance means a performance fixed in a phonogram unless otherwise specified;

with respect to copyright and related rights, the term right to authorise or prohibit refers to exclusive rights;

Singapore Treaty means the Singapore Treaty on the Law of Trademarks, done at Singapore, March 27, 2006;

UPOV 1991 means the International Convention for the Protection of New Varieties of Plants, as revised at Geneva, March 19, 1991;

WCT means the WIPO Copyright Treaty, done at Geneva, December 20, 1996;

WIPO means the World Intellectual Property Organization;

for greater certainty, work includes a cinematographic work, photographic work and computer program; and

WPPT means the WIPO Performances and Phonograms Treaty, done at Geneva, December 20, 1996.

2. For the purposes of Article 18.8 (National Treatment), Article 18.31(a) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.62.1 (Related Rights):

a national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 18.7 (International Agreements) or the TRIPS Agreement.

Article 18.2. Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 18.3. Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or

adversely affect the international transfer of technology.

Article 18.4. Understandings In Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.

Article 18.5. Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 18.6. Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the Amendment of the TRIPS Agreement, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1,WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

2. Each Party shall notify, if it has not already done so, the WTO of its acceptance of the Protocol amending the TRIPS Agreement, done at Geneva on December 6, 2005.

Article 18.7. International Agreements

1. Each Party affirms that it has ratified or acceded to the following agreements:

(a) Patent Cooperation Treaty, as amended September 28, 1979;

(b) Paris Convention; and

(c) Berne Convention.

2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement for that Party:

(a) Madrid Protocol;

(b) Budapest Treaty;

(c) Singapore Treaty; (1)

(d) UPOV 1991; (2)

(e) WCT; and

(f) WPPT.

(1) A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.

(2) Annex 18-A applies to this subparagraph.

Article 18.8. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, (3) each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection (4) of intellectual property rights.

2. With respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

(3) For greater certainty, with respect to copyrights and related rights that are not covered under Section H (Copyright and Related Rights), nothing in this Agreement limits a Party from taking an otherwise permissible derogation from national treatment with respect to those rights.

(4) For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, "protection" also includes the prohibition on the circumvention of effective technological measures set out in Article 18.68 (TPMs) and the provisions concerning rights management information set out in Article 18.69 (RMI).

Article 18.9. Transparency

1. Further to Article 26.2 (Publication) and Article 18.73.1 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights. (5) (6)

3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights. (7)

(5) For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 18.24 (Electronic Trademarks System).

(6) For greater certainty, paragraph 2. does not require a Party to make available on the Internet the entire dossier for the relevant application.

(7)For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

Article 18.10. Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, including in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless provided in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Article 18.11. Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system. (8)

(8) For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

Section B. Cooperation

Article 18.12. Contact Points for Cooperation

Further to Article 21.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 27.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.

Article 18.13. Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) intellectual property issues relevant to:

(i) small and medium-sized enterprises;

(ii) science, technology and innovation activities; and

(iii) the generation, transfer and dissemination of technology;

(e) policies involving the use of intellectual property for research, innovation and economic growth;

(f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and

(g) technical assistance for developing countries.

Article 18.14. Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:

(a) making search and examination results available to the patent offices of other Parties; (9) and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

4. The Parties recognise the importance of giving due consideration to ratifying or acceding to the Patent Law Treaty, done at Geneva, June 1, 2000; or in the alternative, adopting or maintaining procedural standards consistent with the objective of the Patent Law Treaty.

(9) The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

Article 18.15. Public Domain

1. The Parties recognise the importance of a rich and accessible public domain.

2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

Article 18.16. Cooperation In the Area of Traditional Knowledge

1, The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.

3. The Parties shall endeavour to pursue quality patent examination, which may include:

(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;

(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and

(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Article 18.17. Cooperation on Request Cooperation

Activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and

on terms and conditions mutually agreed upon between the Parties involved.

Section C. Trademarks

Article 18.18. Types of Signs Registrable as Trademarks

No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 18.19. Collective and Certification Marks

Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system. (10)

(10) Consistent with the definition of a geographical indication in Article 18.1 (Definitions), any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.

Article 18.20. Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications, (11) (12) for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(11) For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

(12) For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

Article 18.21. Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

Article 18.22. Well-Known Trademarks

1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (13) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark (14), for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.

(13) In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

(14) The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.

Article 18.23. Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;

(c) providing an opportunity to oppose the registration of a trademark of to seek cancellation (15) of a trademark; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

(15) For greater certainty, cancellation for purposes of this Section may be implemented through nullification or revocation proceedings.

Article 18.24. Electronic Trademarks System Each Party Shall Provide:

(a) a system for the electronic application for, and maintenance of, trademarks; and

(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article 18.25. Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:

(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification; (16) and

(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

(16) A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Article 18.26. Term of Protection for Trademarks

Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.

Article 18.27. Non-Recordal of a Licence

No Party shall require recordal of trademark licences:

(a) to establish the validity of the licence; or

(b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.

Article 18.28. Domain Names

1. In connection with each Party's system for the management of its country- code top-level domain (ccTLD) domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:

(i) is designed to resolve disputes expeditiously and at low cost;

(ii) is fair and equitable;

(iii) is not overly burdensome; and

(iv) does not preclude resort to judicial proceedings; and

(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,

in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies (17) shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

(17) The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

Section D. Country Names

Article 18.29. Country Names

Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E. Geographical Indications

Article 18.30. Recognition of Geographical Indications

The Parties recognise that geographical indications may be protected through a trademark or sui generis system or other legal means.

Article 18.31. Administrative Procedures for the Protection or Recognition of Geographical Indications

If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system, that Party shall with respect to applications for that protection or petitions for that recognition:

(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals; (18)

(b) process those applications or petitions without imposition of overly burdensome formalities;

(c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;

(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;

(e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and

(f) provide for cancellation (19) of the protection or recognition afforded to a geographical indication.

(18) This subparagraph also applies to judicial procedures that protect or recognise a geographical indication.

(19) For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

Article 18.32. Grounds of Opposition and Cancellation (20)

1. If a Party protects or recognises a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least, on the following grounds:

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;

(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and

(c) the geographical indication is a term customary in common language as the common name (21) for the relevant good in the territory of the Party.

2. If a Party has protected or recognised a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party. (22)

3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.

4. If a Party has in place a sui generis system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any of the circumstances identified in paragraph 1 has been established. (23) That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.

5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.

(20) A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.

(21) For greater certainty, if a Party provides for the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of

Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, the Parties understand nothing shall require a Party to protect or recognise a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

(22) For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraph 2 or paragraph 4 of this Article in relation to that geographical indication.

(23) As an alternative to this paragraph, if a Party has in place a sui generis system of the type referred to in this paragraph as of the applicable date under Article 18.36.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.

Article 18.33. Guidelines for Determining Whether a Term Is the Term Customary In the Common Language

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include:

(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and

(b) how the good referenced by the term is marketed and used in trade in the territory of that Party. (24)

(24) For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of the Party.

Article 18.34. Multi-Component Terms

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), an individual component of a multi- component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.

Article 18.35. Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date (25) in the Party or the registration date in the Party, as applicable.

(25) For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention.

Article 18.36. International Agreements

1. If a Party protects or recognises a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) (26) or Article 18.32.4 (Grounds of Opposition and Cancellation), that Party shall apply at least procedures and grounds that are equivalent to those in Article 18.31(e) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32.1 (Grounds of Opposition and Cancellation), as well as:

(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognising the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;

(b) make available to the public, on the Internet, details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;

(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and

(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.

2. In respect of international agreements referred to in paragraph 6 that permit, the protection or recognition of a new geographical indication, a Party shall: (27) (28)

(a) apply paragraph 1(b);

(b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or tecognised; and

(c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.

3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.

4. For the purposes of this Article, a Party is not required to apply Article 18.32 (Grounds of Opposition and Cancellation), or obligations equivalent to Article 18.32, to geographical indications for wines and spirits or applications for those geographical indications.

5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which the agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of the agreement, on that later date.

6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:

(a) was concluded, or agreed in principle 8 prior to the date of conclusion, or agreement in principle, of this Agreement;

(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or

(c) entered into force for a Party prior to the date of entry into force of this Agreement for that Party.

(26) Each Party shall apply Article 18.33 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 18.34 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.

(27) In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.

(28) A Party may comply with this Article by applying Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation).

(29) For the purpose of this Article, an agreement "agreed in principle" means an agreement involving another government, government entity or international organisation in respect of which a political understanding has been reached and the negotiated outcomes of the agreement

have been publically announced.

Section F. Patents and Undisclosed Test or other Data

Subsection A. General Patents

Article 18.37. Patentable Subject Matter

1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application. (30)

3. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non- biological and microbiological processes.

4. A Party may also exclude from patentability plants other than microorganisms.

(30) For the purposes of this Section, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled, or having ordinary skill in the art, having regard to the prior art.

Article 18.38. Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure: (31) (32)

(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and

(b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

(31) No Party shall be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office, unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title, by a third person who obtained the information directly or indirectly from the inventor.

(32) For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorised by, or derived from, the patent applicant.

Article 18.39. Patent Revocation

1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.

2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article SA of the Paris Convention and the TRIPS Agreement.

Article 18.40. Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 18.41. Other Use without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.

Article 18.42. Patent Filing

Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date, (33) unless that application has, prior to publication, (34) been withdrawn, abandoned or refused.

(33) A Party shall not be required to apply this Article in cases involving derivation or in situations involving any application that has or had, at any time, at least one claim having an effective filing date before the date of entry into force of this Agreement for that Party or any application that has or had, at any time, a priority claim to an application that contains or contained such a claim.

(34) For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

Article 18.43. Amendments, Corrections and Observations

Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application. (35)

(35) A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

Article 18.44. Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, cach Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

3. Each Party shall provide that an applicant may request the carly publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 18.45. Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement for that Party:

(a) search and examination results, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Subsection B. Measures Relating to Agricultural Chemical Products

Article 18.47. Protection of Undisclosed Test or other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval (40) fora new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product, (41) that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar (42) product on the basis of that information or the marketing approval granted to the person that submitted such test or other data for at least 10 years (43) from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

3. For the purposes of this Article, a new agricultural chemical product is one that contains (44) a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

(40) For the purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.

(41) Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

(42) For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical! product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

(43) For greater certainty, a Party may limit the period of protection under this Article to 10 years.

(44) For the purposes of this Article, a Party may treat “contain” as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat “utilise” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.

Subsection C. Measures Relating to Pharmaceutical Products

Article 18.49. Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 18.40 (Exceptions), each Party shall adopt or maintain a regulatory review exception (49) for pharmaceutical products.

(49) For greater certainty, consistent with Article 18.40 (Exceptions), nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country or both.

Article 18.52. Definition of New Pharmaceutical Product

For the purposes of Article 18.50.1 (Protection of Undisclosed Test or Other Data), a new pharmaceutical product means a pharmaceutical product that does not contain (61) a chemical entity that has been previously approved in that Party.

Article 18.53. Measures Relating to the Marketing of Certain Pharmaceutical Products

1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:

(a) a system to provide notice to a patent holder (62) or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;

(b) adequate time and opportunity for such a patent holder to seek, prior to the marketing (63) of an allegedly infringing product, available remedies in subparagraph (c); and

(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.

2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

(61) For the purposes of this Article, a Party may treat "contain" as meaning utilise.

(62) For greater certainty, for the purposes of this Article, a Party may provide that a "patent holder" includes a patent licensee or the authorised holder of marketing approval.

(63) For the purposes of paragraph 1(b), a Party may treat "marketing" as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national

Article 18.54. Alteration of Period of Protection

Subject to Article 18.50.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 18.50 or Article 18.51 (Biologics) and is also covered by a patent in the territory of that Party, the Party shall not alter the period of protection that it provides pursuant to Article 18.47, Article 18.50 or Article 18.51 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 18.47, Article 18.50 or Article 18.51.

Section G. Industrial Designs

Article 18.55. Protection

1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs:

(a) embodied in a part of an article; or, alternatively,

(b) shaving a particular regard, where appropriate, to a part of an article in the context of the article as a whole. healthcare programme operated by a Party and inscribed in the Appendix to Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices).

2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.

Article 18.56. Improving Industrial Design Systems

The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems, as well as facilitating the process of cross-border acquisition of rights in their respective industrial design systems, including giving due consideration to ratifying or acceding to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva, July 2, 1999.

Section H. Copyright and Related Rights

Article 18.57. Definitions

For the purposes of Article 18.58 (Right of Reproduction) and Article 18.60 (Right of Distribution) through Article 18.70 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds,

or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

Article 18.58. Right of Reproduction

Each Party shall provide (64) to authors, performers and producers of phonograms (65) the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

(64) For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.

(65) References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

Article 18.59. Right of Communication to the Public

Without prejudice to Article 11(1)(ii), Article 11bis(1)(i) and (ii), Article 11ter(1)(ii), Article 14(1)(ii), and Article 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them. (66)

(66) The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis(2) of the Berne Convention.

Article 18.60. Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies (67) of their works, performances and phonograms through sale or other transfer of ownership.

(67) The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 18.61. No Hierarchy

Each Party shall provide that in cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram:

(a) the need for the authorisation of the author does not cease to exist because the authorisation of the performer or producer is also tequired; and

(b) the need for the authorisation of the performer or producer does not cease to exist because the authorisation of the author is also required.

Article 18.62. Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals (68) of another Party; and to performances or phonograms first published or first fixed (69) in the territory of another Party (70). A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

2. Each Party shall provide to performers the exclusive right to authorise or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means, (71) (72) and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 18.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law. (73)

(68) For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

(69) For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

(70) For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 18.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

(71) With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 18.8 (National Treatment).

(72) For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

(73) For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

Article 18.64. Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, mutatis mutandis, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Article 18.65. Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Article 18.66. Balance In Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 18.65 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled. (78) (79)

(78) As recognised by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, June 27, 2013 (Marrakesh Treaty). The Parties recognise that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.

(79) For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 18.65 (Limitations and Exceptions).

Article 18.67. Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right (80) in a work, performance or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right. (81)

(80) For greater certainty, this provision does not affect the exercise of moral rights.

(81) Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

Article 18.70. Collective Management

The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties (100) based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

(100) For greater certainty, royalties may include equitable remuneration.

Section I. Enforcement

Article 18.71. General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section ate available under its law (101) so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. (102) These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party confirms that the enforcement procedures set forth in Article 18.74 (Civil and Administrative Procedures and Remedies), Article 18.75 (Provisional Measures) and Article 18.77 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

4. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

(101) For greater certainty, "law" is not limited to legislation.

(102) For greater certainty, and subject to Article 44 of the TRIPS Agreement and the provisions of this Agreement, each Party confirms that it makes such remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.

Article 18.72. Presumptions

1. In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption (103) that, in the absence of proof to the contrary:

(a) the person whose name is indicated in the usual manner (104) as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and

(b) the copyright or related right subsists in such subject matter.

2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered prima facie valid.

3. In connection with the commencement of a civil or administrative enforcement Proceeding involving a patent that has been substantively examined and granted (105) by the competent authority of a Party, that Party shall provide that each claim in the patent be considered prima facie to satisfy the applicable criteria of patentability in the territory of the Party. (106) (107)

(103) For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

(104) For greater certainty, a Party may establish the means by which it shall determine what constitutes the "usual manner" for a particular physical support.

(105) For greater certainty, nothing in this Chapter prevents a Party from making available third party procedures in connection with its fulfilment of the obligations under paragraphs 2 and 3.

(106) For greater certainty, if Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.

(107) A Party may provide that this paragraph applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement for that Party.

Article 18.73. Enforcement Practices with Respect to Intellectual Property Rights

1. Each Party shall provide that final judicial decisions and administrative tulings of general application pertaining to the enforcement of intellectual property rights:

(a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

(b) are published (108) or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.

2. Each Party recognises the importance of collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.

3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.

(108) For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

Article 18.74. Civil and Administrative Procedures and Remedies

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter. (109)

2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.

3. Each Party shall provide (110) that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.

5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement. (111)

6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms or performances, each Party shall establish or maintain a system that provides for one or more of the following:

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages. (112)

7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages. (113)

8. Pre-established damages under paragraphs 6 and 7 shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.

9. In awarding additional damages under paragraphs 6 and 7, judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.

10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.

11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties to the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

12. Each Party shall provide that in civil judicial proceedings:

(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;

(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a mamner as to minimise the risk of further infringement; and

(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other

than in exceptional circumstances, to permit the release of goods into the channels of commerce.

13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. The information may include information regarding any person involved in any aspect of the infringement or alleged infringement and the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of the goods or services and of their channels of distribution.

14. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights, including trademarks, geographical indications, patents, copyright and related rights and industrial designs, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

16. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that those procedures conform to principles equivalent in substance to those set out in this Article.

17. Incivil judicial proceedings concerning the acts described in Article 18.68 (TPMs) and Article 18.69 (RMI):

(a) each Party shall provide that its judicial authorities have the authority at least to: (114)

(i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity;

(ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article; (115)

(iii) | order court costs, fees or expenses as provided for under paragraph 10; and

(iv) order the destruction of devices and products found to be involved in the prohibited activity; and

(b) a Party may provide that damages shall not be available against a nom-profit library, archive, educational institution, museum or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.

(109) For the purposes of this Article, the term "right holders" shall include those authorised licensees, federations and associations that have the legal standing and authority to assert such rights. The term "authorised licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

(110) A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5 and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6 and 7 to be ordered in parallel.

(111) A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.

(112) For greater certainty, additional damages may include exemplary or punitive damages.

(113) For greater certainty, additional damages may include exemplary or punitive damages.

(114) For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 18.68 (TPMs) and Article 18.69 (RMD), if those remedies are available under its copyright law.

(115) If a Party's copyright law provides for both pre-established damages and additional damages, that Party may comply with the requirements of this subparagraph by providing for only one of these forms of damages.

Article 18.75. Provisional Measures

1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right inaudita altera parte expeditiously in accordance with that Party's judicial rules.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.

3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 18.76. Special Requirements Related to Border Measures

1, Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party. (116)

2. Each Party shall provide that any right holder initiating procedures for its competent authorities (117) to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is prima facie an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.

3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:

(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods; (118) or

(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.

5. Each Party shall provide that its competent authorities may initiate border measures ex officio (119) with respect to goods under customs control (120) that are:

(a) imported;

(b) destined for export; (121) or

(c) in transit, (122) (123)

and that are suspected of being counterfeit trademark goods or pirated copyright goods.

6. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraph 1, paragraph 5(a), paragraph 5(b) and, if applicable, paragraph 5(c), whether the suspect goods infringe an intellectual property right. (124) If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

7. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

8. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.

9. This Article also shall apply to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage. (125)

(116) For the purposes of this Article: (a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

(117) For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

(118) For greater certainty, a Party may establish reasonable procedures to receive or access that information.

(119) For greater certainty, that ex officio action does not require a formal complaint from a third party or right holder.

(120) For the purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.

(121) For the purposes of this Article, a Party may treat goods "destined for export" as meaning exported.

(122) This subparagraph applies to suspect goods that are in transit from one customs office to another customs office in the Party's territory from which the goods will be exported.

(123) As an alternative to this subparagraph, a Party shall instead endeavour to provide, if appropriate and with a view to eliminating international trade in counterfeit trademark goods or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transhipped through its territory and destined for the territory of the other Party, to

inform that other Party's efforts to identify suspect goods upon arrival in its territory.

(124) A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

(125) For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.

Article 18.77. Criminal Procedures and Penalties

1, Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of wilful copyright or related rights piracy, "on a commercial scale" includes at least:

(a) acts carried out for commercial advantage or financial gain; and

(b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace. (126) (127)

2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties. (128)

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation (129) and domestic use, in the course of trade and on a commercial scale, of a label or packaging: (130)

(a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark registered in its territory; and

(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.

(126) The Parties understand that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law.

(127) A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

(128) The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, criminal procedures and penalties as specified in paragraphs 1, 2 and 3 are applicable in any free trade zones in a Party.

(129) A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

(130) A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

4. Recognising the need to address the unauthorised copying (131) of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.

5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in paragraphs 1 through 5, each Party shall provide the following:

(a) Penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity. (132)

(b) Its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health ot safety. (133)

(c) Its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

(d) Its judicial authorities have the authority to order the forfeiture, at least for serious offences, of any assets derived from or obtained through the infringing activity.

(e) Its judicial authorities have the authority to order the forfeiture or destruction of:

(i) all counterfeit trademark goods or pirated copyright goods;

(ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and

(iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.

In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant.

(f) Its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil (134) infringement proceedings.

(g) Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder. (135)

7. With respect to the offences described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

(131) For the purposes of this Article, a Party may treat the term "copying" as synonymous with reproduction.

(132) The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

(133) A Party may also account for such circumstances through a separate criminal offence.

(134) A Party may also provide this authority in connection with administrative infringement proceedings.

(135) With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder's ability to exploit the work, performance or phonogram in the market.

Article 18.78. Trade Secrets (136)

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices. (137) As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.

2. Subject to paragraph 3, each Party shall provide for criminal procedures and penalties for one or more of the following:

(a) the unauthorised and wilful access to a trade secret held in a computer system;

(b) the unauthorised and wilful misappropriation (138) of a trade secret, including by means of a computer system; or

(c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.

3. With respect to the relevant acts referred to in paragraph 2, a Party may, as appropriate, limit the availability of its criminal procedures, or limit the level of penalties available, to one or more of the following cases in which:

(a) the acts are for the purposes of commercial advantage or financial gain;

(b) the acts are related to a product or service in national or international commerce;

(c) the acts are intended to injure the owner of such trade secret;

(d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or

(e) the acts are detrimental to a Party's economic interests, international relations, or national defence or national security.

(136) For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

(137) For the purposes of this paragraph "a manner contrary to honest commercial practices" means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.

(138) A Party may deem the term "misappropriation" to be synonymous with "unlawful acquisition".

Article 18.80. Government Use of Software

1. Each Party recognises the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights.

2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence. These measures shall apply to the acquisition and management of the software for government use. (147)

(147) For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable, to use computer software in a manner which is not authorised by the relevant licence.

Section J. Internet Service Providers (148)

Article 18.81. Definitions

For the purposes of this Section: the term copyright includes related rights; and Internet Service Provider means:

(a) a provider of online services for the transmission, routing, or providing of connections for digital online communications,

between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 18.82.2(a) (Legal Remedies and Safe Harbours); or

(b) a provider of online services undertaking the functions in Article 18.82.2(c) or Article 18.82.2(d) (Legal Remedies and Safe Harbours).

For greater certainty, Internet Service Provider includes a provider of the services listed above that engages in caching carried out through an automated process.

(148) Annex 18-F applies to this Section.

Section K. Final Provisions

Article 18.83. Final Provisions

1. Except as otherwise provided in Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2, 3 and 4, each Party shall give effect to the provisions of this Chapter on the date of entry into force of this Agreement for that Party. (160)

(160) Only the following Parties have determined that, in order to implement and comply with Article 18.51.1 (Biologics), they require changes to their law, and thus require transition periods: Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam.

2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement. This Section does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.

3. With respect to works of any Party that avails itself of a transition period permitted to it with regard to implementation of Article 18.63 (Term of Protection for Copyright and Related Rights) as it relates to the term of copyright protection (transition Party), Japan and Mexico shall apply at least the term of protection available under the transition Party's law for the relevant works during the transition period and apply Article 18.8.1 (National Treatment) with respect to copyright term only when that Party fully implements Article 18.63.

4. With regard to obligations subject to a transition period, a Party shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement for that Party.

(a) In the case of Brunei Darussalam, with respect to:

(i) Article 18.7.2(d) (International Agreements), UPOV 1991, three years;

(ii) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(iii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), 18 months;

(iv) Article 18.50 (Protection of Undisclosed Test or Other Data), four years; ++

(v) Article 18.51 (Biologics), four years; ++

(vi) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), two years; and

(vi) With respect to Section J (Internet Service Providers), three years.

(++) If there are unreasonable delays in Brunei Darussalam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Brunei Darussalam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (a){iv) and (a)(v), Brunei Darussalam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Brunei Darussalam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Brunei Darussalam of such products.

(b) In the case of Malaysia, with respect to:

(i) Article 18.7.2(a) (International Agreements), Madrid Protocol, four years;

(ii) Article 18.7.2(b) (International Agreements), Budapest Treaty, four years;

(iii) Article 18.7.2(c) (International Agreements), Singapore Treaty, four years;

(iv) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;

(v) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(vi) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;

(vii) Article 18.51 (Biologics), five years;

(viii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), 4.5 years;

(ix) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, two years;

(x) Article 18.76 (Special Requirements Related to Border Measures), with respect to applications to suspend the release of, or to detain, âconfusingly similarâ trademark goods, four years;

(xi) Article 18.76.5(b) and (c) (Special Requirements Related to Border Measures), with respect to ex officio border enforcement for in transit and export, four years; and

(xii) Article 18.79.2 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), four years.

(c) In the case of Mexico, with respect to:

(i) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;

(ii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;

(iii) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;

(iv) Article 18.50 (Protection of Undisclosed Test or Other Data), five years; (++)

(v) Article 18.51 (Biologics), five years; (++) and

(vi) Section J (Internet Service Providers), three years.

(++) If there are unreasonable delays in Mexico in the initiation of the filing of marketing approval applications for new pharmaceutical products after implementing its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (c)(iv) and (c)(v), Mexico may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Mexico shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Mexico of such products.

(d) In the case of New Zealand, with respect to Article 18.63 (Term of Protection for Copyright and Related Rights), eight years. Except that from the date of entry into force of this Agreement for New Zealand, New Zealand shall provide that the term of protection for a work, performance or phonogram that would, during that eight years, have expired under the term that was provided in New Zealand law before the entry into force of this Agreement, instead expires 60 years from the relevant date in Article 18.63 that is the basis for calculating the term of protection under this Agreement. The Parties understand that, in applying Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), New Zealand shall not be required to restore or extend the term of protection to the works, performances and phonograms with a term provided pursuant to the previous sentence, once these works, performances and phonograms fall into the public domain in its territory.

(e) In the case of Peru, with respect to:

(i) Article 18.50.2 (Protection of Undisclosed Test or Other Data), five years; and

(ii) Article 18.51 (Biologics), 10 years.

(f) In the case of Viet Nam, with respect to:

(i) Article 18.7.2(b) (International Agreements), Budapest Treaty, two years;

(ii) Article 18.7.2(e) (International Agreements), WCT, three years;

(iii) Article 18.7.2(f) (International Agreements), WPPT, three years;

(iv) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(v) Article 18.463 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming pharmaceutical products, five years; (^)

(vi) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming agricultural chemical products, five years; (^)

(vii) Article 18.463 and Article 18.464 (Patent Term Adjustment for Unreasonable Granting Authority Delays), three years; (161)

(viii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;

(ix) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), five years;

(x) Article 18.50 (Protection of Undisclosed Test or Other Data), 10 years; (*/++)

(xi) Article 18.51 (Biologics), 10 years; (*/++)

(xii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), three years;

(xiii) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, five years;

(xiv) Article 18.68 (TPMs), three years;

(xv) Article 18.69 (RMI), three years;

(xvi) Article 18.76.5(b) (Special Requirements Related to Border Measures), with respect to ex officio border measures for export, three years;

(xvii) Article 18.76.5(c) (Special Requirements Related to Border Measures), with respect to ex officio border measures for in transit, two years;

(xviii) Article 18.77.1(b) (Criminal Procedures and Penalties), three years;

(xix) Article 18.77.2 (Criminal Procedures and Penalties), with respect to importation of pirated copyright goods, three years;

(xx) Article 18.77.2 (Criminal Procedures and Penalties), with respect to exportation, three years;

(xxi) Article 18.77.4 (Criminal Procedures and Penalties), with respect to camcording, three years;

(xxii) Article 18.77.6(g) (Criminal Procedures and Penalties), with respect to enforcement without the right holder's request for rights other than copyright, three years;

(xxiii) Article 18.78.2 and Article 18.78.3 (Trade Secrets), three years;

(xxiv) Article 18.79.1 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to criminal remedies, three years;

(xxv) Article 18.79.3 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to cable signals, three years; and

(xxvi) Section J (Internet Service Providers), three years.

(161) Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), for Viet Nam this Article shall apply to all applications filed after the conclusion of the three-year transition period under paragraph 4(f)(vii) or any applicable transition under paragraphs 4(H(v) and 4(f(vi) of this Article.

(^) For transitions for Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays) for patents claiming pharmaceutical products and agricultural chemical products, the Parties will consider a justified request from Viet Nam for an extension of the transition period for up to one additional year. Viet Nam's request shall include the reasons for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional one-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.46.3 and Article 18.46.4.

(*) For transitions for Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) for pharmaceutical products: (A) The Parties will consider a justified request from Viet Nam for an extension of the transition period for up to two additional years. Viet Nam's request shall include the reason for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics). (B) Viet Nam may make a further request for an additional one-time extension pursuant to Chapter 27 (Administrative and Institutional Provisions). Viet Nam's request shall include the reason for the request. The Commission shall decide pursuant to the procedures set forth in Article 27.3 (Decision-Making), whether to grant the request based on relevant factors, which may include capacity as well as other appropriate circumstances. Viet Nam shall make the request no later than one year prior to the expiration of the two-year transition period referred to in the first sentence of paragraph (A). The Parties shall give due consideration to that request. If the Committee grants Viet Nam's request, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) no later than the date on which the extension period expires. (C) Viet Nam's implementation of Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) during three years after the conclusion of the extension period referred to in paragraph (A) shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement).

(++) If there are unreasonable delays in Viet Nam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Viet Nam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (f(x) and (f)(xi), Viet Nam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Viet Nam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Viet Nam of such products.

Chapter 19. LABOUR

Article 19.1. Definitions

For the purposes of this Chapter:

ILO Declaration means the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998),

labour laws means statutes and regulations, or provisions of statutes and regulations, of a Party that are directly related to the following internationally recognised labour rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour protections for children and minors;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) acceptable conditions of work with respect to minimum wages (1), hours of work, and occupational safety and health;

(1) For Singapore, minimum wages may include wage payments and adjustments gazetted under the Employment Act and wage supplement schemes under the Central Provident Fund Act.

statutes and regulations and statutes or regulations means: (2)

(a) for Australia, Acts of the Commonwealth Parliament, or regulations made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament;

(b) for Malaysia, the Federal Constitution, Acts of Parliament and subsidiary legislation or regulations made under Acts of Parliament;

(c) for Mexico, Acts of Congress or regulations and provisions promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United Mexican States; and

(d) for the United States, Acts of Congress or regulations promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United States.

(2) For greater certainty, for each Party setting out a definition, which has a federal form of government, its definition provides coverage for substantially all workers.

Article 19.2. Statement of Shared Commitment

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.

2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

Article 19.3. Labour Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration. (3) (4)

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. (5)

(3) The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.

(4) To establish a violation of an obligation under Article 19.3.1 (Labour Rights) or Article 19.3.2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties.

(5) For greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

Article 19.4. Non Derogation

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

(a) implementing Article 19.3.1 (Labour Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or

(b) implementing Article 19.3.1 (Labour Rights) or Article 19.3.2 , if the waiver or derogation would weaken or reduce adherence to a right set out in Article 19.3.1, or to a condition of work referred to in Article 19.3.2, in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory, in a manner affecting trade or investment between the Parties.

Article 19.5. Enforcement of Labour Laws

1. No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions with regard to the allocation of enforcement resources between labour enforcement activities among the fundamental labour rights and acceptable conditions of work enumerated in Article 19.3.1 (Labour Rights) and Article 19.3.2, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party.

Article 19.6. Forced or Compulsory Labour

Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour. (6)

(6) For greater certainty, nothing in this Article authorises a Party to take initiatives that would be inconsistent with its obligations under other provisions of this Agreement, the WTO Agreement or other international trade agreements.

Article 19.7. Corporate Social Responsibility

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

Article 19.8. Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws: are fair, equitable and transparent; comply with due process of law; and do not entail unreasonable fees or time limits or unwarranted delays. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that:

(a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(b) final decisions on the merits of the case:

(i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard;

(ii) state the reasons on which they are based; and

(iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

5. Each Party shall provide that parties to these proceedings have the right to seck review or appeal, as appropriate under its law.

6. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under the Party's labour laws and that these remedies are executed in a timely manner.

7. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

8. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

Article 19.9. Public Submissions

1. Each Party, through its contact point designated under Article 19.13 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:

(a) raise an issue directly relevant to this Chapter,

(b) clearly identify the person or organisation making the submission; and

(c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall:

(a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate; and

(b) make the submission and the results of its consideration available to the other Parties and the public, as appropriate, in a timely manner.

4. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

Article 19.10. Cooperation

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.

2. In undertaking cooperative activities, the Parties shall be guided by the following principles:

(a) consideration of each Party's priorities, level of development and. available resources;

(b) broad involvement of, and mutual benefit to, the Parties;

(c) relevance of capacity and capability-building activities, including technical assistance between the Parties to address labour protection issues and activities to promote innovative workplace practices;

(d) generation of measurable, positive and meaningful labour outcomes;

(e) resource efficiency, including through the use of technology, as appropriate, to optimise resources used in cooperative activities;

(f) complementarity with existing regional and multilateral initiatives to address labour issues; and.

(g) transparency and public participation.

3. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities. Subject to the agreement of the Parties involved, cooperative activities may occur through bilateral or plurilateral engagement and may

involve relevant regional or international organisations, such as the ILO, and non-Parties.

4. The funding of cooperative activities undertaken within the framework of this Chapter shall be decided by the Parties involved on a case-by-case basis.

5. In addition to the cooperative activities outlined in this Article, the Parties shall, as appropriate, caucus and leverage their respective membership in regional and multilateral fora to further their common interests in addressing labour issues.

6. Areas of cooperation may include:

(a) job creation and the promotion of productive, quality employment, including policies to generate job-rich growth and promote sustainable enterprises and entrepreneurship;

(b) creation of productive, quality employment linked to sustainable growth and skills development for jobs in emerging industries, including environmental industries;

(c) innovative workplace practices to enhance workers' well-being and business and economic competitiveness;

(d) human capital development and the enhancement of employability, including through lifelong learning, continuous education, training and the development and upgrading of skills;

(e) work-life balance;

(f) promotion of improvements in business and labour productivity, particularly in respect of SMEs;

(g) remuneration systems;

(h) promotion of the awareness of and respect for the principles and rights as stated in the ILO Declaration and for the concept of Decent Work as defined by the ILO;

(i) labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration;

(j) occupational safety and health;

(k) labour administration and adjudication, for example, strengthening capacity, efficiency and effectiveness;

(l) collection and use of labour statistics;

(m) labour inspection, for example, improving compliance and enforcement mechanisms;

(n) addressing the challenges and opportunities of a diverse, multigenerational workforce, including:

(i) promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability and other characteristics not related to merit or the requirements of employment;

(ii) promotion of equality of, elimination of discrimination against, and the employment interests of women; and

(iii) protection of vulnerable workers, including migrant workers, and low-waged, casual or contingent workers;

(o) addressing the labour and employment challenges of economic crises, such as through areas of common interest in the ILO Global Jobs Pact;

(p) social protection issues, including workers' compensation in case of occupational injury or illness, pension systems and employment assistance schemes;

(q) best practice for labour relations, for example, improved labour relations, including promotion of best practice in alternative dispute resolution;

(r) social dialogue, including tripartite consultation and partnership;

(s) with respect to labour relations in multi-national enterprises, promoting information sharing and dialogue related to conditions of employment by enterprises operating in two or more Parties with representative worker organisations in each Party;

(t) corporate social responsibility; and

(u) other areas as the Parties may decide.

7. Parties may undertake activities in the areas of cooperation in paragraph 6 through:

(a) workshops, seminars, dialogues and other fora to share knowledge, experiences and best practices, including online fora and other knowledge-sharing platforms;

(b) study trips, visits and research studies to document and study policies and practices;

(c) collaborative research and development related to best practices in subjects of mutual interest;

(d) specific exchanges of technical expertise and assistance, as appropriate; and

(e) other forms as the Parties may decide.

Article 19.11. Cooperative Labour Dialogue

1. A Party may request dialogue with another Party on any matter arising under this Chapter at any time by delivering a written request to the contact point that the other Party has designated under Article 19.13 (Contact Points).

2. The requesting Party shall include information that is specific and sufficient to enable the receiving Party to respond, including identification of the matter at issue, an indication of the basis of the request under this Chapter and, when relevant, how trade or investment between the Parties is affected.

3. Unless the requesting and receiving Parties (the dialoguing Parties) decide otherwise, dialogue shall commence within 30 days of a Party's receipt of a request for dialogue. The dialoguing Parties shall engage in dialogue in good faith. As part of the dialogue, the dialoguing Parties shall provide a means for receiving and considering the views of interested persons on the matter.

4. Dialogue may be held in person or by any technological means available to the dialoguing Parties.

5. The dialoguing Parties shall address all the issues raised in the request. If the dialoguing Parties resolve the matter, they shall document any outcome, including, if appropriate, specific steps and timelines that they have agreed. The dialoguing Parties shall make the outcome available to the public, unless they decide otherwise.

6. In developing an outcome pursuant to paragraph 5, the dialoguing Parties should consider all available options and may jointly decide on any course of action they consider appropriate, including:

(a) the development and implementation of an action plan in any form that they find satisfactory, which may include specific and verifiable steps, such as on labour inspection, investigation or compliance action, and appropriate timeframes;

(b) the independent verification of compliance or implementation by individuals or entities, such as the ILO, chosen by the dialoguing Parties; and

(c) appropriate incentives, such as cooperative programmes and capacity building, to encourage or assist the dialoguing Parties to identify and address labour matters.

Article 19.12. Labour Council

1. The Parties hereby establish a Labour Council (Council) composed of senior governmental representatives at the ministerial or other level, as designated by each Party.

2. The Council shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Council shall meet every two years, unless the Parties decide otherwise.

3. The Council shall:

(a) consider matters related to this Chapter;

(b) establish and review priorities to guide decisions by the Parties about labour cooperation and capacity building activities undertaken pursuant to this Chapter, taking into account the principles in Article 19.10.2 (Cooperation);

(c) agree on a general work programme in accordance with the priorities established under subparagraph (b);

(d) oversee and evaluate the general work programme;

(e) review reports from the contact points designated under Article 19.13 (Contact Points);

(f) discuss matters of mutual interest;

(g) facilitate public participation and awareness of the implementation of this Chapter; and

(h) perform any other functions as the Parties may decide.

4. During the fifth year after the date of entry into force of this Agreement, or as otherwise decided by the Parties, the Council shall review the implementation of this Chapter with a view to ensuring its effective operation and report the findings and any recommendations to the Commission.

5. The Council may undertake subsequent reviews as agreed by the Parties.

6. The Council shall be chaired by each Party on a rotational basis.

7. All Council decisions and reports shall be made by consensus and be made publicly available, unless the Council decides otherwise.

8. The Council shall agree on a joint summary report on its work at the end of each Council meeting.

9. The Parties shall, as appropriate, liaise with relevant regional and international organisations, such as the ILO and APEC, on matters related to this Chapter. The Council may seek to develop joint proposals or collaborate with those organisations or with non-Parties.

Article 19.13. Contact Points

1. Each Party shall designate an office or official within its labour ministry or equivalent entity as a contact point to address matters related to this Chapter within 90 days of the date of entry into force of this Agreement for that Party. Each Party shall notify the other Parties promptly in the event of any change to its contact point.

2. The contact points shall:

(a) facilitate regular communication and coordination between the Parties;

(b) assist the Council;

(c) report to the Council, as appropriate;

(d) act as a channel for communication with the public in their respective territories; and

(e) work together, including with other appropriate agencies of their governments, to develop and implement cooperative activities, guided by the priorities of the Council, areas of cooperation identified in Article 19.10.6 (Cooperation) and the needs of the Parties.

3. Contact points may develop and implement specific cooperative activities bilaterally or plurilaterally.

4. Contact points may communicate and coordinate activities in person or through electronic or other means of communication.

Article 19.14. Public Engagement

1. In conducting its activities, including meetings, the Council shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter.

2. Each Party shall establish or maintain, and consult, a national labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter.

Article 19.15. Labour Consultations

1. The Parties shall make every effort through cooperation and consultation based on the principle of mutual respect to resolve any matter arising under this Chapter.

2. A Party (requesting Party) may, at any time, request labour consultations with another Party (responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting

Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter. The requesting Party shall circulate the request to the other Parties through their respective contact points.

3. The responding Party shall, unless agreed otherwise with the requesting Party, reply to the request in writing no later than seven days after the date of its receipt. The responding Party shall circulate the reply to the other Parties and enter into labour consultations in good faith.

4. A Party other than the requesting Party or the responding Party (the consulting Parties) that considers that it has a substantial interest in the matter may participate in the labour consultations by delivering a written notice to the other Parties within seven days of the date of circulation by the requesting Party of the request for labour consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. The Parties shall begin labour consultations no later than 30 days after the date of receipt by the responding Party of the request.

6. In the labour consultations:

(a) each consulting Party shall provide sufficient information to enable a full examination of the matter; and

(b) any Party participating in the consultations shall treat any confidential information exchanged in the course of the consultations on the same basis as the Party providing the information.

7. Labour consultations may be held in person or by any technological means available to the consulting Parties. If labour consultations are held in person, they shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

8. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The consulting Parties may request advice from an independent expert or experts chosen by the consulting Parties to assist them. The consulting Parties may have recourse to such procedures as good offices, conciliation or mediation.

9. In labour consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies with expertise in the matter that is the subject of the labour consultations.

10. If the consulting Parties are unable to resolve the matter, any consulting Party may request that the Council representatives of the consulting Parties convene to consider the matter by delivering a written request to the other consulting Party through its contact point. The Party making that request shall inform the other Parties through their contact points. The Council representatives of the consulting Parties shall convene no later than 30 days after the date of receipt of the request, unless the consulting Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation or mediation.

11. If the consulting Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon.

The consulting Parties shall make the outcome available to the other Parties and to the public, unless they agree otherwise.

12. If the consulting Parties have failed to resolve the matter no later than 60 days after the date of receipt of a request under paragraph 2, the requesting Party may request the establishment of a panel under Article 28.7 (Establishment of a Panel) and, as provided in Chapter 28 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

13. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

14. A Party may have recourse to labour consultations under this Article without prejudice to the commencement or continuation of cooperative labour dialogue under Article 19.11 (Cooperative Labour Dialogue).

15. Labour consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

Chapter 20. ENVIRONMENT

Article 20.1. Definitions

For the purposes of this Chapter:

environmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement or control of: the release, discharge or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas. (1) (2)

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources; and

statute or regulation means:

(a) for Australia, an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government;

(b) for Brunei Darussalam, an Act, Order or a Regulation promulgated pursuant to the Constitution of Brunei Darussalam, enforceable by the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;

(c) for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government;

(d) for Chile, a law of National Congress or decree of the President of the Republic, enacted as indicated by the Political Constitution of the Republic of Chile;

(e) for Japan, a Law of the Diet, a Cabinet Order, or a Ministerial Ordinance and other Orders established pursuant to a Law of the Diet, that is enforceable by action of the central level of government;

(f) for Malaysia, an Act of Parliament or regulation promulgated pursuant to an Act of Parliament that is enforceable by action of the federal government;

(g) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government;

(h) for New Zealand, an Act of the Parliament of New Zealand or a regulation made under an Act of the Parliament of New Zealand by the Governor-General in Council, which is enforceable by action of the central level of government;

(i) for Peru, a law of Congress, Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government;

(j) for Singapore, an Act of the Parliament of Singapore, or a Regulation promulgated pursuant to an Act of the Parliament of Singapore, which is enforceable by action of the Government of Singapore;

(k) for the United States, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the central level of government; and

(l) for Viet Nam, a law of the National Assembly, an ordinance of the Standing Committee of the National Assembly, or a regulation promulgated by the central level of government to implement a law of the National Assembly or an ordinance of the Standing Committee of the National Assembly that is enforceable by action of the central level of government.

(1) For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its legislation.

(2) The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

Article 20.2. Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

2. Taking account of their respective national priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance and complement the objectives of this Agreement.

3. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 20.3. General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.

2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

3. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

4. No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement for that Party.

5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding:

(a) investigatory, prosecutorial, regulatory and compliance matters; and

(b) the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

6. Without prejudice to paragraph 2, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

7. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 20.4. Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

Article 20.5. Protection of the Ozone Layer

1. The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, such substances. (3) (4) (5)

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law

or policy, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to ozone layer protection.

3. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances. Cooperation may include, but is not limited to exchanging information and experiences in areas related to:

(a) environmentally friendly alternatives to ozone-depleting substances;

(b) refrigerant management practices, policies and programmes; (c) methodologies for stratospheric ozone measurements; and

(d) combating illegal trade in ozone-depleting substances.

(3) For greater certainty, for each Party, this provision pertains to substances controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto, as applicable to it.

(4) A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-A implementing its obligations under the Montreal Protocol or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

(5) If compliance with this provision is not established pursuant to footnote 4, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to control the production and consumption of, and trade in, certain substances that can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.

Article 20.6. Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships. (6) (7) (8)

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures to prevent the pollution of the marine environment from ships. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to the prevention of pollution of the marine environment from ships.

3. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include:

(a) accidental pollution from ships;

(b) pollution from routine operations of ships;

(c) deliberate pollution from ships;

(d) development of technologies to minimise ship-generated waste;

(e) emissions from ships;

(f) adequacy of port waste reception facilities;

(g) increased protection in special geographic areas; and

(h) enforcement measures including notifications to flag States and, as appropriate, by port States.

(6) For greater certainty, for each Party, this provision pertains to pollution regulated by the International Convention for the Prevention of Pollution from Ships, done at London, November 2, 1973, as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, done at London, February 17, 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto, done at London, September 26, 1997 (MARPOL),

including any future amendments thereto, as applicable to it.

(7) A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-B implementing its obligations under MARPOL, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

(8) If compliance with this provision is not established pursuant to footnote 7, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to prevent the pollution of the marine environment from ships in a manner affecting trade or investment between the Parties.

Article 20.7. Procedural Matters

1. Each Party shall promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.

2. Each Party shall ensure that an interested person residing or established in its territory may request that the Party's competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with the Party's law.

3. Each Party shall ensure that judicial, quasi-judicial or administrative proceedings for the enforcement of its environmental laws are available under its law and that those proceedings are fair, equitable, transparent and comply with due process of law. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 3.

5. Each Party shall provide appropriate sanctions or remedies for violations of its environmental laws for the effective enforcement of those laws. Those sanctions or remedies may include a right to bring an action directly against the violator to seek damages or injunctive relief, or a right to seek governmental action.

6. Each Party shall ensure that it takes appropriate account of relevant factors in the establishment of the sanctions or remedies referred to in paragraph 5. Those factors may include the nature and gravity of the violation, damage to the environment and any economic benefit the violator derived from the violation.

Article 20.8. Opportunities for Public Participation

1. Each Party shall seek to accommodate requests for information regarding the Party's implementation of this Chapter.

2. Each Party shall make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 20.9. Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter. (9) Each Party shall respond in a timely manner to such submissions in writing and in accordance with domestic procedures, and make the submissions and its responses available to the public, for example by posting on an appropriate public website.

2. Each Party shall make its procedures for the receipt and consideration of written submissions readily accessible and publicly available, for example by posting on an appropriate public website. These procedures may provide that to be eligible for consideration the submission should:

(a) be in writing in one of the official languages of the Party receiving the submission;

(b) clearly identify the person making the submission;

(c) provide sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based;

(d) explain how, and to what extent, the issue raised affects trade or investment between the Parties;

(e) not raise issues that are the subject of ongoing judicial or administrative proceedings; and

(f) indicate whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.

3. Each Party shall notify the other Parties of the entity or entities responsible for receiving and responding to any written submissions referred to in paragraph 1 within 180 days of the date of entry into force of this Agreement for that Party.

4. If a submission asserts that a Party is failing to effectively enforce its environmental laws and following the written response to the submission by that Party, any other Party may request that the Committee on Environment (Committee) discuss that submission and written response with a view to further understanding the matter raised in the submission and, as appropriate, to consider whether the matter could benefit from cooperative activities.

5, At its first meeting, the Committee shall establish procedures for discussing submissions and responses that are referred to it by a Party. These procedures may provide for the use of experts or existing institutional bodies to develop a report for the Committee comprised of information based on facts relevant to the matter.

6. No later than three years after the date of entry into force of this Agreement, and thereafter as decided by the Parties, the Committee shall prepare a written report for the Commission on the implementation of this Article. For the purposes of preparing this report, each Party shall provide a written summary regarding its implementation activities under this Article.

(9) If available and appropriate, a Party may use an existing institutional body or mechanism for this purpose.

Article 20.10. Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or jurisdiction, to adopt voluntarily, into their policies and practices, principles of corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party.

Article 20.11. Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognise that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties also recognise that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. Therefore, in accordance with its laws, regulations or policies and to the extent it considers appropriate, each Party shall encourage:

(a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and

(b) its relevant authorities, businesses and business organisations, non-governmental organisations and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organisations to develop voluntary mechanisms that, among other things:

(a) are truthful, are not misleading and take into account scientific and technical information;

(b) if applicable and available, are based on relevant international standards, recommendations or guidelines, and best practices;

(c) promote competition and innovation; and

(d) do not treat a product less favourably on the basis of origin.

Article 20.12. Cooperation Frameworks

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.

2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.

3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:

(a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and

(b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.

4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.

5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.

6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.

7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.

8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.

9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.

10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 20.13. Trade and Biodiversity

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in

accordance with its law or policy.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.

6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:

(a) the conservation and sustainable use of biological diversity;

(b) the protection and maintenance of ecosystems and ecosystem services; and

(c) access to genetic resources and the sharing of benefits arising from their utilisation.

Article 20.14. Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and human health. The Parties also recognise that the prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

2. Accordingly, the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under Article 7.5 (Committee on Sanitary and Phytosanitary Measures) to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

Article 20.15. Transition to a Low Emissions and Resilient Economy

1. The Parties acknowledge that transition to a low emissions economy requires collective action.

2. The Parties recognise that each Party's actions to transition to a low emissions economy should reflect domestic circumstances and capabilities and, consistent with Article 20.12 (Cooperation Frameworks), Parties shall cooperate to address matters of joint or common interest. Areas of cooperation may include, but are not limited to: energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and non-market mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue. Further, the Parties shall, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low emissions economy.

Article 20.16. Marine Capture Fisheries (10)

1. The Parties acknowledge their role as major consumers, producers and traders of fisheries products and the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries. The Parties also acknowledge that the fate of marine capture fisheries is an urgent resource problem facing the international community. Accordingly, the Parties recognise the importance of taking measures aimed at the conservation and the sustainable management of fisheries.

2. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported and unregulated (UU) fishing (11) can have significant negative impacts on trade, development and the environment and recognise the need for individual and collective action to address the

problems of overfishing and unsustainable utilisation of fisheries resources.

3. Accordingly, each Party shall seek to operate a fisheries management system that regulates marine wild capture fishing and that is designed to:

(a) prevent overfishing and overcapacity;

(b) reduce bycatch of non-target species and juveniles, including through the regulation of fishing gear that results in bycatch and the regulation of fishing in areas where bycatch is likely to occur; and

(c) promote the recovery of overfished stocks for all marine fisheries in which that Party's persons conduct fishing activities.

Such a management system shall be based on the best scientific evidence available and on internationally recognised best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species. (12)

4. Each Party shall promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures. Such measures should include, as appropriate:

(a) for sharks: the collection of species specific data, fisheries bycatch mitigation measures, catch limits, and finning prohibitions; and

(11) The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001 IUU Fishing Plan of Action) of the UN Food and Agricultural Organisation (FAO), adopted in Rome, 2001.

(12) These instruments include, among others, and as they may apply, UNCLOS, the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York, December 4, 1995 (UN Fish Stocks Agreement), the FAO Code of Conduct for Responsible Fisheries, the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, (Compliance Agreement) done at Rome, November 24, 1993 and the 2001 IUU Fishing Plan of Action.

(b) for marine turtles, seabirds, and marine mammals: fisheries bycatch mitigation measures, conservation and relevant management measures, prohibitions, and other measures in accordance with relevant international agreements to which the Party is party.

5. The Parties recognise that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction and eventual elimination of all subsidies that contribute to overfishing and overcapacity. To that end, no Party shall grant or maintain any of the following subsidies (13) within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

(a) subsidies for fishing (14) that negatively affect (15) fish stocks that are in an overfished (16) condition; and

(b) subsidies provided to any fishing vessel (17) while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.

6. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with paragraph 5(a) shall be brought into conformity with that paragraph as soon as possible and no later than three years (18) of the date of entry into force of this Agreement for that Party.

7. In relation to subsidies that are not prohibited by paragraph 5(a) or 5(b), and taking into consideration a Party's social and developmental priorities, including food security concerns, each Party shall make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.

8. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 5 at regular meetings of the Committee.

9. Each Party shall notify the other Parties, within one year of the date of entry into force of this Agreement for it and every two years thereafter, of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing

related activities.

10. These notifications shall cover subsidies provided within the previous two- year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information: (19)

(a) programme name;

(b) legal authority for the programme;

(c) catch data by species in the fishery for which the subsidy is provided;

(d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overexploited, depleted, fully exploited, recovering or underexploited);

(e) fleet capacity in the fishery for which the subsidy is provided;

(f) conservation and management measures in place for the relevant fish stock; and

(g) total imports and exports per species.

11. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by paragraph 5, in particular fuel subsidies.

12. A Party may request additional information from the notifying Party regarding the notifications under paragraphs 9 and 10. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.

13. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments (20) and shall endeavour to improve cooperation internationally in this regard, including with and through competent international organisations.

14. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from those practices, each Party shall:

(a) cooperate with other Parties to identify needs and to build capacity to support the implementation of this Article;

(b) support monitoring, control, surveillance, compliance and enforcement systems, including by adopting, reviewing, or revising, as appropriate measures to:

(i) deter vessels that are flying its flag and its nationals from engaging in IUU fishing activities; and

(ii) address the transhipment at sea of fish or fish products caught through IUU fishing activities;

(c) implement port State measures;

(d) strive to act consistently with relevant conservation and management measures adopted by Regional Fisheries Management Organisations of which it is not a member so as not to undermine those measures; and

(e) endeavour not to undermine catch or trade documentation schemes operated by Regional Fisheries Management Organisations or Arrangements or an intergovernmental organisation whose scope includes the management of shared fisheries resources, including straddling and highly migratory species, where that Party is not a member of those organisations or arrangements.

15. Consistent with Article 26.2.2 (Publication), a Party shall, to the extent possible, provide other Parties the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products that results from IUU fishing.

(10) For greater certainty, this Article does not apply with respect to aquaculture.

(13) For the purposes of this Article, a subsidy shall be attributable to the Party conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

(14) For the purposes of this paragraph, "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

(15) The negative effect of such subsidies shall be determined based on the best scientific evidence available.

(16) For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognised as overfished by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished for the purposes of this paragraph.

(17) The term "fishing vessels" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

(18) Notwithstanding this paragraph, and solely for the purpose of completing a stock assessment that it has already initiated, Viet Nam may request an extension of two additional years to bring any subsidy programmes into conformity with Article 20.16.5(a) (Marine Capture Fisheries) by providing a written request to the Committee no later than six months before the expiry of the three-year period provided for in this paragraph. Viet Nam's request shall include the reason for the requested extension and the information about its subsidy programmes as provided for in Article 20.16.10, Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this footnote unless the Committee decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Committee in writing a report on the measures it has taken to fulfil its obligation under Article 20.16.5(a).

(19) Sharing information and data on existing fisheries subsidy programmes does not prejudge their legal status, effects or nature under the GATT 1994 or the SCM Agreement and is intended to complement WTO data reporting requirements.

(20) Regional and international instruments include, among others, and as they may apply, the 2001 TUU Fishing Plan of Action, the 2005 Rome Declaration on IUU Fishing, adopted in Rome on March 12, 2005, the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, done at Rome, November 22, 2009, as well as instruments establishing and adopted by Regional Fisheries Management Organisations, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

Article 20.17. Conservation and Trade

1. The Parties affirm the importance of combating the illegal take (21) of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.

2. Accordingly, each Party shall adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). (22) (23) (24)

3. The Parties commit to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora. To that end, the Parties shall:

(a) exchange information and experiences on issues of mutual interest related to combating the illegal take of, and illegal trade in, wild fauna and flora, including combating illegal logging and associated illegal trade, and promoting the legal trade in associated products;

(b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora; and

(c) endeavour to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.

4. Each Party further commits to:

(a) take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk within its territory, including measures to conserve the ecological integrity of specially protected natural areas, for example wetlands;

(b) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavour to enhance public participation and transparency in these institutional frameworks; and

(c) endeavour to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of, and illegal trade in, wild fauna and flora.

5, In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence (25), were taken or traded in violation of that Party's law, the primary purpose of which is to conserve, protect, or manage wild fauna or flora. Such measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.

6. The Parties recognise that each Party retains the right to exercise administrative, investigatory and enforcement discretion in its implementation of paragraph 5, including by taking into account in relation to each situation the strength of the available evidence and the seriousness of the suspected violation. In addition, the Parties recognise that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of administrative, investigatory and enforcement resources.

7. In order to promote the widest measure of law enforcement cooperation and information sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavour to identify opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by creating and participating in law enforcement networks.

(21) The term "take" means captured, killed or collected and with respect to a plant, also means harvested, cut, logged or removed.

(22) For the purposes of this Article, a Party's CITES obligations include existing and future amendments to which it is a Party and any existing and future reservations, exemptions, and exceptions applicable to it.

(23) To establish a violation of this paragraph, a Party must demonstrate that the other Party has failed to adopt, maintain or implement laws, regulations or other measures to fulfil its obligations under CITES in a manner affecting trade or investment between the Parties.

(24) If a Party considers that another Party is failing to comply with its obligations under this paragraph, it shall endeavour, in the first instance, to address the matter through a consultative or other procedure under CITES.

(25) For greater certainty, for the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

Article 20.18. Environmental Goods and Services

1. The Parties recognise the importance of trade and investment in environmental goods and services as a means of improving environmental and economic performance and addressing global environmental challenges.

2. The Parties further recognise the importance of this Agreement to promoting trade and investment in environmental goods and services in the free trade area.

3. Accordingly, the Committee shall consider issues identified by a Party or Parties related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavour to address any potential barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties may develop bilateral and plurilateral cooperative projects on environmental goods and services to address current and future global trade- related environmental challenges.

Article 20.19. Environment Committee and Contact Points

1. Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement for it, in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Parties in the event of any change to its contact point.

2. The Parties establish an Environment Committee (Committee) composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for the implementation of this Chapter.

3. The purpose of the Committee is to oversee the implementation of this Chapter and its functions shall be to:

(a) provide a forum to discuss and review the implementation of this Chapter;

(b) provide periodic reports to the Commission regarding the implementation of this Chapter;

(c) provide a forum to discuss and review cooperative activities under this Chapter;

(d) consider and endeavour to resolve matters referred to it under Article 20.21 (Senior Representative Consultations);

(e) coordinate with other committees established under this Agreement as appropriate; and

(f) perform any other functions as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.

5. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter.

6. All decisions and reports of the Committee shall be made available to the public, unless the Committee agrees otherwise.

7. During the fifth year after the date of entry into force of this Agreement, the Committee shall:

(a) review the implementation and operation of this Chapter;

(b) report its findings, which may include recommendations, to the Parties and the Commission; and

(c) undertake subsequent reviews at intervals to be decided by the Parties.

8. The Committee shall provide for public input on matters relevant to the Committee's work, as appropriate, and shall hold a public session at each meeting.

9. The Parties recognise the importance of resource efficiency in the implementation of this Chapter and the desirability of using new technologies to facilitate communication and interaction between the Parties and with the public.

Article 20.20. Environment Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with any other Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request. The requesting Party shall circulate its request for consultations to the other Parties through their respective contact points.

3. A Party other than the requesting or the responding Party that considers it has a substantial interest in the matter (a participating Party) may participate in the consultations by delivering a written notice to the contact point of the requesting and responding Parties no later than seven days after the date of circulation of the request for consultations. The participating Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the requesting and the responding Parties (the consulting Parties) agree otherwise, the consulting Parties shall

enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter, which may include appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 20.21. Senior Representative Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), a consulting Party may request that the Committee representatives from the consulting Parties convene to consider the matter by delivering a written request to the contact point of the other consulting Party or Parties. At the same time, the consulting Party making the request shall circulate the request to the contact points of other Parties.

2. The Committee representatives from the consulting Parties shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts. Committee representatives from any other Party that considers it has a substantial interest in the matter may participate in the consultations.

Article 20.22. Ministerial Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.21 (Senior Representative Consultations), a consulting Party may refer the matter to the relevant Ministers of the consulting Parties who shall seek to resolve the matter.

2. Consultations pursuant to Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and this Article may be held in person or by any technological means available as agreed by the consulting Parties. If in person, consultations shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

3. Consultations shall be confidential and without prejudice to the rights of any Party in any future proceedings.

Article 20.23. Dispute Resolution

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations) within 60 days after the date of receipt of a request under Article 20.20, or any other period as the consulting Parties may agree, the requesting Party may request consultations under Article 28.5 (Consultations) or request the establishment of a panel under Article 28.7 (Establishment of a Panel).

2. Notwithstanding Article 28.15 (Role of Experts), in a dispute arising under Article 20.17.2 (Conservation and Trade) a panel convened under Chapter 28 (Dispute Settlement) shall:

(a) seek technical advice or assistance, if appropriate, from an entity authorised under CITES to address the particular matter, and provide the consulting Parties with an opportunity to comment on any such technical advice or assistance received; and

(b) provide due consideration to any interpretive guidance received pursuant to subparagraph (a) on the matter to the extent appropriate in light of its nature and status in making its findings and determinations under Article 28.17.4 (Initial Report).

3. Before a Party initiates dispute settlement under this Agreement for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, that Party shall consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute.

4. If a Party requests consultations with another Party under Article 20.20 (Environment Consultations) for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, and the responding Party considers that the requesting Party does not maintain environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute, the Parties shall discuss the issue during the consultations.

ANNEX 20-A.

For Australia, the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.

For Brunei Darussalam, the Customs (Prohibition and Restriction on Imports and Exports), Order.

For Canada, the Ozone-depleting Substances Regulations, 1998 of the Canadian Environmental Protection Act, 1999 (CEPA).

For Chile, Supreme Decree N° 238 (1990) of the Ministry of Foreign Affairs and Law N° 20.096.

For Japan, the Law concerning the Protection of the Ozone Layer through the Control of Specified Substances and Other Measures (Law No. 53, 1988).

For Malaysia, the Environmental Quality Act 1974.

For Mexico, the General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA), under Title IV Environmental Protection, Chapter I and II regarding federal enforcement of atmospheric provisions.

For New Zealand, the Ozone Layer Protection Act 1996.

For Peru, the Supreme Decree No. 033-2000-ITINCI.

For Singapore, the Environmental Protection and Management Act, including regulations made thereunder.

For the United States, 42 U.S.C §§ 7671-7671q (Stratospheric Ozone Protection).

For Viet Nam, the Law on Environmental Protection 2014; Joint Circular No. 47/2011/TTLT-BCT-BTNMT dated 30 December 2011 of the Ministry of Industry and Trade and the Ministry of Natural Resources and Environment, regulating the management of import, export and temporary import for re-export of ozone depleting substances according to the Montreal Protocol; Decision No. 15/2006/QD-BTNMT dated 08 September 2006 of the Ministry of Natural Resources and Environment, issuing a list of refrigeration equipment using chlorofluorocarbons prohibited for import.

ANNEX 20-B.

For Australia, the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 and the Navigation Act 2012.

For Brunei Darussalam, the Prevention of Pollution of the Sea Order 2005; the Prevention of Pollution of the Sea (Oil) Regulations 2008; and the Prevention of the Pollution of the Seas (Noxious Liquid Substances in Bulk) Regulations, 2008.

For Canada, the Canada Shipping Act, 2001 and its related regulations.

For Chile, the Decree N° 1.689 (1995) of the Ministry of Foreign Affairs.

For Japan, the Law Relating to the Prevention of Marine Pollution and Maritime Disasters (Law No. 136, 1970).

For Malaysia, the Act 515 Merchant Shipping (Oil Pollution) Act 1994; Merchant Shipping Ordinance 1952 (amended in 2007 by Act A316); and the Environmental Quality Act 1974.

For Mexico, Article 132 of the General Law on Ecological Equilibrium and Environmental Protection (Ley General del Equilibrio Ecológico y la Protección al Ambiente (LGEEPA).

For New Zealand, the Maritime Transport Act 1994.

For Peru, the Decree Law No. 22703; and the 1978 Protocol by Decree Law No. 22954 (March 26, 1980).

For Singapore, the Prevention of Pollution of the Sea Act, including regulations made thereunder.

For the United States, the Act to Prevent Pollution from Ships, 33 U.S.C §§ 1901- 1915.

For Viet Nam, the Law on Environmental Protection 2014; the Maritime Code 2005; Circular 50/2012/TT-BGTVT dated 19 December 2012 of the Ministry of Transport, regulating the management of receiving and processing oil-containing liquid waste from sea vessels at Viet Nam's sea ports; the National Technical Regulation on Marine Pollution Prevention Systems of Ships QCVN 26: 2014/BGTVT.

Chapter 21. COOPERATION AND CAPACITY BUILDING

Article 21.1. General Provisions

1. The Parties acknowledge the importance of cooperation and capacity building activities and shall undertake and strengthen these activities to assist in implementing this Agreement and enhancing its benefits, which are intended to accelerate economic growth and development.

2. The Parties recognise that cooperation and capacity building activities may be undertaken between two or more Parties, on a mutually agreed basis, and shall seck to complement and build on existing agreements or arrangements between them.

3. The Parties also recognise that the involvement of the private sector is important in these activities, and that SMEs may require assistance in participating in global markets.

Article 21.2. Areas of Cooperation and Capacity Building

1. The Parties may undertake and strengthen cooperation and capacity building activities to assist in:

(a) implementing the provisions of this Agreement;

(b) enhancing each Party's ability to take advantage of the economic opportunities created by this Agreement; and

(c) promoting and facilitating trade and investment of the Parties.

2. Cooperation and capacity building activities may include, but are not necessarily limited to, the following areas:

(a) agricultural, industrial and services sectors;

(b) promotion of education, culture and gender equality; and

(c) disaster risk management.

3. The Parties recognise that technology and innovation provides added value to cooperation and capacity building activities, and may be incorporated into cooperation and capacity building activities under this Article.

4. The Parties may undertake cooperation and capacity building activities through modes such as: dialogue, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate capacity building and training; the sharing of best practices on policies and procedures; and the exchange of experts, information and technology.

Article 21.3. Contact Points for Cooperation and Capacity Building

1. Each Party shall designate and notify a contact point on matters relating to the coordination of cooperation and capacity building activities in accordance with Article 27.5 (Contact Points).

2. A Party may make a request for cooperation and capacity building activities related to this Agreement to another Party or Parties through the contact points.

Article 21.4. Committee on Cooperation and Capacity Building

1. The Parties hereby establish a Committee on Cooperation and Capacity Building (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) facilitate the exchange of information between the Parties in areas including, but not limited to, experiences and lessons learned through cooperation and capacity building activities undertaken between the Parties;

(b) discuss and consider issues or proposals for future cooperation and capacity building activities;

(c) initiate and undertake collaboration, as appropriate, to enhance donor coordination and facilitate public-private partnerships in cooperation and capacity building activities;

(d) invite, as appropriate, international donor institutions, private sector entities, non-governmental organisations or other relevant institutions, to assist in the development and implementation of cooperation and capacity building activities;

(ec establish ad hoc working groups, as appropriate, which may include government representatives, non-government

representatives or both;

(f) coordinate with other committees, working groups and any other subsidiary body established under this Agreement as appropriate, in support of the development and implementation of cooperation and capacity building activities;

(g) review the implementation or operation of this Chapter, and (h) engage in other activities as the Parties may decide.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Committee shall produce an agreed record of its meetings, including decisions and next steps and, as appropriate, report to the Commission.

Article 21.5. Resources

Recognising the different levels of development of the Parties, the Parties shall work to provide the appropriate financial or in-kind resources for cooperation and capacity building activities conducted under this Chapter, subject to the availability of resources and the comparative capabilities that different Parties possess to achieve the goals of this Chapter.

Article 21.6. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 22. COMPETITIVENESS AND BUSINESS FACILITATION

Article 22.1. Definitions

For the purposes of this Chapter:

supply chain means a cross-border network of enterprises operating together as an integrated system to design, develop, produce, market, distribute, transport, and deliver products and services to customers.

Article 22.2. Committee on Competitiveness and Business Facilitation

1. The Parties recognise that, in order to enhance the domestic, regional and global competitiveness of their economies, and to promote economic integration and development within the free trade area, their business environments must be responsive to market developments.

2. Accordingly, the Parties hereby establish a Committee on Competitiveness and Business Facilitation (Committee), composed of government representatives of each Party.

3. The Committee shall:

(a) discuss effective approaches and develop information sharing activities to support efforts to establish a competitive environment that is conducive to the establishment of businesses, facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;

(b) explore ways to take advantage of the trade and investment opportunities that this Agreement creates;

(c) provide advice and recommendations to the Commission on ways to further enhance the competitiveness of the Parties' economies, including recommendations aimed at enhancing the participation of SMEs in regional supply chains;

(d) explore ways to promote the development and strengthening of supply chains within the free trade area in accordance with Article 22.3 (Supply Chains); and

(e) engage in other activities as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

5. In carrying out its functions, the Committee may work with other committees, working groups and any other subsidiary body established under this Agreement. The Committee may also seek advice from, and consider the work of, appropriate experts, such as international donor institutions, enterprises and non- governmental organisations.

Article 22.3. Supply Chains

1. The Committee shall explore ways in which this Agreement may be implemented so as to promote the development and strengthening of supply chains in order to integrate production, facilitate trade and reduce the costs of doing business within the free trade area.

2. The Committee shall develop recommendations and promote seminars, workshops or other capacity building activities with appropriate experts, including private sector and international donor organisations, to assist participation by SMEs in supply chains in the free trade area.

3. The Committee shall, as appropriate, work with other committces, working groups and any other subsidiary body established under this Agreement, including through joint meetings, to identify and discuss measures affecting the development and strengthening of supply chains. The Committee shall ensure that it does not duplicate the activities of these other bodies.

4. The Committee shall identify and explore best practices and experiences relevant to the development and strengthening of supply chains between the Parties.

5. The Committee shall commence a review of the extent to which this Agreement has facilitated the development, strengthening and operation of supply chains in the free trade area during the fourth year after the date of entry into force of this Agreement. Unless the Parties agree otherwise, the Committee shall conduct further reviews every five years thereafter.

6. In conducting its review, the Committee shall consider the views of interested persons that a Party has received pursuant to Article 22.4 (Engagement with Interested Persons) and provided to the Committee.

7. No later than two years after the commencement of a review under paragraph 5, the Committee shall submit a report to the Commission containing the Committee's findings and recommendations on ways in which the Parties can promote and strengthen the development of supply chains in the free trade area.

8. Following the Commission's consideration of the report, the Committee shall make the report publicly available, unless the Parties agree otherwise.

Article 22.4. Engagement with Interested Persons

The Committee shall establish mechanisms appropriate to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing competitiveness and business facilitation.

Article 22.5. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 23. DEVELOPMENT

Article 23.1. General Provisions

1. The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty, raise living standards and create new employment opportunities in support of development.

2. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of jobs, and the alleviation of poverty.

3. The Parties acknowledge that economic growth and development contribute to achieving the objectives of this Agreement of promoting regional economic integration.

4. The Parties also acknowledge that effective domestic coordination of trade, investment and development policies can contribute to sustainable economic growth.

5. The Parties recognise the potential for joint development activities between the Parties to reinforce efforts to achieve sustainable development goals.

6. The Parties also recognise that activities carried out under Chapter 21 (Cooperation and Capacity Building) are an important component of joint development activities.

Article 23.2. Promotion of Development

1. The Parties acknowledge the importance of each Party's leadership in implementing development policies, including policies that are designed for its nationals to maximise the use of the opportunities created by this Agreement.

2. The Parties acknowledge that this Agreement has been designed in a manner that takes into account the different levels of economic development of the Parties, including through provisions that support and enable the achievement of national development goals.

3. The Parties further recognise that transparency, good governance and accountability contribute to the effectiveness of development policies.

Article 23.3. Broad-Based Economic Growth

1. The Parties acknowledge that broad-based economic growth reduces poverty, enables sustainable delivery of basic services, and expands opportunities for people to live healthy and productive lives.

2. The Parties recognise that broad-based economic growth promotes peace, stability, democratic institutions, attractive investment opportunities, and effectiveness in addressing regional and global challenges.

3. The Parties also recognise that generating and sustaining broad-based economic growth requires sustained high-level commitment by their governments to effectively and efficiently administer public institutions, invest in public infrastructure, welfare, health and education systems, and foster entrepreneurship and access to economic opportunity.

4. The Parties may enhance broad-based economic growth through policies that take advantage of trade and investment opportunities created by this Agreement in order to contribute to, among other things, sustainable development and the reduction of poverty. These policies may include those related to the promotion of market-based approaches aimed at improving trading conditions and access to finance for vulnerable areas or populations, and SMEs.

Article 23.4. Women and Economic Growth

1. The Parties recognise that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy contributes to economic development. The Parties further recognise the benefit of sharing their diverse experiences in designing, implementing and strengthening programmes to encourage this participation.

2. Accordingly, the Parties shall consider undertaking cooperative activities aimed at enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by this Agreement. These activities may include providing advice or training, such as through the exchange of officials, and exchanging information and experience on:

(a) programmes aimed at helping women build their skills and capacity, and enhance their access to markets, technology and financing;

(b) developing women's leadership networks; and

(c) identifying best practices related to workplace flexibility.

Article 23.5. Education, Science and Technology, Research and Innovation

1. The Parties recognise that the promotion and development of education, science and technology, research and innovation can play an important role in accelerating growth, enhancing competitiveness, creating jobs, and expanding trade and investment among the Parties.

2. The Parties further recognise that policies related to education, science and technology, research and innovation can help Parties maximise the benefits derived from this Agreement. Accordingly, Parties may encourage the design of policies in

these areas that take into consideration trade and investment opportunities arising from this Agreement, in order to further increase those benefits. Those policies may include initiatives with the private sector, including those aimed at developing relevant expertise and managerial skills, and enhancing enterprises' ability to transform innovations into competitive products and start-up businesses.

Article 23.6. Joint Development Activities

1. The Parties recognise that joint activities between the Parties to promote maximisation of the development benefits derived from this Agreement can reinforce national development strategies, including, where appropriate, through work with bilateral partners, private companies, academic institutions and non- governmental organisations.

2. When mutually agreed, two or more Parties shall endeavour to facilitate joint activities between relevant government, private and multilateral institutions so that the benefits derived from this Agreement might more effectively advance each Party's development goals. These joint activities may include:

(a) discussion between Parties to promote, where appropriate, alignment of Parties' development assistance and finance programmes with national development priorities;

(b) consideration of ways to expand engagement in science, technology and research to foster the application of innovative uses of science and technology, promote development and build capacity;

(c) facilitation of public and private sector partnerships that enable private enterprises, including SMEs, to bring their expertise and resources to cooperative ventures with government agencies in support of development goals; and

(d) involvement of the private sector, including philanthropic organisations and businesses, and non-governmental organisations in activities to support development.

Article 23.7. Committee on Development

1. The Parties hereby establish a Committee on Development (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) facilitate the exchange of information on Parties' experiences regarding the formulation and implementation of national policies intended to derive the greatest possible benefits from this Agreement;

(b) facilitate the exchange of information on Parties' experiences and lessons learned through joint development activities undertaken under Article 23.6 (Joint Development Activities);

(c) discuss any proposals for future joint development activities in support of development policies related to trade and investment;

(d) invite, as appropriate, international donor institutions, private sector entities, non-governmental organisations or other relevant institutions to assist in the development and implementation of joint development activities;

(e) carry out other functions as the Parties may decide in respect of maximising the development benefits derived from this Agreement; and

(f) consider issues associated with the implementation and operation of this Chapter, with a view towards considering ways the Chapter may enhance the development benefits of this Agreement.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. In carrying out its functions, the Committee may work with other committees, working groups and any other subsidiary body established under this Agreement.

Article 23.8. Relation to other Chapters

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

Article 23.9. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 24. SMALL AND MEDIUM-SIZED ENTERPRISES

Article 24.1. Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement, including all Annexes, tariff schedules and product specific rules of origin;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website links to:

(a) the equivalent websites of the other Parties; and

(b) the websites of its government agencies and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing or doing business in that Party's territory.

3. Subject to each Party's laws and regulations, the information described in paragraph 2(b) may include:

(a) customs regulations and procedures;

(b) regulations and procedures concerning intellectual property rights;

(c) technical regulations, standards, and sanitary and phytosanitary measures relating to importation and exportation;

(d) foreign investment regulations;

(e) business registration procedures;

(f) employment regulations; and

(g) taxation information.

When possible, each Party shall endeavour to make the information available in English.

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure that such information and links are up-to-date and accurate.

Article 24.2. Committee on SMEs

1. The Parties hereby establish a Committee on SMEs (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) identify ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement;

(b) exchange and discuss each Party's experiences and best practices in supporting and assisting SME exporters with respect to, among other things, training programmes, trade education, trade finance, identifying commercial partners in other Parties and establishing good business credentials;

(c) develop and promote seminars, workshops or other activities to inform SMEs of the benefits available to them under this Agreement;

(d) explore opportunities for capacity building to assist the Parties in developing and enhancing SME export counselling, assistance and training programmes;

(e) recommend additional information that a Party may include on the website referred to in Article 24.1 (Information Sharing);

(f) review and coordinate the Committee's work programme with those of other committees, working groups and any subsidiary body established under this Agreement, as well as those of other relevant international bodies, in order not to duplicate those work programmes and to identify appropriate opportunities for cooperation to improve the ability of SMEs to engage in trade and investment opportunities provided by this Agreement;

(g) facilitate the development of programmes to assist SMEs to participate and integrate effectively into the global supply chain;

(h) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs;

(i) submit a report of its activities on a regular basis and make appropriate recommendations to the Commission; and

(j) consider any other matter pertaining to SMEs as the Committee may decide, including any issues raised by SMEs regarding their ability to benefit from this Agreement.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Committee may seek to collaborate with appropriate experts and international donor organisations in carrying out its programmes and activities.

Article 24.3. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 25. REGULATORY COHERENCE

Article 25.1. Definitions

For the purposes of this Chapter:

covered regulatory measure means the regulatory measure determined by each Party to be subject to this Chapter in accordance with Article 25.3 (Scope of Covered Regulatory Measures); and

regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

Article 25.2. General Provisions

1. For the purposes of this Chapter, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:

(a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;

(b) each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;

(c) the role that regulation plays in achieving public policy objectives;

(d) taking into account input from interested persons in the development of regulatory measures; and

(e) developing regulatory cooperation and capacity building between the Parties.

Article 25.3. Scope of Covered Regulatory Measures

Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement for that Party, determine and make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, cach Party should aim to achieve significant coverage.

Article 25.4. Coordination and Review Processes or Mechanisms

1. The Parties recognise that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognise that while the processes or mechanisms referred to in paragraph 1 may vary between Parties depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to:

(a) review proposed covered regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are not limited to those set out in Article 25.5 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;

(b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;

(c) make recommendations for systemic regulatory improvements; and

(d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in paragraph 1.

Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.

Article 25.5. Implementation of Core Good Regulatory Practices

1. To assist in designing a measure to best achieve the Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Recognising that differences in the Parties' institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things:

(a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;

(b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive impacts, recognising that some costs and benefits are difficult to quantify and monetise;

(c) explain the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and

(d) rely on the best reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory agency.

3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulation on SMEs.

4. Each Party should ensure that new covered regulatory measures are plainly written and are clear, concise, well organised and casy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.

6. Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.

7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.

8. To the extent appropriate and consistent with its law, each Party should encourage its relevant regulatory agencies to consider regulatory measures in other Parties, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Article 25.6. Committee on Regulatory Coherence

1. The Parties hereby establish a Committee on Regulatory Coherence (Committee), composed of government representatives of the Parties.

2. The Committee shall consider issues associated with the implementation and operation of this Chapter. The Committee shall also consider identifying future priorities, including potential sectoral initiatives and cooperative activities, involving issues covered by this Chapter and issues related to regulatory coherence covered by other Chapters of this Agreement.

3. In identifying future priorities, the Committee shall take into account the activities of other committees, working groups and any other subsidiary body established under this Agreement and shall coordinate with them in order to avoid duplication of activities.

4. The Committee shall ensure that its work on regulatory cooperation offers value in addition to initiatives underway in other relevant fora and avoids undermining or duplicating such efforts.

5. Each Party shall designate and notify a contact point to provide information, on request by another Party, regarding the implementation of this Chapter in accordance with Article 27.5 (Contact Points).

6. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

7. At least once every five years after the date of entry into force of this Agreement, the Committee shall consider developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms referred to in Article 25.4.1 (Coordination and Review Processes or Mechanisms), as well as the Parties' experiences in implementing this Chapter with a view towards considering whether to make recommendations to the Commission for improving the provisions of this Chapter so as to further enhance the benefits of this Agreement.

Article 25.7. Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include:

(a) information exchanges, dialogues or meetings with other Parties;

(b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of other Parties;

(c) training programmes, seminars and other relevant assistance;

(d) strengthening cooperation and other relevant activities between regulatory agencies; and

(e) other activities that Parties may agree.

2. The Parties further recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are centrally available.

Article 25.8. Engagement with Interested Persons

The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence.

Article 25.9. Notification of Implementation

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities under this Chapter, each Party shall submit a notification of implementation to the Committee through the contact points designated pursuant to Article 27.5 (Contact Points) within two years of the date of entry into force of this Agreement for that Party and at least once every four years thereafter.

2. In its initial notification, each Party shall describe the steps that it has taken since the date of entry into force of this Agreement for that Party, and the steps that it plans to take to implement this Chapter, including those to:

(a) establish processes or mechanisms to facilitate effective interagency coordination and review of proposed covered regulatory measures in accordance with Article 25.4 (Coordination and Review Processes or Mechanisms);

(b) encourage relevant regulatory agencies to conduct regulatory impact assessments in accordance with Article 25.5.1 (implementation of Core Good Regulatory Practices) and Article 25.5.2;

(c) ensure that covered regulatory measures are written and made available in accordance with Article 25.5.4 (Implementation of Core Good Regulatory Practices) and Article 25.5.5;

(d) review its covered regulatory measures in accordance with Article 25.5.6 (Implementation of Core Good Regulatory Practices); and

(e) provide information to the public in its annual notice of prospective covered regulatory measures in accordance with Article 25.5.7 (Implementation of Core Regulatory Practices).

3. In subsequent notifications, each Party shall describe the steps, including those set out in paragraph 2, that it has taken since the previous notification, and those that it plans to take to implement this Chapter, and to improve its adherence to it.

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Committee may review notifications made by a Party pursuant to paragraph 1. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Committee may use its review and discussion of a notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with Article 25.7 (Cooperation).

Article 25.10. Relation to other Chapters

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

Article 25.11. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 26. TRANSPARENCY AND ANTI-CORRUPTION

Section A. Definitions

Article 26.1. Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the public official's position, whether or not within the official's authorised competence;

administrative ruling of general application means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct, but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice;

foreign public official means any person holding a legislative, executive, administrative or judicial office of a foreign country,

at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; and any person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organisation means an international civil servant or any person who is authorised by a public international organisation to act on its behalf; and

public official means:

(a) any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

(b) any other person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service, as defined under the Party's law and as applied in the pertinent area of that Party's law; or

(c) any other person defined as a public official under a Party's law. (1)

(1) For the United States, the obligations in Section C shall not apply to conduct outside the jurisdiction of federal criminal law and, to the extent they involve preventive measures, shall apply only to those measures covered by federal law governing federal, state and local officials.

Section B. Transparency

Article 26.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures.

3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.

4. With respect to a proposed regulation (2) of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is published in accordance with paragraph 2(a), each Party shall:

(a) publish the proposed regulation in an official journal, or on an official website, preferably online and consolidated into a single portal;

(b) endeavour to publish the proposed regulation:

(i) no less than 60 days in advance of the date on which comments are due; or

(ii) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;

(c) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and

(d) consider comments received during the comment period, and is encouraged to explain any significant modifications made to the proposed regulation, preferably on an official website or in an online journal.

5. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

(a) promptly publish the regulation on a single official website or in an official journal of national circulation; and

(b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

(2) A Party may, consistent with its legal system, comply with its obligations that relate to a proposed regulation in this Article by publishing a policy proposal, discussion document, summary of the regulation or other document that contains sufficient detail to adequately inform interested persons and other Parties about whether and how their trade or investment interests may be affected.

Article 26.3. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement, cach Party shall ensure in its administrative proceedings applying measures referred to in Article 26.2.1 (Publication) to a particular person, good or service of another Party in specific cases that:

(a) whenever possible, a person of another Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issue in question;

(b) a person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and

(c) the procedures are in accordance with its law.

Article 26.4. Review and Appeal (3)

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those 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, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic law, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

(3) For greater certainty, review need not include merits (de novo) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

Article 26.5. Provision of Information

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect another Partyâs interests under this Agreement, it shall, to the extent possible, inform that other Party of the proposed or actual measure.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

3. A Party may convey any request or provide information under this Article to the other Parties through their contact points.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Section C. Anti-Corruption

Article 26.6. Scope

1. The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment. Recognising the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their adherence to the APEC Conduct Principles for Public Officials, July 2007, and encourage observance of the APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector, September 2007.

2. The scope of this Section is limited to measures to eliminate bribery and corruption with respect to any matter covered by this Agreement.

3. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

4. Each Party shall ratify or accede to the United Nations Convention against Corruption, done at New York on October 31, 2003 (UNCAC).

Article 26.7. Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, when committed intentionally, by any person subject to its jurisdiction: (4)

(a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

(c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, (5) for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) the aiding or abetting, or conspiracy (6) in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraph 1 or 5. In particular, each Party shall ensure that legal persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

4. No Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law. (7)

6. Each Party shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 1 or 5.

(4) A Party that is not a party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, including its Annex, done at Paris on November 21, 1997, may satisfy the obligations in subparagraphs (a), (b) and (c) by establishing the criminal offences described in those subparagraphs in respect of "in the exercise of his or her official duties" rather than "in relation to the performance of his or her official duties".

(5) For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

(6) Parties may satisfy the commitment regarding conspiracy through applicable concepts within their legal systems, including asociación ilícita.

(7) For the United States, this commitment applies only to issuers that have a class of securities registered pursuant to 15 U.S.C 78] or that are otherwise required to file reports pursuant to 15 U.S.C 780 (d).

Article 26.8. Promoting Integrity Among Public Officials

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

(a) measures to provide adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

(b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

(c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) measures to facilitate reporting by public officials of acts of corruption to appropriate authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against public officials who violate the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence described in Article 26.7.1 (Measures to Combat Corruption) may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 26.9. Application and Enforcement of Anti-Corruption Laws

1. In accordance with the fundamental principles of its legal system, no Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 26.7.1 (Measures to Combat Corruption) through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Party, as an encouragement for trade and investment. (8)

2. In accordance with the fundamental principles of its legal system, cach Party retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anti- corruption laws. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in Article 26.7.1 (Measures to Combat Corruption).

(8) For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

Article 26.10. Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption. To this end, a Party may:

(a) undertake public information activities and public education programmes that contribute to non-tolerance of corruption;

(b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes or measures for preventing and detecting bribery and corruption in international trade and investment;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; and

(d) adopt or maintain measures that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

(a) develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment; and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anti- corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident that may be considered to constitute an offence described in Article 26.7.1 (Measures to Combat Corruption).

Article 26.11. Relation to other Agreements

Subject to Article 26.6.4 (Scope), nothing in this Agreement shall affect the rights and obligations of the Parties under UNCAC, the United Nations Convention against Transnational Organized Crime, done at New York on November 15, 2000, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on November 21, 1997, or the Inter-American Convention Against Corruption, done at Caracas on March 29, 1996.

Article 26.12. Dispute Settlement

1. Chapter 28 (Dispute Settlement), as modified by this Article, shall apply to this Section.

2. A Party may only have recourse to the procedures set out in this Article and Chapter 28 (Dispute Settlement) if it considers that a measure of another Party is inconsistent with an obligation under this Section, or that another Party has otherwise failed to carry out an obligation under this Section, in a manner affecting trade or investment between Parties.

3. No Party shall have recourse to dispute settlement under this Article or Chapter 28 (Dispute Settlement) for any matter arising under Article 26.9 (Application and Enforcement of Anti-Corruption Laws).

4. Article 28.5 (Consultations) shall apply to consultations under this Section, with the following modifications:

(a) a Party other than a consulting Party may make a request in writing to the consulting Parties to participate in the consultations, no later than seven days after the date of circulation of the request for consultations, if it considers that its trade or investment is affected by the matter at issue. That Party shall include in its request an explanation of how its trade or investment is affected by the matter at issue. That Party may participate in consultations if the consulting Parties agree; and

(b) the consulting Parties shall involve officials of their relevant anti- corruption authorities in the consultations.

5. The consulting Parties shall make every effort to find a mutually satisfactory solution to the matter, which may include appropriate cooperative activities or a work plan.

Chapter 27. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 27.1. Establishment of the Trans-Pacific Partnership Commission

The Parties hereby establish a Trans-Pacific Partnership Commission (Commission), composed of government representatives of each Party at the level of Ministers or senior officials. Each Party shall be responsible for the composition of its delegation.

Article 27.2. Functions of the Commission

1. The Commission shall:

(a) consider any matter relating to the implementation or operation of this Agreement;

(b) review, within three years of the date of entry into force of this Agreement and at least every five years thereafter, the economic relationship and partnership among the Parties;

(c) consider any proposal to amend or modify this Agreement;

(d) supervise the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

(e) consider ways to further enhance trade and investment between the Parties;

(f) establish the Rules of Procedure referred to in Article 28.13 (Rules of Procedure for Panels), and, where appropriate, amend those Rules;

(g) review the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) every three years and, when appropriate, constitute a new roster; and

(h) determine whether this Agreement may enter into force for an original signatory notifying pursuant to Article 30.5.4 (Entry into Force).

2. The Commission may:

(a) establish, refer matters to, or consider matters raised by, any ad hoc or standing committee, working group or any other subsidiary body;

(b) merge or dissolve any committees, working groups or other subsidiary bodies established under this Agreement in order to improve the functioning of this Agreement;

(c) consider and adopt, subject to completion of any necessary legal procedures by cach Party, a modification to this Agreement of: (1)

(i) the Schedules to Annex 2-D (Tariff Commitments), by accelerating tariff elimination;

(ii) the rules of origin established in Annex 3-D (Product- Specific Rules of Origin) and Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin); or

(iii) the lists of entities, covered goods and services, and thresholds contained in each Party's Annex to Chapter 15 (Government Procurement);

(d) develop arrangements for implementing this Agreement;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(f) issue interpretations of the provisions of this Agreement;

(g) seek the advice of non-governmental persons or groups on any matter falling within the Commission's functions; and

(h) take any other action as the Parties may agree.

3. Pursuant to paragraph 1(b), the Commission shall review the operation of this Agreement with a view to updating and enhancing this Agreement, through negotiations, as appropriate, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.

4. In conducting a review pursuant to paragraph 3, the Commission shall take into account:

(a) the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

(b) relevant developments in international fora; and

(c) as appropriate, input from non-governmental persons or groups of the Parties.

(1) Chile shall implement the actions of the Commission through Acuerdos de Ejecucion, in accordance with Article 54, numeral 1, fourth paragraph of the Political Constitution of the Republic of Chile (Constitucion Politica de la Republica de Chile).

Article 27.3. Decision-Making

1. The Commission and all subsidiary bodies established under this Agreement shall take all decisions by consensus, except as otherwise provided in this Agreement, or as otherwise decided by the Parties. (2) Except as otherwise provided in this Agreement, the Commission or any subsidiary body shall be deemed to have taken a decision by consensus if no Party present at any meeting when a decision is taken objects to the proposed decision.

2. For the purposes of Article 27.2.2(f) (Functions of the Commission), a decision of the Commission shall be taken by agreement of all Parties. A decision shall be deemed to be reached if a Party which does not indicate agreement when the Commission considers the issue does not object in writing to the interpretation considered by the Commission within five days of that consideration.

(2) For greater certainty, any such decision on alternative decision-making by the Parties shall itself be taken by consensus.

Article 27.4. Rules of Procedure of the Commission

1. The Commission shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 27.2 (Functions of the Commission). Meetings of the Commission shall be chaired successively by each Party.

2. The Party chairing a session of the Commission shall provide any necessary administrative support for such session, and shall notify the other Parties of any decision of the Commission.

3. Except as otherwise provided in this Agreement, the Commission and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

4. The Commission and any subsidiary body established under this Agreement may establish rules of procedures for the conduct of its work.

Article 27.5. Contact Points

1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement for that Party. A Party shall notify any Party for which this Agreement enters into force at a later date of its designated contact points, no later than 30 days after the date on which the other Party has notified its designated contact points.

Article 27.6. Administration of Dispute Settlement Proceedings

1. Each Party shall:

(a) designate an office to provide administrative assistance to a panel established under Chapter 28 (Dispute Settlement) for a proceeding in which it is a disputing Party and to perform such other related functions as the Commission may direct; and

(b) notify the other Parties of the location of its designated office.

2. Each Party shall be responsible for the operation and costs of its designated office.

Article 27.7. Reporting In Relation to Party-specific Transition Periods

1. At each regular meeting of the Commission, any Party which has a Party-specific transition period for any obligation under this Agreement shall report on its plans for and progress towards implementing the obligation.

2. In addition, any such Party shall provide a written report to the Commission on its plans for and progress towards implementing each such obligation as follows:

(a) for any transition period of three years or less, the Party shall provide a written report six months before the expiration of the transition period; and

(b) for any transition period of more than three years, the Party shall provide a yearly written report on the anniversary date of entry into force of this Agreement for it, beginning on the third anniversary, and a written report six months before the expiration of the transition period.

3. Any Party may request additional information regarding another Party's progress towards implementing the obligation. The reporting Party shall promptly reply to those requests.

4. No later than the date on which a transition period expires, a Party with a Party-specific transition period shall provide written notification to the other Parties of what measures it has taken to implement the obligation for which it has a transition period.

5. If a Party fails to provide the notification referred to in paragraph 4, the matter shall be automatically placed on the agenda for the next regular meeting of the Commission. In addition, any Party may request that the Commission meet promptly to discuss that matter.

Chapter 28. DISPUTE SETTLEMENT

Section A. Dispute Settlement

Article 28.1. Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 28.7.1 (Establishment of a Panel);

consulting Party means a Party that requests consultations under Article 28.5.1 (Consultations) or the Party to which the request for consultations is made;

disputing Party means a complaining Party or a responding Party; panel means a panel established under Article 28.7 (Establishment of a Panel);

perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

responding Party means a Party that has been complained against under Article 28.7 (Establishment of a Panel);

Rules of Procedure means the rules referred to in Article 28.13 (Rules of Procedure for Panels) and established in accordance with Article 27.2.1(f) (Functions of the Commission); and

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 28.14 (Third Party Participation).

Article 28.2. Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 28.3. Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement; or

(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

2. No later than six months after the effective date that Members of the WTO have the right to initiate non-violation nullification or impairment complaints under Article 64 of the TRIPS Agreement, the Parties shall consider whether to amend paragraph 1(c) to include Chapter 18 (Intellectual Property).

3. An instrument entered into by two or more Parties in connection with the conclusion of this Agreement:

(a) does not constitute an instrument related to this Agreement within the meaning of paragraph 2(b) of Article 31 of the Vienna Convention on the Law of Treaties, done at Vienna on May 23, 1969 and shall not affect the rights and obligations under this Agreement of Parties which are not party to the instrument; and

(b) may be subject to the dispute settlement procedures under this Chapter for any matter arising under the instrument if that instrument so provides.

Article 28.4. Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a complaining Party has requested the establishment of, or referred a matter to, a panel or other tribunal under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 28.5. Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in Article 28.3 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure (1) or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 27.5.1 (Contact Points).

2. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request. (2) That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into consultations in good faith.

3. A Party other than a consulting Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing no later than seven days after the date of circulation of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. Consultations may be held in person or by any technological means available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties agree otherwise.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and

(b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

7. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

8. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

(1) The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

(2) For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.

Article 28.6. Good Offices, Conciliation and Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 28.7 (Establishment of a Panel).

Article 28.7. Establishment of a Panel

1. A Party that requested consultations under Article 28.5.1 (Consultations) may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within:

(a) a period of 60 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations);

(b) a period of 30 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations) in a matter regarding perishable goods; or

(c) any other period as the consulting Parties may agree.

2. The complaining Party shall circulate the request concurrently to all Parties through the overall contact points designated under Article 27.5.1 (Contact Points).

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

4. A panel shall be established upon delivery of the request.

5. Unless the disputing Parties agree otherwise, the panel shall be composed in a manner consistent with this Chapter and the Rules of Procedure.

6. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

7. A panel shall not be established to review a proposed measure.

Article 28.8. Terms of Reference

1. Unless the disputing Parties agree otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 28.17.4 (Initial Report).

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs benefits within the meaning of Article 28.3.1(c) (Scope), the terms of reference shall so indicate.

Article 28.9. Composition of Panels

1. A panel shall be composed of three members.

2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose a panel:

(a) Within a period of 20 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall each appoint a panellist and notify each other of those appointments.

(b) If the complaining Party or Parties fail to appoint a panellist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.

(c) If the responding Party fails to appoint a panellist within the period specified in subparagraph (a), the complaining Party or Parties shall select the panellist not yet appointed:

(i) from the responding Party's list established under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists);

(ii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists), from the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists); or

(iii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists) and no roster of panel chairs has been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), by random selection from a list of three candidates nominated by the complaining Party or Parties,

no later than 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel).

(d) For appointment of the third panellist, who shall serve as chair:

(i) the disputing Parties shall endeavour to agree on the appointment of a chair;

(ii) if the disputing Parties fail to appoint a chair under subparagraph (d)(i) by the time the second panellist is appointed or

within a period of 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), whichever is longer, the two panellists appointed shall, by agreement, appoint the chair from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists);

(iii) if the two panellists do not agree on the appointment of the chair under subparagraph (d)(ii) within a period of 43 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the two panellists shall appoint the chair with the agreement of the disputing Parties;

(iv) if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, the disputing Parties shall select the chair by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) within a period of 60 days after the date of delivery of the request for the establishment of the panel;

(v) notwithstanding subparagraph (d)(iv), if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, a disputing Party may elect to have the chair appointed from the roster established under Article 28.11(Roster of Panel Chairs and Party Specific Lists) by an independent third party, provided that the following conditions are met:

(A) any costs associated with the appointment are borne by the electing Party;

(B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third party's appointment process; and

(C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in subparagraph (d)(iv);

(vi) if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(ii) through (v) cannot apply, the complaining Party or Parties, on the one hand, and the responding Party, on the other hand, may nominate three candidates. The chair shall be randomly selected from those candidates that are nominated within a period of 60 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and

(vii) notwithstanding subparagraph (d)(vi), if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(i) through (v) cannot apply, a disputing Party may, following the nomination of candidates under subparagraph (d)(vi), elect to have the chair appointed from those candidates by an independent third party, provided that the following conditions are met:

(A) any costs associated with such appointment are borne by the electing Party;

(B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third partyâs appointment process; and

(C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in subparagraph (vi).

3. Unless the disputing Parties agree otherwise, the chair shall not be a national of any of the disputing Parties or a third Party and any nationals of the disputing Parties or a third Party appointed to the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) shall be excluded from a selection process under paragraph 2(d).

4. Each disputing Party shall endeavour to select panellists who have expertise or experience relevant to the subject matter of the dispute.

5. For a dispute arising under Chapter 19 (Labour), Chapter 20 (Environment) or Chapter 26 (Transparency and Anti-corruption), each disputing Party shall select panellists in accordance with the following requirements, in addition to those set out in Article 28.10.1 (Qualifications of Panellists):

(a) in any dispute arising under Chapter 19 (Labour), panellists other than the chair shall have expertise or experience in labour law or practice;

(b) in any dispute arising under Chapter 20 (Environment), panellists other than the chair shall have expertise or experience in environmental law or practice; and

(c) in any dispute arising under section C of Chapter 26 (Transparency and Anti-corruption), panellists other than the chair shall have expertise or experience in anti-corruption law or practice.

6. If a panellist selected under paragraph 2 is unable to serve on the panel, the complaining Party, the responding Party, or the disputing Parties, as the case may be, shall, no later than seven days after learning that the panellist is unavailable, select another panellist in accordance with the same method of selection that was used to select the panellist who is unable to serve, unless the disputing Parties agree otherwise.

7. If the process for selecting the new panellist under paragraph 6 is not completed within the time frame set out in that paragraph then the disputing Parties shall select the panellist by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) no later than 15 days after learning that the original panellist is no longer able to serve.

8. If a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) then the disputing Parties shall select the panellist by using the method of selection set out in paragraph 2(d)(vi) no later than 15 days after learning that the original panellist is no longer able to serve.

9. If a panellist appointed under this Article resigns or becomes unable to serve on the panel, either during the course of the proceeding or when the panel is reconvened under Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits) or Article 28.21 (Compliance Review), a replacement panellist shall be appointed within 15 days in accordance with paragraphs 6, 7 and 8. The replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, and all time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

10. If a disputing Party believes that a panellist is in violation of the code of conduct referred to in Article 28.10.1(d) (Qualifications of Panellists), the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 28.10. Qualifications of Panellists

1. All panellists shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability and sound Judgment;

(c) be independent of, and not affiliated with or take instructions from, any Party; and

(d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 28.6 (Good Offices, Conciliation and Mediation).

Article 28.11. Roster of Panel Chairs and Party Specific Lists Roster of Panel Chairs

1. No later than 120 days after the date of entry into force of this Agreement, those Parties for which this Agreement has come into force under Article 30.5 (Entry into Force) shall establish a roster to be used for the selection of panel chairs.

2. If the Parties are unable to establish a roster within the time period specified in paragraph 1, the Commission shall immediately convene to appoint individuals to the roster. Taking into account the nominations made under paragraph 4 and the qualifications set out in Article 28.10 (Qualifications of Panellists), the Commission shall establish the roster no later than 180 days after the date of entry into force of this Agreement.

3. The roster shall consist of at least 15 individuals, unless the Parties agree otherwise. 4. Each Party may nominate up to two individuals for the roster and may include up to one national of any Party among its nominations.

5. The Parties shall appoint individuals to the roster by consensus. The roster may include up to one national of each Party.

6. Once established under paragraph 1 or 2, or if reconstituted following a review by the Parties, a roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. Members of the roster may be reappointed.

7. The Parties may appoint a replacement at any time if a roster member is no longer willing or available to serve.

8. Subject to paragraphs 4 and 5, any acceding Party may nominate up to two individuals for the roster. Either or both of those individuals may be included on the roster by consensus of the Parties. Party Specific Indicative List

9. At any time after the date of entry into force of this Agreement, a Party may establish a list of individuals who are willing and able to serve as panellists.

10. The list referred to in paragraph 9 may include individuals who are nationals of that Party or non-nationals. Each Party may appoint any number of individuals to its list and appoint additional individuals or replace a list member at any time.

11. A Party that establishes a list in accordance with paragraph 9 shall promptly make it available to the other Parties.

Article 28.12. Function of Panels

1. A panel's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969). With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

Article 28.13. Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement in accordance with Article 27.2.1(f) (Functions of the Commission), shall ensure that:

(a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

(b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;

(c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each disputing Party shall:

(i) make its best efforts to release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and

(ii) if not already released, release all these documents by the time the final report of the panel is issued;

(e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(f) confidential information is protected;

(g) written submissions and oral arguments shall be made in English, unless the disputing Parties agree otherwise; and

(h) unless the disputing Parties agree otherwise, hearings shall be held in the capital of the responding Party.

Article 28.14. Third Party Participation

A Party that is not a disputing Party and that considers it has an interest in the matter before the panel shall, on delivery of a

written notice to the disputing Parties, be entitled to attend all hearings, make written submissions, present views orally to the panel, and receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of circulation of the request for the establishment of the panel under Article 28.7.2 (Establishment of a Panel).

Article 28.15. Role of Experts

At the request of a disputing Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

Article 28.16. Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

Article 28.17. Initial Report

1. The Panel shall draft its report without the presence of any Party.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any third Parties, and on any information or advice put before it under Article 28.15 (Role of Experts). At the joint request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panellist. In cases of urgency, including those related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panellist. 4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the panel as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement;

(ii) a Party has otherwise failed to carry out its obligations in this Agreement; or

(iii) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope);

(c) any other determination requested in the terms of reference;

(d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.

6. Panellists may present separate opinions on matters not unanimously agreed.

7. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may agree.

8. After considering any written comments by the disputing Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

Article 28.18. Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the disputing Parties agree otherwise. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall release the final report to the public.

2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

Article 28.19. Implementation of Final Report

1. The Parties recognise the importance of prompt compliance with determinations made by panels under Article 28.18 (Final Report) in achieving the aim of the dispute settlement procedures in this Chapter, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement;

(b) a Party has otherwise failed to carry out its obligations in this Agreement; or

(c) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope),

the responding Party shall, whenever possible, eliminate the non-conformity or the nullification or impairment.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to do so immediately.

4. The disputing Parties shall endeavour to agree on the reasonable period of time. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the final report under Article 28.18.1 (Final Report), any disputing Party may, no later than 60 days after the presentation of the final report under Article 28.18.1 (Final Report), refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 28.18.1 (Final Report). However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

Article 28.20. Non-Implementation - Compensation and Suspension of Benefits

1. The responding Party shall, if requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

(a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity or the nullification or impairment; or

(b) following the expiry of the reasonable period of time established in accordance with Article 28.19 (Implementation of Final Report), there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment.

2. A complaining Party may suspend benefits in accordance with paragraph 3 if that complaining Party and the responding Party have:

(a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or

(b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend. (3) The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the panel issues its determination under paragraph 5, as the case may be.

In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined non-conformity or nullification or impairment to exist;

(b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and

(c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account:

(i) the trade in the good, the supply of the service or other subject matter in which the panel has found the non- conformity or nullification or impairment, and the importance of that trade to the complaining Party;

(ii) that goods, all financial services covered under Chapter 11 (Financial Services), services other than such financial services, and each section in Chapter 18 (Intellectual Property), are each distinct subject matters; and

(iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

If the responding Party considers that:

(a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the panel has determined that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panel's determination.

7. The complaining Party shall not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The disputing Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 per cent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 per cent of the level that the complaining Party has proposed to suspend under paragraph 3.

8. If a monetary assessment is to be paid to the complaining Party, then it shall be paid in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties in equal, quarterly instalments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. If the circumstances warrant, the disputing Parties may decide that the responding Party shall pay an assessment into a fund designated by the disputing Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting the responding Party to carry out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly instalment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party that seeks an extension of the period for the payment under paragraph 10 shall make a written request for that extension no later than 30 days before the expiration of the 12 month period. The disputing Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraphs 3, 4 and 6, if:

(a) the responding Party fails to make a payment under paragraph 8 or fails to make the payment under paragraph 13 after electing to do so;

(b) the responding Party fails to provide the plan as required under paragraph 9; or

(c) the monetary assessment period, including any extension, has lapsed and the responding Party has not yet eliminated the non- conformity or the nullification or impairment.

13. If the responding Party notified the complaining Party that it wished to discuss the possible use of a fund and the disputing Parties do not agree on the use of a fund within three months of the date of the responding Partyâs notice under paragraph 7, and this time period has not been extended by agreement of the disputing Parties, the responding Party may elect to make the monetary assessment payment equal to 50 per cent of the amount determined under paragraph 5 or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5. If this election is made, the payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5, or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5, at the end of the election period.

14. The complaining Party shall accord sympathetic consideration to the notice provided by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

15. Compensation, suspension of benefits and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation, suspension of benefits and the payment of a monetary assessment shall only be applied until the responding Party has eliminated the non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

(3) For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, or nullification or impairment in the sense of Article 28.3.1(c) (Scope), determined to exist by the panel in its final report issued under Article 28.18.1 (Final Report).

Article 28.21. Compliance Review

1. Without prejudice to the procedures in Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits), if a responding Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party or Parties. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. If the panel determines that the responding Party has eliminated the non- conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits suspended under Article 28.20 (Non- Implementation - Compensation and Suspension of Benefits).

Section B. Domestic Proceedings and Private Commercial Dispute Settlement

Article 28.22. Private Rights

No Party shall provide for a right of action under its law against any other Party on the ground that a measure of that other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 28.23. Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to, and is in compliance with, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.

Chapter 29. EXCEPTIONS AND GENERAL PROVISIONS

Section A. Exceptions

Article 29.1. General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade) and Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis. (1)

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 10 (Cross-Border Trade in Services), Chapter 12 (Temporary Entry for Business Persons), Chapter 13 (Telecommunications), Chapter 14 (Electronic Commerce) (2) and Chapter 17 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, mutatis mutandis. (3) The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

4. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

(1) For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

(2) This paragraph is without prejudice to whether a digital product should be classified as a good or service.

(3) For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, mutatis mutandis, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

Article 29.2. Security Exceptions

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 29.3. Temporary Safeguard Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

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

(b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

(a) not be inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (MostFavoured-Nation Treatment); (4)

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

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

(d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;

(e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Parties in writing within 30 days of the extension, unless after consultations more than one-half of the Parties advise, in writing, within 30 days of receiving the notification that they do not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), in which case the Party imposing the measure shall remove the measure, or otherwise modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Parties, within 90 days of receiving notification that more than one half of the Parties do not agree;

(f) not be inconsistent with Article 9.8 (Expropriation and Compensation); (5)

(g) in the case of restrictions on capital outflows, not interfere with investors' ability to earn a market rate of return in the territory of the restricting Party on any restricted assets; (6) and

(h) not be used to avoid necessary macroeconomic adjustment.

4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment. (7)

5. A Party shall endeavour to provide that any measures adopted or maintained under paragraph 1 or 2 be price-based, and if such measures are not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Parties of the measure.

6. In the case of trade in goods, Article XII of GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994 are incorporated into and made part of this Agreement, mutatis mutandis. Any measures adopted or maintained under this paragraph shall not impair the relative benefits accorded to the other Parties under this Agreement as compared to the treatment of a non-Party.

7. A Party adopting or maintaining measures under paragraph 1, 2 or 6 shall:

(a) notify, in writing, the other Parties of the measures, including any changes therein, along with the rationale for their imposition, within 30 days of their adoption;

(b) present, as soon as possible, cither a time schedule or the conditions necessary for their removal;

(c) promptly publish the measures; and

(d) promptly commence consultations with the other Parties in order to review the measures adopted or maintained by it.

(i) In the case of capital movements, promptly respond to any other Party that requests consultations in relation to the measures adopted by it, provided that such consultations are not otherwise taking place outside of this Agreement.

(ii) In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a Party, if requested, shall promptly commence consultations with any interested Party.

(4) Without prejudice to the general interpretation of Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most- Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured- Nation Treatment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment).

(5) For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in Annex 9-B(3)(b) (Expropriation).

(6) The term "restricted assets" in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party.

(7) For the purposes of this Article, "foreign direct investment" means a type of investment by an investor of a Party in the territory of another Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment.

Article 29.4. Taxation Measures

1. For the purposes of this Article:

designated authorities means:

(a) for Australia, the Secretary to the Treasury or an authorised representative of the Secretary;

(b) for Brunei Darussalam, the Minister of Finance or the Minister's authorised representative;

(c) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;

(d) for Chile, the Undersecretary of the Ministry of Finance (Subsecretario de Hacienda),

(e) for Japan, the Minister for Foreign Affairs and the Minister of Finance; (8)

(f) for Malaysia, the Minister of Finance or the Minister's authorised. representative;

(g) for Mexico, the Minister of Finance and Public Credit (Secretario de Hacienda y Crédito Piblico);

(h) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner,

(i) for Peru, the General Director of International Economy, Competition and Productivity Affairs (Director General de Asuntos de Economia Internacional, Competencia y Productividad del Ministerio de Economia y Finanzas);

(j) for Singapore, the Chief Tax Policy Officer, Ministry of Finance;

(k) for the United States, the Assistant Secretary of the Treasury (Tax Policy); and

(l) for Viet Nam, the Minister of Finance, or any successor of these designated authorities as notified in writing to the other Parties;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and taxation measures include excise duties, but do not include:

(a) a "customs duty" as defined in Article 1.3 (General Definitions); or

(b) the measures listed in subparagraphs (b) and (c) of that definition.

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

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

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties in question. The designated authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 28 (Dispute Settlement) or Article 9.19 (Submission of a Claim to Arbitration) until the expiry of the six-month period, or any other period as may have been agreed by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

5. Notwithstanding paragraph 3:

(a) Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article II of GATT 1994; and

(b) Article 2.15 (Export Duties, Taxes or other Charges) shall apply to taxation measures.

6. Subject to paragraph 3:

(a) Article 10.3 (National Treatment) and Article 11.6.1 (Cross-Border Trade) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property (9) (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory;

(b) Article 9.4 (National Treatment), Article 9.5 (Most-FavouredNation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.6.1 (Cross-Border Trade) and Article 14.4 (NonDiscriminatory Treatment of Digital Products) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property (9) (but not on the transfer of that investment or property),or taxes on estates, inheritances, gifts and generation-skipping transfers; and

(c) Article 14.4 (Non-Discriminatory Treatment of Digital Products) shall apply to taxation measures on income, on capital gains, on the taxable income of corporations, or on the value of an investment or property (9) (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular digital products, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular digital products on requirements to provide the digital product in its territory,

but nothing in the Articles referred to in subparagraphs (a), (b) and (c) shall apply to:

(d) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(e) a non-conforming provision of any existing taxation measure;

(f) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(g) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(h) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties; (10)

(i) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund or other arrangement to provide pension, superannuation or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over that trust, plan, fund or other arrangement; or

(j) any excise duty on insurance premiums to the extent that such tax would, if levied by the other Parties, be covered by subparagraph (e), (f) or (g).

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 9.10.2 (Performance Requirements), Article 9.10.3 and Article 9.10.5 shall apply to taxation measures.

8. Article 9.8 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 9.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 9.19 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of the referral, the investor may submit its claim to arbitration under Article 9.19 (Submission of a Claim to Arbitration).

9. Nothing in this Agreement shall prevent Singapore from adopting taxation measures no more trade restrictive than necessary to address Singapore's public policy objectives arising out of its specific constraints of space.

(8) For the purposes of consultations between the designated authorities of the relevant Parties, the contact point of Japan is the Ministry of Finance.

(9) This is without prejudice to the methodology used to determine the value of such investment or property under Parties' respective laws.

(10) The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

Article 29.5. Tobacco Control Measures (11)

A Party may elect to deny the benefits of Section B of Chapter 9 (Investment) with respect to claims challenging a tobacco control measure (12) of the Party. Such a claim shall not be submitted to arbitration under Section B of Chapter 9 (Investment) if a Party has made such an election. If a Party has not elected to deny benefits with respect to such claims by the time of the submission of such a claim to arbitration under Section B of Chapter 9 (Investment), a Party may elect to deny benefits during the proceedings. For greater certainty, if a Party elects to deny benefits with respect to such claims, any such claim shall be dismissed.

(11) For greater certainty, this Article does not prejudice: (i) the operation of Article 9.15 (Denial of Benefits); or (ii) a Party's rights under Chapter 28 (Dispute Settlement) in relation to a tobacco control measure.

(12) tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.

Article 29.6. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.

Section B. General Provisions

Article 29.7. Disclosure of Information

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or 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 29.8. Traditional Knowledge and Traditional Cultural Expressions

Subject to each Party’s international obligations, each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.

Chapter 30. FINAL PROVISIONS

Article 30.1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 30.2. Amendments

The Parties may agree, in writing, to amend this Agreement. When so agreed by all Parties and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which all Parties have notified the Depositary in writing of the approval of the amendment in accordance with their respective applicable legal procedures, or on such other date as the Parties may agree.

Article 30.3. Amendment of the WTO Agreement

In the event of an amendment of the WTO Agreement that amends a provision that the Parties have incorporated into this Agreement, the Parties shall, unless otherwise provided for in this Agreement, consult on whether to amend this Agreement.

Article 30.7. Depositary

1. The original English, Spanish and French texts of this Agreement shall be deposited with New Zealand, which is hereby designated as the Depositary of this Agreement.

2. The Depositary shall promptly provide certified copies of the original texts of this Agreement and of any amendments to this Agreement to cach signatory State, acceding State and acceding separate customs territory.

3. The Depositary shall promptly inform cach signatory and acceding State or acceding separate customs territory, and provide them with the date and a copy, of:

(a) a notification under Article 30.2 (Amendments), Article 30.4.6 (Accession) or Article 30.5 (Entry into Force);

(b) a request to accede to this Agreement under Article 30.4.2 (Accession);

(c) the deposit of an instrument of accession under Article 30.4.5 (Accession); and

(d) a notice of withdrawal provided under Article 30.6 (Withdrawal).

ANNEX I

EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 9.12 (NonConforming Measures) and Article 10.7 (Non-Conforming Measures), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 9.4 (National Treatment) or Article 10.3 (National Treatment);

(b) Article 9.5 (Most-Favoured-Nation Treatment) or Article 10.4 (MostFavoured-Nation Treatment);

(c) Article 9.10 (Performance Requirements);

(d) Article 9.11 (Senior Management and Boards of Directors);

(e) Article 10.5 (Market Access); or

(f) Article 10.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 9.12.1(a) (Non-Conforming Measures) and Article 10.7.1(a) (Non-Conforming Measures), do not apply to the listed measure(s) as indicated in the introductory note for each Party's Schedule;

(e) Level of Government indicates the level of government maintaining the listed measures;

(f) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) Description, as indicated in the introductory note for each Party's Schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.

3. Article 10.6 (Local Presence) and Article 10.3 (National Treatment) are separate disciplines and a measure that is only inconsistent with Article 10.6 (Local Presence) need not be reserved against Article 10.3 (National Treatment).

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. Description sets out the non-conforming measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Regional

Measure: All existing non-conforming measures at the regional level of government.

Description: Investment and Cross-Border Trade in Services All existing non-conforming measures at the regional level of government.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Australia's Foreign Investment Policy, which consists of the Foreign Acquisitions and Takeovers Act 1975 (FATA) (Cth); Foreign Acquisitions and Takeovers Regulations 1989 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

Description: Investment

1. The following investments (1) require notification and approval from the Australian Government: (a) proposed investments by foreign persons in existing (2) Australian businesses, or prescribed corporations, (3) the value of whose assets exceeds $A252 million* in the following sectors: (i) the telecommunications sector; (ii) the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia; (iii) the supply of training or human resources, or the manufacture or supply of military goods, equipment or technology, to the Australian or other defence forces; (iv) the manufacture or supply of goods, equipment or technologies able to be used for a military purpose; (v) the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and (vi) the extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities; (b) proposed investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies (4), the value of whose total assets exceeds $A1,094 million*; (c) proposed direct investments by foreign government investors, irrespective of size; (d) proposed investments by foreign persons (5) of five per cent or more in the media sector, regardless of the value of the investment; (e) proposed acquisitions by foreign persons of developed non-residential commercial real estate where the property is valued at more than $A1,094 million*. Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to above for which no notification is received may be subject to orders under Sections 18 through 21 and 21A of the FATA.

Separate or additional requirements may apply to measures subject to other Annex I reservations and to sectors, sub-sectors or activities subject to Annex II.

2. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control (6) of an existing financial sector company, may be refused, or be subject to certain conditions. (7)

(1) Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). "Investments" means activities covered by Part II of FATA or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

(2) For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

(3) For the purposes of this entry, "prescribed corporation" means: (a) a trading corporation; (b) a financial corporation; (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies; (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded $A252 million (for item (a) of the entry) or $A1,094 million (for item (b) of the entry), being assets consisting of all or any of the following: (i) land situated in Australia (including legal and equitable interests in such land); (ii) mineral rights; (iii) shares in a corporation incorporated in Australia; (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded $A252 million (for item (a) of the entry) or $A1094 million (for item (b) of the entry); (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e) of this footnote; (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation; or (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

* This is the figure as at 1 January 2015. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

(4) A "financial sector company" means, as defined in section 3 of the Financial Sector (Shareholdings) Act 1998 (Cth): (a) an authorised deposit-taking institution; (b) an authorised insurance company; or (c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

(5) A "foreign person" means, as defined in section 5 of the FATA: (a) a natural person not ordinarily resident in Australia; (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(6) "Unacceptable shareholding situation" and "practical control" as defined in the Financial Sector (Shareholdings) Act 1998 (Cth).

(7) Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Patents Act 1990 (Cth) Patent Regulations (Cth)

Description: Cross-Border Trade in Services In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia. (8)

(8) For the purposes of this entry, a person is taken to be "ordinarily resident" in Australia if: (a) the person has his or her home in Australia; or (b) Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, the person is taken not to be ordinarily resident in Australia if he or she resides in Australia for a special or temporary purpose only.

Sector: All

Obligations Concerned: Performance Requirements (Article 9.10) (9)

Level of Government: Central, Regional

Measures: Designs Act 2003 (Cth)

Description: Investment A design that has been registered or disclosed in a filed design application may be used by an Australian government (or a person authorised by an Australian government) and, if it is used, any agreement or licence fixing the terms on which a person other than that government may use the design may be inoperative with respect to the government use unless the agreement or licence has been approved by that government.

(9) Applies only in relation to Article 9.10.1(i) (Performance Requirements).

Sector: Professional Services

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Migration Act 1958 (Cth)

Description: Cross-Border Trade in Services To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Corporations Act 2001 (Cth)

Description: Cross-Border Trade in Services A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

Sector: Professional Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Customs Act 1901 (Cth)

Description: Cross-Border Trade in Services To act as a customs broker in Australia, service suppliers must supply the service in and from Australia.

Sector: Fishing and Services incidental to Fishing

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Fisheries Management Act 1991 (Cth) Foreign Fishing Licences Levy Act 1991 (Cth)

Description: Investment and Cross-Border Trade in Services

Foreign fishing vessels (10) seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transhipment of fish, in the Australian Fishing Zone must be authorised. Where foreign fishing vessels are authorised they may be subject to a levy.(11)

(10) For the purposes of this entry, a “foreign fishing vessel” is one that does not meet the definition of an Australian boat under the Fisheries Management Act 1991 (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

(11) The levy charged will be in accordance with the Foreign Fishing Licences Levy Act 1991 (Cth) or any amendments thereto.

Sector: Communication Services

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Telstra Corporation Act 1991 (Cth)

Description: Investment Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares. The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

Sector: Health Services

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Commonwealth Serum Laboratories Act 1961 (Cth)

Description: Investment

The votes attached to significant foreign shareholdings (12) may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

(12) For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measure: Competition and Consumer Act 2010 (Cth)

Description: Investment and Cross-Border Trade in Services

Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia. Only a person (13) affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of "reasonable" include Australia's national interest and the interests of Australian shippers.

(13) For the purposes of this entry, sections 10.48 and 10.58 of Part X of the Competition and Consumer Act 2010 (Cth) list the categories of persons to whom this entry will apply.

Sector: Maritime Transport

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Shipping Registration Act 1981 (Cth) Shipping Registration Regulations 1981 (Cth)

Description: Investment and Cross-Border Trade in Services

For a ship to be registered on the Australian Shipping Register it must be majority Australian-owned or on demise charter to Australian-based operators. In the case of small craft, a ship must be wholly owned by or solely operated by Australian

residents, Australian nationals or both. For a trading ship to be registered on the International Shipping Register it must be wholly or majority Australian-owned, on demise charter to Australian-based operators or operated solely by Australian residents, Australian nationals or both. The master or chief mate, and chief engineer or first engineer of the ship must be an Australian national or Australian resident. A ship on demise charter to an Australian-based operator is a ship on demise charter to: (a) an Australian national or Australian nationals; or (b) in circumstances where there are two or more persons who include an Australian national, where the Australian national is in a position to control the exercise of the rights and powers of the charterers under the charter party. For the purposes of this entry, an Australian national is an Australian citizen who is ordinarily resident in Australia; or a body corporate that has its principal place of business in Australia.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Air Navigation Act 1920 (Cth) Ministerial Statements

Description: Investment Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent. Furthermore, it is required that: (a) at least two-thirds of the Board members must be Australian citizens; (b) the Chairperson of the Board must be an Australian citizen; (c) the airline's head office must be in Australia; and (d) the airline's operational base must be in Australia.

Sector: Transport Services Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11) Level of Government: Central Measures: Qantas Sale Act 1992 (Cth) Description: Investment Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition: (a) the head office of Qantas must always be located in Australia; (b) the majority of Qantas' operational facilities must be located in Australia; (c) at all times, at least two-thirds of the directors of Qantas must be Australian citizens; (d) at a meeting of the Board of Directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and (e) Qantas is prohibited from taking any action to become incorporated outside Australia.

SCHEDULE OF BRUNEI DARUSSALAM

INTRODUCTORY NOTES

1. In the interpretation of an entry in this Annex, all elements of the entry shall be considered, where the Description sets out the non-conforming measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Measures: Companies Act (Chapter 39) Business Names Act (Chapter 92) Miscellaneous Licences Act (Chapter 127) Co--operative Societies Act (Chapter 84) Employment Agencies Order 2004 Administrative Measures and Guidelines

Description: Investment

1. Sole Proprietors and Cooperative Societies Foreign nationals may not establish sole proprietorships or cooperative societies.

2. Partnerships Foreign nationals may not establish a partnership, except with the written approval of the Registrar of Business Names.

3. Company Directorship A foreign national may not sit on the board of directors of an enterprise established in Brunei Darussalam unless one of the two directors or, where there are more than two directors, at least two of them shall be ordinarily resident in Brunei Darussalam. For the purposes of this entry, a foreign national shall apply to the Ministry of Finance in order to be considered as being "ordinarily resident in Brunei Darussalam".

Sector: Manufacturing and Services Incidental to Manufacturing

Obligations Concerned: Performance Requirements (Article 9.10)

Measures: Brunei Darussalam Long--Term Development Plan Administrative Measures and Guidelines

Description: Investment

Foreign investors may not utilise sites under the control of the Ministry of Primary Resources and Tourism and the Brunei Economic Development Board for any manufacturing and services incidental to manufacturing activities unless they comply with the following: (a) to purchase, use, or accord a preference to goods produced in Brunei Darussalam, to purchase goods from local suppliers; or (b) to transfer technology or other proprietary knowledge to persons in Brunei Darussalam, as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

Sector: Agriculture and Services Incidental to Agriculture

Obligations Concerned: Performance Requirements (Article 9.10)

Measures: Brunei Darussalam Long--Term Development Plan Administrative Measures and Guidelines

Description: Investment

Foreign investors may not utilise sites under the control of the Department of Agriculture, Ministry of Primary Resources and Tourism, for any agriculture and services incidental to agriculture activities unless they comply with these requirements: (a) to purchase, use or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers; (b) to achieve a given level or percentage of domestic content; or (c) to transfer technology or other proprietary knowledge to persons in Brunei Darussalam, as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

Sector: Fisheries and Services Incidental to Fisheries

Obligations Concerned: Performance Requirements (Article 9.10)

Measures: Brunei Darussalam Long--Term Development Plan Administrative Measures and Guidelines

Description: Investment Foreign investors may not utilise sites under the control of the Department of Fisheries, Ministry of Primary Resources and Tourism, for any fisheries and services incidental to fisheries activities unless they comply with requirements to purchase, use or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers, or to comply with any requirement to transfer technology or other proprietary knowledge, as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

Sector: Forestry and Services Incidental to Forestry

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Market Access (Article 10.5)

Measures: National Forestry Policy (1990) Brunei Darussalam Long--Term Development Plan Administrative Measures and Guidelines (Strategic Plan 2004 –– 2023)

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals or enterprises shall not establish an enterprise to undertake activities related to forestry or services incidental to forestry: (a) except through a joint venture with a Brunei national or Bruneian enterprise in which the foreign national or enterprise does not own more than 70 per cent equity; and (b) unless they comply with any performance requirements which may be imposed, including a requirement to transfer technology or other proprietary knowledge, as long as such requirement does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

2. For greater certainty, this entry does not apply to logging activities.

Sector: Construction Services

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Local Presence (Article 10.6)

Measures: Architects, Professional Engineers and Quantity Surveyors Order 2011 Building Control Order 2011 (Draft)

Building Control Regulations (Draft) Procedures of Contractors and Suppliers Registration, Ministry of Development (Edition 2009) Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises are not allowed to supply construction services such as: general construction work for building services, general construction work for civil engineering, installation and assembly work services, building completion and finishing work services, except mining, and mechanical engineering services, unless: (a) through an enterprise established in Brunei Darussalam; (b) they register for either Certificate A or Certificate B, as a contractor or supplier; or (c) they comply with any requirement to transfer technology or other proprietary knowledge to persons in Brunei Darussalam as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

2. In the case of Certificate A, a foreign national or enterprise may not own equity shareholding other than what is prescribed in the table below, in any enterprise that applies to be registered as a contractor or supplier:

Table

Class	Project Threshold	Level of Foreign Equity Allowed
I	Up to BND 50 000	None
II	Exceeding BND 50 000 but not more than BND 250 000	None
III	Exceeding BND 250 000 but not more than BND 500 000	20 per cent
IV	Exceeding BND 500 000 but not more than BND 1.5 million	50 per cent
V	Exceeding BND 1.5 million but not more than BND 5 million	70 per cent
VI	Exceeding BND 5 million	90 per cent
Building Specialist and Supplier	No threshold	90 per cent
Mechanical and Electrical Specialist and Supplier	No threshold	90 per cent

3. For greater certainty, Certificate A refers to certificates which are required for participating in government and private projects, whilst Certificate B refers to certificates which are required for participating in private projects only.

Sector: Environmental Services

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Local Presence (Article 10.6)

Measures: Pollution Control Guidelines for Industrial Development of Brunei Darussalam Planning Guidelines for Earthworks Development (Focus on Environmental Sensitive Area) 2009 Planning Guidelines and Standards for Industrial Development 2010 Environmental Impact Assessment Order 2011 (Draft) Environmental Protection and Management Order 2012 Hazardous Waste (Control of Export, Import and Transit) Order 2011 (Draft) Hazardous Waste (Control of Export, Import and Transit) Regulations (Draft) Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises are not allowed to provide consultancy services on environmental protection and management; waste management services; landscape design management and maintenance services and janitorial services, roadside and cleaning works services, unless: (a) they are established as an enterprise in Brunei Darussalam; (b) they register for either Certificate A or Certificate B, as a contractor or supplier; or (c) they comply with any requirement to transfer technology or other proprietary knowledge to persons in Brunei Darussalam as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of the technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

2. In the case of Certificate A, a foreign national or enterprise may not own equity shareholding other than what is prescribed in the table below, in any enterprise that applies to be registered as a contractor or supplier:

Table

Class	Project Threshold	Level of Foreign Equity Allowed
I	Up to BND 50 000	None
II	Exceeding BND 50 000 but not more than BND 250 000	None
III	Exceeding BND 250 000 but not more than BND 500 000	20 per cent
IV	Exceeding BND 500 000 but not more than BND 1.5 million	50 per cent
V	Exceeding BND 1.5 million but not more than BND 5 million	70 per cent
VI	Exceeding BND 5 million	90 per cent
Building Specialist and Supplier	No threshold	90 per cent
Mechanical and Electrical Specialist and Supplier	No threshold	90 per cent

3. For greater certainty, Certificate A refers to certificates which are required for participating in government and private projects, whilst Certificate B refers to certificates which are required for participating in private projects only.

Sector: Business Services

Sub--Sector: Auditing services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Measures: Companies Act (Chapter 39) Accountants Order 2010 Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises may not establish financial auditing enterprises in Brunei Darussalam, except through a partnership or joint venture with at least one authorised Bruneian auditor.

2. If they are not established in Brunei Darussalam, foreign nationals and enterprises may not provide financial auditing services in Brunei Darussalam, unless: (a) authorised by the Ministry of Finance; or (b) through a locally established auditor or enterprise provided that they are authorised by the Ministry of Finance.

3. For greater certainty, the term “authorised” refers to a qualified person who has been authorised by the Ministry of Finance to provide financial auditing services.

Sector: Telecommunication Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6)

Measures: Telecommunications Order 2001 AiTi Operational Framework

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises may not provide telecommunication services for which Brunei Darussalam requires a licence (1) in the territory of Brunei Darussalam, unless: (a) they maintain a physical business presence in Brunei Darussalam; (b) they provide such services through a commercial arrangement with a licensed operator in Brunei Darussalam; and (c) where so required, they locate their transmission equipment used for the provision of public telecommunications networks or supply of public telecommunications services within Brunei Darussalam.

2. Except where specifically approved by the Ministry of Communications, foreign nationals and enterprises may not own more than 51 per cent equity shareholding in any telecommunication enterprises. The approval process for exceeding this 51 per cent threshold shall be based on objective criteria and be implemented in an impartial manner.

3. Foreign nationals and enterprises may not undertake activities related to telecommunication services unless they comply with any performance requirements that may be imposed. Such performance requirements shall not include a requirement to purchase domestic telecommunications equipment.

4. For greater certainty, telecommunication services means any services for telecommunications, which means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems whether or not such signs, signals, writing, images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception; but excludes any broadcasting service.

(1) Software application-based services provided over the Internet (Over-the-Top services) do not currently require a licence in Brunei Darussalam.

Sector: Business Services

Sub--Sector: Architectural services, Engineering services, Integrated engineering services, Quantity surveying services, Related scientific and technical consulting services, Surveying services, Urban planning and landscape services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Measures: Architects, Professional Engineers and Quantity Surveyors Order 2011 Licensed Land Surveyors Act (Chapter 100) Licensed Land Surveyors (Amendment) Order (Draft) Licensed Land Surveyors Regulations (Draft) Town Planners Registration Order (Draft) Town Planners (Forms and Fees) Rules (Draft) Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises may not supply architectural services, engineering services, integrated engineering services or quantity surveying services, unless: (a) they are resident in Brunei Darussalam for at least 90 days per calendar year and are registered as an architect, professional engineer or quantity surveyor in that sector with Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors; (b) if they are not resident in Brunei Darussalam, through a local enterprise where the services suppliers are registered as an architect, professional engineer or quantity surveyor and hold a practising certificate in that sector with Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors; or (c) through an enterprise established in Brunei Darussalam that is a partnership or joint venture with at least one Brunei national who is registered as an architect, professional engineer or quantity surveyor and holds a practising certificate in that sector with Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors.

2. Foreign nationals and enterprises may not provide urban planning and landscape services, related scientific and technical consulting services, and surveying services, unless: (a) they are resident in Brunei Darussalam for at least 90 days per calendar year and are registered as a planner or surveyor in that sector with the Ministry of Development; (b) if they are not

resident in Brunei Darussalam, through a local enterprise where the services suppliers are registered as planner or surveyor in that sector with the Ministry of Development; or (c) through an enterprise established in Brunei Darussalam that is a partnership or joint venture with at least one Brunei national who is registered as a planner or surveyor in that sector with the Ministry of Development.

Sector: Business Services

Sub-Sector: Unarmed guard services

Obligations Concerned: Local Presence (Article 10.6)

Measures: Security Agencies Act (Chapter 187) Administrative Measures and Guidelines

Description: Cross-Border Trade in Services

Foreign nationals and enterprises may not provide unarmed guard services unless they establish an enterprise in Brunei Darussalam.

Sector: Business Services

Sub-Sector: Placement and supply services of personnel Employment agencies

Obligations Concerned: National Treatment (Article 9.4) Local Presence (Article 10.6)

Measures: Employment Agencies Order 2004 Administrative Measures and Guidelines

Description: Investment and Cross-Border Trade in Services

A foreign national or enterprise may not supply, or establish an enterprise to supply, services to place or supply personnel, or an employment agency, except through a local agent or enterprise registered with the Department of Labour, Ministry of Home Affairs.

Sector: Business Licences

Obligations Concerned: National Treatment (Article 9.4)

Measures: Miscellaneous Licences Act (Chapter 127) Municipal Board Act (Chapter 57) Municipal Board Enactment 1920 Road Traffic Act (Chapter 68) Public Entertainment Act (Chapter 181) Administrative Measures and Guidelines

Description: Investment

1. A “Business Licence” may only be granted to a Brunei national.

2. For greater certainty this entry is limited to the issuance of “Business Licences” for the operation of commercial properties identified in the listed measures. Business Licences are required for the enforcement of health and safety regulations, and do not restrict the participation of foreign nationals in any activity where such a Business Licence is required, unless otherwise provided for in this Schedule.

Sector: Private Health and Social Services

Sub-Sector: General medical practitioners Specialised medical practitioners Dental practitioners

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Measures: Medical Practitioners and Dentists Act (Chapter 112)

Description: Cross-Border Trade in Services

A foreign national may not establish a private practice for the provision of general medical, specialised medical or dental services unless the foreign national has worked in Brunei Darussalam for at least six cumulative years as a general medical, specialised medical or dental practitioner, which shall include three years of clinical service in a public hospital, health centre or clinic under the Ministry of Health.

Sector: Tourism and Travel Related Services

Sub-Sector: Travel agents Tour operator services

Obligations Concerned: National Treatment (Article 9.4)

Measures: Travel Agents Act (Chapter 103) Administrative Measures and Guidelines

Description: Investment

1. Foreign nationals and enterprises may not establish a travel agency in Brunei Darussalam.

2. Foreign nationals and enterprises may not own more than 70 per cent equity shareholding in any enterprise established in Brunei Darussalam providing tour operator services.

Sector: Tourism

Sub-Sector: Hotels/Boarding House/Lodging

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Measures: Miscellaneous Licences Act (Chapter 127) Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

Foreign nationals and enterprises may not establish hotels, boarding houses or lodgings in Brunei Darussalam, unless: (a) through a joint venture with a Brunei national or Bruneian enterprise; (b) the majority of senior managers in the joint venture are Brunei nationals; and (c) they comply with any commitment or understanding to purchase, use or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers.

Sector: Mining and Quarrying of sand (apart from silica sand) and gravel, and Services incidental to Mining and Quarrying of sand and gravel

Obligations Concerned: National Treatment (Article 9.4)

Measures: Mining Act (Chapter 42) Administrative Measures and Guidelines

Description: Investment

1. Unless authorised to do so by the Ministry of Development, a foreign national may not establish an enterprise to mine or quarry for sand (apart from silica sand) or gravel, or provide any services incidental to such mining and quarrying of sand or gravel.

2. Any sand (apart from silica sand) or gravel mined or quarried in Brunei Darussalam is only allowed to be used within Brunei Darussalam and is not allowed to be exported.

Sector: Trade Fair and Exhibition Organising Services

Obligations Concerned: National Treatment (Article 10.3)

Measures: Public Entertainment Act (Chapter 181)

Description: Cross--Border Trade in Services

A foreign national may not provide trade fair and exhibition organising services in Brunei Darussalam except with the written approval of the Ministry of Home Affairs or Ministry of Primary Resources and Tourism, which includes the requirement of supporting documents from the relevant government agencies or diplomatic representative office of that respective foreign national, depending on the sector involved.

Sector: Transport Services

Sub-Sector: Rail transport services

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Measures: Administrative Measures and Guidelines

Description: Investment and Cross-Border Trade in Services

Foreign nationals and enterprises may not provide rail transport services in Brunei Darussalam, unless: (a) through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own

more than 49 per cent equity shareholding in the joint venture; (b) they comply with any performance requirements imposed, including requirements to transfer a particular technology or other proprietary knowledge as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam; or (c) a majority of the senior managers in the joint venture are Brunei nationals.

Sector: Transport Services

Sub-Sector: Maritime passenger transport services, Maritime freight transport services, Services auxiliary to maritime transport

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Measures: Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises may not provide maritime passenger and freight transport services as Brunei Darussalam-flagged vessels in Brunei Darussalam, unless: (a) they register such vessels under the Brunei Darussalam flag through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 40 per cent equity shareholding in the joint venture; (b) they comply with any performance requirements imposed, including a requirement to transfer a particular technology or other proprietary knowledge as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam; and (c) a majority of the senior managers in the joint venture are Brunei nationals.

2. Foreign nationals and enterprises may not provide services auxiliary to maritime transport services at Muara Port, unless: (a) through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in any such enterprise providing services auxiliary to maritime transport services; and (b) a majority of the senior managers in any such enterprise established are Brunei nationals.

3. The number of enterprises in Brunei Darussalam providing maritime passenger and freight transport services and services auxiliary to maritime transport at Muara Port may be subject to needs--based quantitative limits.

Sector: Transport Services

Sub-Sector: Specialty air services (flight training organisation)

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Measures: Administrative Measures and Guidelines

Description Investment and Cross-Border Trade in Services

1. Foreign nationals and enterprises may not provide specialty air transport services (flight training) in Brunei Darussalam, unless: (a) through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 49 per cent equity shareholding in any such enterprise providing specialty air services (flight training); (b) they comply with any performance requirements imposed, including a requirement to transfer a particular technology or other proprietary knowledge as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology and is not for the purpose of commercial exploitation by Brunei Darussalam; and (c) a majority of the senior managers in any such enterprises established are Brunei nationals.

2. The number of enterprises in Brunei Darussalam providing specialty air services (flight training) may be subject to needs--based quantitative limits.

Sector: Communication Services

Sub-Sector: Courier services, including express delivery services Obligations Concerned: National Treatment (Article 9.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Measures: Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

Foreign nationals and enterprises may not supply courier services, including express delivery services, in Brunei Darussalam, unless through an enterprise established in Brunei Darussalam that is a joint venture, to provide such services.

Sector: Business Services

Sub-Sector: Professional services Legal services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Measures: Legal Profession Act (Chapter 132)

Description: Investment and Cross--Border Trade in Services

1. A foreign national or service supplier may not supply legal services in Brunei Darussalam except in relation to international law or home country law.

2. A foreign national or service supplier may not establish an enterprise for the supply of legal services in Brunei Darussalam in relation to international law or home country law, except through a partnership with at least one registered Bruneian advocate and solicitor.

Sector: Education Services

Sub-Sector: Higher education services International schools

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Measures: Education Order (Chapter 210)

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals and enterprises may not supply higher education services through a commercial presence in Brunei Darussalam, unless: (a) through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in the joint venture; (b) they comply with any performance requirements imposed, including a requirement to transfer a particular technology or other proprietary knowledge as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam; and (c) a majority of the senior managers in the joint venture are Brunei nationals.

2. Foreign enterprises are not allowed to be set up as branches or associate institutions unless authorised by the Minister of Education.

3. Foreign nationals and enterprises may not establish international schools in Brunei Darussalam unless authorised by the Minister of Education.

Sector: Land

Obligations Concerned: National Treatment (Article 9.4)

Measures: Land Code (Chapter 40) Land Acquisition (Chapter 41) Land Code (Strata) Act (Chapter 189)

Description: Investment

Subject to review and approval by the relevant committee (Komiti bagi Mempertimbangkan Permohonan Pindahmilik Strata) chaired by the Minister of Development, or his authorised representative, a foreign national or enterprise: (a) may own or lease non--landed property (strata title) for up to a maximum of: (i) 99 years where the property is situated on land which is held in perpetuity (freehold); or (ii) one day less than the term of the lease where the land held is leasehold land; and (b) may not own or lease more than 70 per cent of the individual strata titles in a single property.

Sector: Petroleum

Obligations Concerned: National Treatment (Article 9.4)

Measures: Petroleum Mining Act (Chapter 44) (the Act) Brunei National Petroleum Company Sendirian Berhad Order, 2002 Petroleum (Pipe--Lines) Act (Chapter 45) Administrative Measures and Guidelines

Description: Investment

1. Under the Act, the State Party has exclusive ownership of and rights over petroleum in the territory of Brunei Darussalam. The State Party presently includes Brunei National Petroleum Company Sdn. Bhd. ("PetroleumBRUNEI"). Private companies may obtain exploration, exploitation, development and production rights for petroleum through petroleum mining Agreements with the State Party.

2. The State Party may require that investment in Brunei Darussalam by an investor of another Party take the form of a joint venture or a similar arrangement with a Bruneian enterprise, which may include PetroleumBRUNEI or any of its subsidiaries.

3. The State Party may require as a contractual term that, during the exploration or development period, all relevant costs with respect to the maximum participating interest of the Bruneian enterprise be borne by the partner that is an investor of another Party. Consequently, on the expiration of the carry interest period, the Bruneian enterprise will bear the costs of future operations in proportion to its participating interests in the petroleum mining Agreement.

4. The State Party may require as a contractual term that a Bruneian enterprise may acquire a participating interest, or increase its participating interest, in the joint venture or similar arrangement upon the occurrence of a stipulated event.

5. The terms "State Party", "petroleum mining Agreement" and "petroleum" used herein shall have the meanings ascribed to them under the Act.

Sector: Petroleum

Obligations Concerned: Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Measures: Administration Measures and Guidelines

Description: Investment

Foreign enterprises acting as operators in the upstream, midstream and downstream oil and gas industry may be: (a) contractually required to provide a portion of natural gas or manufactured petrochemical products and their derivatives in Brunei Darussalam for domestic use; or (b) required to appoint a certain percentage of Brunei nationals to management positions.

Sector: Services supporting the petroleum industry

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Measures: Local Business Development Directive No. 2 of the Energy Department, Prime Minister's Office

Description: Investment and Cross--Border Trade in Services

1. A foreign national or enterprise shall not supply, or establish an enterprise to supply services in the upstream, midstream and downstream petroleum industry in the services listed in Appendix I – A, unless as may otherwise be authorised by the Government of Brunei Darussalam.

2. Where a foreign national or enterprise has a contract for the provision of services listed in Appendix I – A, it may only provide such services through a Brunei national or Bruneian enterprise.

Sector: Services supporting the petroleum industry

Obligations Concerned: Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Measures: Local Business Development Directive No. 2 of the Energy Department, Prime Minister's Office

Description: Investment and Cross--Border Trade in Services

1. A foreign national or enterprise may supply, or establish an enterprise to supply services in the upstream, midstream and downstream petroleum industry other than those listed in Appendix I – A.

2. Where the total approved contract value for the supply of services in paragraph 1 is more than BND 10 million, the foreign national or enterprise must comply with the following requirements: (a) appoint at least 40 per cent or more, Brunei

nationals to the enterprise's management positions in Brunei Darussalam within the duration of the contract period; (b) accord a preference to goods and services produced in Brunei Darussalam so that at least 40 per cent, or more, of goods and services are produced or purchased in Brunei Darussalam within the duration of the contract period; and (c) establish or maintain a representative office or any form of enterprise, or be resident in Brunei Darussalam, unless as may otherwise be authorised by the Government of Brunei Darussalam.

Sector: Services supporting the petroleum industry

Sub-Sector: Operation of Marine Supply Base and Shipyard

Obligations Concerned: National Treatment (Article 9.4) Market Access (Article 10.5)

Measures: Administrative Measures and Guidelines

Description: Investment and Cross--Border Trade in Services

1. Foreign nationals or enterprises may not establish a marine supply base or shipyard to supply services to the oil and gas industry except through a joint venture with a Brunei national or Bruneian enterprise, and may not own more than 49 per cent equity shareholding in the joint venture.

2. The number of marine supply bases or shipyards in Brunei Darussalam may be subject to needs--based quantitative limits.

APPENDIX I-A. Work Categories

Corporate Services

1. Provision of environmental health services, including pest prevention services. This does not include advisory and consultancy services

2. Provision of media publication services

3. Provision of event management services

4. Provision of travel arrangements for staff (other than those booked online)

Engineering Design

1. Provision of quantity surveying services

Facility Management

1. Provision of supply, rental, installation and maintenance of air--conditioners for onshore and offshore areas

2. Provision of catering, cleaning, laundry and recreational services at offshore facilities

3. Provision of housekeeping and catering services for onshore oil and gas facilities including lodging

4. Provision of building and maintenance services for staff housing

5. Provision of electrical maintenance services for staff housing

6. Provision of landscape maintenance services

7. Provision of packing and transportation services for staff

8. Provision of office support services

9. Provision of security services

10. Provision of warehousing services for storage

11. Provision of maintenance services for industrial buildings

12. Provision of civil infrastructure services including maintenance, construction, renovation and demolition

13. Provision of courier services to worldwide locations and within Brunei

Inspection Services

1. Provision of specialist inspection and non--destructing testing services

Instrumentation – Aftermarket

1. Provision of after-sales maintenance services for instrumentation equipment and spare parts

Land

1. Provision of spot or term hire of light vehicles

2. Provision of spot or term hire of medium/heavy vehicles. This does not include specialised or special-purpose vehicles

3. Provision of material handling and manpower services

4. Provision of material clearing and forwarding services for air and sea freight

5. Provision of road fuel tankers and maintenance services for transport of petroleum products domestically

Marine Vessels

1. Provision of chartered anchor handling tugs

2. Provision of chartered barges for accommodation and working deck space

3. Provision of chartered Liquefied Natural Gas (LNG) tugs to support berthing of LNG vessels

4. Provision of chartered contingencies utility craft to support safety coverage

5. Provision of chartered fast crew boats for passenger transfer and light cargo

6. Provision of chartered vessels for general purpose launches, area launches, standby launches

7. Provision of chartered supply vessels

Offshore Maintenance Services

1. Provision of offshore construction and maintenance services including work pack preparation, project preparation, installation, repair and maintenance work

2. Provision of blasting and painting services for offshore facilities

3. Provision of scaffolding equipment and maintenance activities for offshore platforms

Onshore Fabrication

1. Provision of onshore fabrication services to support onshore brownfield projects and minor maintenance activities

2. Provision of onshore fabrication services to support offshore structures

3. Provision of onshore construction services

Onshore Maintenance Services

1. Provision of fabrication, installation and maintenance of onshore production support facilities including landfield maintenance and construction, tank maintenance and construction, project support for brownfield/greenfield projects and other associated services

2. Provision of scaffolding for onshore work

3. Provision of well tie--in services for onshore wells

4. Provision of workshop services including maintenance, repair, testing of equipment

Rotating equipment – aftermarket

1. Provision of after-sales maintenance services for rotating equipment and spare parts

Static equipment – aftermarket

1. Provision of after-sales maintenance services for static equipment and spare parts

Training

1. Provision of basic management, supervisory and development training. Training activities are either non--technical (such as soft skills) or minimal technical training. This does not include higher or tertiary education services, such as specialised technical training and engineering expertise.

Well Construction Services

1. Provision of chemicals and brine mixing services to support drilling activities

2. Provision of low--end drilling tools and equipment

3. Provision of post--drilling platform and tank cleaning services

Well Intervention

1. Provision of coil tubing services and equipment for onshore activities

2. Provision of hoist services for in support of onshore wells workover operations and related activities

3. Provision of equipment and personnel for well abandonment services

4. Provision of well integrity and maintenance services

Product Categories

1. Supply of materials and equipment for civil works including building material and hardware, small tools, textiles and clothing

2. Supply of flat--rack containers for storage and transportation

3. Supply of material handling accessories including wire ropes, cordage chains and tackles

4. Supply of non--office materials and equipment including furniture and household requisites

5. Supply of office materials and equipment including office machines, stationery and consumables

6. Supply of vehicles and vehicles accessories including bicycles. This does not include specialised or special--purpose vehicles.

7. Supply of abrasives, polishes and compounds

8. Supply of lubricants including oil products, greases and fuel additives

9. Supply of workshop tools and accessories including machine and pneumatic tools and accessories, welding and spraying equipment

SCHEDULE OF CANADA INTRODUCTORY

1. Description provides a general non-binding description of the measure for which the entry is made.

2. Obligations Concerned specifies the obligations referred to in Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures) that do not apply to the listed measures.

3. In the interpretation of an entry, all elements of an entry shall be considered. An entry shall be interpreted in the light of the relevant provisions of the Chapters against which the entry is taken. To the extent that:

(a) the Measures element is qualified by a liberalisation commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element prevails over other elements, unless a discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element prevails, in which case the other elements prevail to the extent of that discrepancy.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.) Investment Canada Regulations, SOR/85-611, as qualified by paragraphs 8 through 12 of the Description element

Description: Investment

1. Except as set out in paragraphs 3 and 7, the Director of Investments will review a direct "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by an investor of an original signatory for which the Agreement has entered into force pursuant to Article 30.5 (Entry into Force) if the value of the Canadian business is not less than C$1.5 billion, adjusted in accordance with the applicable methodology in January of each subsequent year as set out in the Investment Canada Act.

2. Notwithstanding the definition of "investor of a Party" in Article 9.1 (Definitions), only investors who are nationals of an original signatory for which the Agreement has entered into force pursuant to Article 30.5 (Entry into Force), or entities controlled by nationals of those Parties, as provided for in the Investment Canada Act, may benefit from the higher review threshold.

3. The higher threshold in paragraph 1 does not apply to a direct "acquisition of control" of a Canadian business by a state owned enterprise of a Party. Such acquisitions are subject to review by the Director of Investments if the value of the Canadian business is not less than C$369 million, adjusted in accordance with the applicable methodology in January of each subsequent year as set out in the Investment Canada Act.

4. An investment subject to review under the Investment Canada Act may not be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. This determination is made in accordance with six factors described in the Act, summarised as follows: (a) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the use of parts, components and services produced in Canada, and on exports from Canada; (b) the degree and significance of participation by Canadians in the investment; (c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada; (d) the effect of the investment on competition within an industry or industries in Canada; (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and (f) the contribution of the investment to Canada's ability to compete in world markets.

5. In making a net benefit determination, the Minister, through the Director of Investments, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with a proposed acquisition that is the subject of review. In the event of non-compliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorised under the Investment Canada Act.

6. A non-Canadian who establishes or acquires a Canadian business, other than those that are subject to review as described above, must notify the Director of Investments.

7. The review thresholds set out in paragraphs 1 and 3 do not apply to an acquisition of a cultural business.

8. In addition, the specific acquisition or establishment of a new business in designated types of business activities relating to Canada's cultural heritage or national identity, which are normally notifiable, may be subject to review if the Governor-in-Council authorises a review in the public interest.

9. An indirect "acquisition of control" of a Canadian business by an investor of a Party in a sector other than a cultural business is not reviewable. 10. Notwithstanding Article 9.

10 (Performance Requirements), Canada may impose requirements, or enforce a commitment or undertaking in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of a Party or of a non-Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada in connection with the review of an acquisition of an investment under the Investment Canada

Act.

11. Except for requirements, commitments or undertakings relating to technology transfer as set out in paragraph 10 of this entry, Article 9.10 (Performance Requirements) applies to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act.

12. For the purposes of this entry: a “non-Canadian” means an individual, government or agency thereof or an entity that is not Canadian; and “Canadian” means a Canadian citizen or permanent resident, a government in Canada or agency thereof, or a Canadian-controlled entity as described in the Investment Canada Act.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Canada Business Corporations Act, R.S.C. 1985, c. C-44 Canada Business Corporations Act Regulations, SOR/2001-512 Canada Cooperatives Act, S.C.1998, c1 Canada Cooperatives Regulations, SOR/99-256

Description: Investment

1. A corporation or distributing cooperative may place constraints on the issue, transfer and ownership of shares in a federally incorporated corporation or cooperative. The object of those constraints is to permit a corporation or cooperative to meet Canadian ownership or control requirements, under certain laws set out in the Canada Business Corporations Act Regulations and Canada Cooperatives Regulations, in sectors where ownership or control is required as a condition to operate or to receive licences, permits, grants, payments or other benefits. In order to maintain certain Canadian ownership levels, a corporation is permitted to sell shareholders’ shares without the consent of those shareholders, and to purchase its own shares on the open market.

2. The Canada Cooperatives Act provides that constraints may be placed on the issue or transfer of investment of shares of a cooperative to persons not resident in Canada to permit cooperatives to meet Canadian ownership requirements to obtain a licence to carry on a business, to become a publisher of a Canadian newspaper or periodicals or to acquire shares of a financial intermediary and in sectors where ownership or control is a required condition to receive licences, permits, grants, payments and other benefits. Where the ownership or control of investment of shares would adversely affect the ability of a cooperative to maintain a level of Canadian ownership or control, the Canada Cooperatives Act provides for the limitation of the number of investment shares that may be owned or for the prohibition of the ownership of investment shares.

3. For the purposes of this entry, “Canadian” means “Canadian” as defined in the Canada Business Corporations Act Regulations, or in the Canada Cooperatives Regulations.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Citizenship Act, R.S.C. 1985, c. C-29 Foreign Ownership of Land Regulations, SOR/79-416

Description: Investment

1. The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act, RSA 1980, c. A-9. In Alberta, an ineligible person or foreign-owned or -controlled corporation may only hold an interest in controlled land consisting of a maximum of two parcels containing, in the aggregate, a maximum of 20 acres.

2. For the purposes of this entry, “ineligible person” means: (a) a natural person who is not a Canadian citizen or permanent resident; (b) a foreign government or agency thereof; or (c) a corporation incorporated in a country other than Canada; and “controlled land” means land in Alberta but does not include: (a) land of the Crown in right of Alberta; (b) land within a city, town, new town, village or summer village; and (c) mines or minerals.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.) Canadian Arsenals Limited Divestiture Authorization Act, S.C. 1986, c. 20 Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41 Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

Description: Investment

1. A "non-resident" or "non-residents" may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For some companies the restrictions apply to individual shareholders, while for others the restrictions may apply in the aggregate. The restrictions are as follows: (a) Air Canada: 25 per cent in the aggregate; (b) Cameco Limited (formerly Eldorado Nuclear Limited): 15 per cent per non-resident natural person, 25 per cent in the aggregate; (c) Nordion International Inc.: 25 per cent in the aggregate; (d) Theratronics International Limited: 49 per cent in the aggregate; and (e) Canadian Arsenals Limited: 25 per cent in the aggregate.

2. For the purposes of this entry, "non-resident" includes: (a) a natural person who is not a Canadian citizen and not ordinarily resident in Canada; (b) a corporation incorporated, formed or otherwise organised outside Canada; (c) the government of a foreign State or a political subdivision thereof, or a person empowered to perform a function or duty on behalf of such a government; (d) a corporation that is controlled directly or indirectly by an entity referred to in subparagraphs (a) through (c); (e) a trust: (i) established by an entity referred to in subparagraphs (b) through (d), other than a trust for the administration of a pension fund for the benefit of natural persons the majority of whom are resident in Canada; or (ii) in which an entity referred to in subparagraphs (a) through (d) has more than 50 per cent of the beneficial interest; and (f) a corporation that is controlled directly or indirectly by a trust referred to in subparagraph (e).

Sector: All

Sub-Sector:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Export and Import Permits Act, R.S.C. 1985, c. E-19

Description: Cross-Border Trade in Services

Only individuals ordinarily resident in Canada, enterprises having their head offices in Canada or branch offices in Canada of foreign enterprises may apply for and be issued import or export permits or transit authorisation certificates for goods and related services subject to controls under the Export and Import Permits Act.

Sector: Business Service Industries

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.) Customs Brokers Licensing Regulations, SOR/86-1067

Description: Investment and Cross-Border Trade in Services

To be a licensed customs broker in Canada: (a) a natural person must be a Canadian national; (b) a corporation must be incorporated in Canada with a majority of its directors being Canadian nationals; and (c) a partnership must be composed of persons who are Canadian nationals, or corporations incorporated in Canada with a majority of their directors being Canadian nationals.

Sector: Business Service Industries

Sub-Sector: Duty free shops

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Customs Act, R.S.C. 1985, c. 1 (2nd Supp.) Duty Free Shop Regulations, SOR/86-1072

Description: Investment and Cross-Border Trade in Services

1. To be a licensed duty free shop operator at a land border crossing in Canada, a natural person must: (a) be a Canadian national; (b) be of good character; (c) be principally resident in Canada; and (d) have resided in Canada for at least 183 days of the year preceding the year of application for the licence.

2. To be a licensed duty free shop operator at a land border crossing in Canada, a corporation must: (a) be incorporated in Canada; and (b) have all of its shares beneficially owned by Canadian nationals who meet the requirements of paragraph 1.

Sector: Business Service Industries

Sub-Sector: Examination services relating to the export and import of cultural property

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

Description: Cross-Border Trade in Services

Only a “resident of Canada” or an “institution” in Canada may be designated as an “expert examiner” of cultural property for the purposes of the Cultural Property Export and Import Act. A “resident” of Canada is an individual who is ordinarily resident in Canada, or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees employed in connection with the business of the corporation ordinarily report for work. An “institution” is an institution that is publicly owned and operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them.

Sector: Professional Services

Sub-Sector: Patent agents, patent agents supplying legal advisory and representation services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Patent Act, R.S.C. 1985, c. P-4 Patent Rules, SOR/96-423

Description: Cross-Border Trade in Services

To represent a person in the prosecution of a patent application or in other business before the Patent Office, a patent agent must be resident in Canada and registered by the Patent Office.

Sector: Professional Services

Sub-Sector: Trade-mark agents, trade-mark agents supplying legal advisory and representation services in statutory procedures

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Trade-marks Act, R.S.C. 1985, c. T-13 Trade-marks Regulations, SOR/96-195

Description: Cross-Border Trade in Services

To represent a person in the prosecution of an application for a trade-mark or in other business before the Trade-marks Office, a trade-mark agent must be resident in Canada and registered by the Trade-marks Office.

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.) Territorial Lands Act, R.S.C. 1985, c. T-7 Federal Real Property and Federal Immovables Act, S.C. 1991, c. 50 Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3 Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Description: Investment

1. This entry applies to production licenses issued for “frontier lands” and “offshore areas” (areas not under provincial jurisdiction) as defined in the applicable measures.

2. A person who holds an oil and gas production licence or shares therein must be a corporation incorporated in Canada.

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: Performance Requirements (Article 9.10) Local Presence (Article 10.6)

Level of Government: Central

Measures: Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. O-7, as amended by Canada Oil and Gas Operations Act, S.C. 1992, c. 35 Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28 Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3 Measures implementing the Canada-Yukon Oil and Gas Accord, including the Canada-Yukon Oil and Gas Accord Implementation Act, 1998, c.5, s.20 and the Oil and Gas Act, RSY 2002, c.162 Measures implementing the Northwest Territories Oil and Gas Accord, including implementing measures that apply to or are adopted by Nunavut as the successor territories to the former Northwest Territories Measures implementing the Canada-Quebec Gulf of St. Lawrence Petroleum Resources Accord

Description: Investment and Cross-Border Trade in Services

1. Under the Canada Oil and Gas Operations Act, a benefits plan must be approved by the Minister responsible for the Act in order to proceed with an oil and gas development project.

2. A “benefits plan” is a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in proposed work or activity referred to in the benefits plan.

3. The benefits plan contemplated by the Canada Oil and Gas Operations Act permits the Minister responsible for the Act to impose on the applicant an additional requirement to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in proposed work activity referred to in the benefits plan.

4. Provisions continuing those set out in the Canada Oil and Gas Operations Act are included in laws which implement the Canada-Yukon Oil and Gas Accord.

5. Provisions continuing those set out in the Canada Oil and Gas Operations Act will be included in laws or regulations to implement the Northwest Territories Oil and Gas Accord and the Canada-Quebec Gulf of St. Lawrence Petroleum Resources Accord. For the purposes of this entry these accords shall be deemed, once concluded, to be existing measures.

6. The Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada - Newfoundland Atlantic Accord Implementation Act have the same requirement for a benefits plan but also require that the benefits plan ensures that: (a) the corporation or other body submitting the plan establishes in the applicable province an office where appropriate levels of decision-making are to take place, prior to carrying out any work or activity in the offshore area; (b) expenditures be made for research and development to be carried out in the province, and for education and training to be provided in the province; and (c) first consideration be given to goods produced or services supplied from within the province, where those goods or services are competitive in terms of fair market price, quality and delivery.

7. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups, or corporations owned or cooperatives operated by them, participate in the supply of goods and services used in proposed work or activity referred to in the plan.

8. In addition, Canada may impose a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a person of Canada in connection with the approval of development projects under the applicable Acts.

Sector: Energy

Sub-Sector: Oil and Gas

Obligations Concerned: Performance Requirements (Article 9.10)

Level of Government: Central

Measures: Canada - Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3 Hibernia Development Project Act, S.C. 1990, c. 41

Description: Investment

1. Under the Hibernia Development Project Act, Canada and the Hibernia Project Owners may enter into agreements. Those agreements may require the Project Owners to undertake to perform certain work in Canada and Newfoundland and to use their best efforts to achieve specific Canadian and Newfoundland target levels in relation to the provisions of a "benefits plan" required under the Canada-Newfoundland Atlantic Accord Implementation Act. "Benefits plans" are further described in Annex I – Canada – 17.

2. In addition, Canada may impose in connection with the Hibernia project a requirement or enforce a commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada.

Sector: Energy

Sub-Sector: Uranium

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.) Investment Canada Regulations, SOR/85-611 Policy on Non-Resident Ownership in the Uranium Mining Sector, 1987

Description: Investment

1. Ownership by "non-Canadians", as defined in the Investment Canada Act, of a uranium mining property is limited to 49 per cent at the stage of first production. Exceptions to this limit may be permitted if it can be established that the property is in fact "Canadian-controlled" as defined in the Investment Canada Act.

2. Exemptions from the Policy on Non-Resident Ownership in the Uranium Mining Sector are permitted, subject to approval of the Governor-in-Council, only in cases where Canadian participants in the ownership of the property are not available. Investments in properties by non-Canadians, made prior to December 23, 1987 and that are beyond the permitted ownership level, may remain in place. No increase in non-Canadian ownership is permitted.

3. In considering a request for an exemption from the Policy from an investor of an original signatory for which the Agreement has entered into force pursuant to Article 30.5 (Entry into Force), Canada will not require that it be demonstrated that a Canadian partner cannot be found.

Sector: Transportation

Sub-Sector: Air transportation

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Canada Transportation Act, S.C. 1996, c. 10 Aeronautics Act, R.S.C. 1985, c. A-2 Canadian Aviation Regulations, SOR/96-433: Part II "Aircraft Markings & Registration"; Part IV "Personnel Licensing & Training"; and Part VII "Commercial Air Services"

Description: Investment

1. The Canada Transportation Act, in Section 55, defines "Canadian" as: "a Canadian citizen or a permanent resident within the meaning of the Immigration and Refugee Protection Act, a government in Canada or an agent of such a government or a

corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75 per cent, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians."

2. Regulations made under the Aeronautics Act incorporate by reference the definition of "Canadian" found in the Canada Transportation Act. These Regulations require that a Canadian operator of commercial air services operate Canadian-registered aircraft. These regulations require an operator to be Canadian in order to obtain a Canadian Air Operator Certificate and to qualify to register aircraft as "Canadian".

3. Only "Canadians" may supply the following commercial air transportation services: (a) "domestic services" (air services between points, or from and to the same point, in the territory of Canada, or between a point in the territory of Canada and a point not in the territory of another country); (b) "scheduled international services" (scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under existing or future air services agreements; (c) "non-scheduled international services" (non-scheduled air services between a point in the territory of Canada and a point in the territory of another country) where those services have been reserved to Canadian carriers under the Canada Transportation Act; and (d) "specialty air services" (include, but are not limited to: aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing and aerial crop spraying).

4. No foreign individual is qualified to be the registered owner of a Canadian-registered aircraft.

5. Further to the Canadian Aviation Regulations, a corporation incorporated in Canada, but that does not meet the Canadian ownership and control requirements, may only register an aircraft for private use where a significant majority of use of the aircraft (at least 60 per cent) is in Canada.

6. The Canadian Aviation Regulations also have the effect of limiting foreign-registered private aircraft registered to "non-Canadian" corporations to be present in Canada for a maximum of 90 days per 12-month period. Such foreign-registered private aircraft would be limited to private use, as would be the case for Canadian-registered aircraft requiring a private operating certificate.

Sector: Transportation

Sub-Sector: Air transportation

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Aeronautics Act, R.S.C. 1985, c. A-2 Canadian Aviation Regulations, SOR/96-433: Part IV "Personnel Licensing &Training"; Part V "Airworthiness"; Part VI "General Operating & Flight Rules"; and Part VII "Commercial Air Services"

Description: Cross-Border Trade in Services

Aircraft and other aeronautical product repair, overhaul or maintenance activities required to maintain the airworthiness of Canadian-registered aircraft and other aeronautical products must be performed by persons meeting Canadian aviation regulatory requirements (i.e., approved maintenance organisations and aircraft maintenance engineers). Certifications are not provided for persons located outside Canada, except sub-organisations of approved maintenance organisations that are themselves located in Canada.

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Motor Vehicle Transport Act, R.S.C. 1985, c. 29 (3rd Supp.), as amended by S.C. 2001, c. 13 Canada Transportation Act, S.C. 1996, c.10 Customs Tariff, 1997, C.36

Description: Cross-Border Trade in Services

Only persons of Canada, using Canadian-registered and either Canadian-built or duty-paid trucks or buses, may supply truck or bus services between points in the territory of Canada.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Canada Shipping Act, 2001, S.C. 2001, c. 26

Description: Investment and Cross-Border Trade in Services

1. To register a ship in Canada, the owner of that ship or the person who has exclusive possession of that ship must be: (a) a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act; (b) a corporation incorporated under the domestic laws of Canada, or a province or territory; or (c) if the ship is not already registered in another country, a corporation incorporated under the domestic laws of a country other than Canada if one of the following is acting with respect to all matters relating to the ship, namely: (i) a subsidiary of the corporation that is incorporated under the domestic laws of Canada or a province or territory; (ii) an employee or director in Canada of any branch office of the corporation that is carrying on business in Canada; or (iii) a ship management company incorporated under the laws of Canada or a province or territory.

2. A ship registered in a foreign country which has been bareboat chartered may be listed in Canada for the duration of the charter while the ship's registration is suspended in its country of registry, if the charterer is: (a) a Canadian citizen or permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act; or (b) a corporation incorporated under the domestic laws of Canada or a province or territory.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Canada Shipping Act, 2001, S.C. 2001, C.26 Marine Personnel Regulations SOR/2007-115

Description: Cross-Border Trade in Services

Masters, mates, engineers and certain other seafarers must hold certificates granted by the Minister of Transport as a requirement of service on Canadian registered ships. Such certificates may be granted only to Canadian citizens or permanent residents.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Pilotage Act, R.S.C. 1985, c. P-14 General Pilotage Regulations, SOR/2000-132 Atlantic Pilotage Authority Regulations, C.R.C., c. 1264 Laurentian Pilotage Authority Regulations, C.R.C., c. 1268 Great Lakes Pilotage Regulations, C.R.C., c. 1266 Pacific Pilotage Regulations, C.R.C., c. 1270

Description: Cross-Border Trade in Services

Subject to Annex II – Canada – 12, a licence or a pilotage certificate issued by the relevant regional Pilotage Authority is required to supply pilotage services in the compulsory pilotage waters of the territory of Canada. Only Canadian citizens or permanent residents may obtain such a licence or a pilotage certificate. A permanent resident of Canada who has been issued a pilot's licence or pilotage certificate must become a Canadian citizen within five years of receipt of the licence or pilotage certificate in order to retain it.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Shipping Conferences Exemption Act, 1987, R.S.C. 1985, c. 17 (3rd Supp.)

Description: Cross-Border Trade in Services Members of a shipping conference must maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by those carriers of goods by water.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Coasting Trade Act, S.C. 1992, c. 31

Description: Cross-Border Trade in Services

The prohibitions under the Coasting Trade Act, set out in Annex II – Canada – 10, do not apply to any vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S. Government from the territory of Canada to supply Distant Early Warning sites.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Regional

Measures: All existing non-conforming measures of all provinces and territories.

Description: Investment and Cross-Border Trade in Services For purposes of transparency, Appendix I-A sets out an illustrative, non-binding list of non-conforming measures maintained at the regional level of government.

Sector: Air Transportation

Sub-Sector: Specialty air services as defined in Chapter 10 (Cross-Border Trade in Services)

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Canada Transportation Act, S.C. 1996, c. 10 Air Transportation Regulations, SOR/88-58 Canadian Aviation Regulations, SOR/96-433

Description: Cross-Border Trade in Services

Authorisation from Transport Canada is required to supply specialty air services in the territory of Canada. In determining whether to grant a particular authorisation, Transport Canada will consider among other factors, whether the country in which the applicant, if an individual, is resident or, if an enterprise, is constituted or organised, provides Canadian specialty air service operators reciprocal access to supply specialty air services in that country's territory. Any foreign service supplier authorised to supply specialty air services is required to comply with Canadian safety requirements while supplying such services in Canada.

Sector: Communications

Sub-Sector: Telecommunications transport networks and services Radiocommunications

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Existing Measures: Telecommunications Act, S.C. 1993, c. 38 Canadian Telecommunications Common Carrier Ownership and

Control Regulations, SOR/94-667 Radiocommunications Act, R.S.C. 1985, c. R-2 Radiocommunication Regulations, SOR/96-484

Description: Investment

Foreign investment in facilities-based telecommunications service suppliers is restricted to a maximum, cumulative total of 46.7 per cent voting interest, based on 20 per cent direct investment and 33.3 per cent indirect investment. Facilities-based telecommunications service suppliers must be controlled in fact by Canadians. At least 80 per cent of the members of the board of directors of facilities-based telecommunications service suppliers must be Canadians. Notwithstanding the restrictions described above: (a) foreign investment is allowed up to 100 per cent for suppliers conducting operations under an international submarine cable licence; (b) mobile satellite systems of a foreign service supplier may be used by a Canadian service supplier to supply services in Canada; (c) fixed satellite systems of a foreign service supplier may be used to supply services between points in Canada and all points outside Canada; (d) foreign investment is allowed up to 100 per cent for suppliers conducting operations under a satellite authorisation; and (e) foreign investment is allowed up to 100 per cent for facilities-based telecommunications service suppliers that have revenues, including those of its affiliates, from the supply of telecommunications services in Canada representing less than 10 per cent of the total telecommunications services annual revenues in Canada. Facilities-based telecommunications service suppliers that previously had annual revenues, including those of their affiliates, from the supply of telecommunications services in Canada representing less than 10 per cent of the total telecommunications services annual revenues in Canada may increase to 10 per cent or beyond as long as the increase in such revenues did not result from the acquisition of control of, or the acquisition of assets used to supply telecommunications services by, another facilities-based telecommunications service supplier that is subject to the legislative authority of the Parliament of Canada.

APPENDIX I-A. Illustrative List of Canada's Regional Non-conforming Measures (1)

Sector	Non-conforming measure by jurisdiction
Accounting, auditing and bookkeeping services	Residency: Saskatchewan, British Columbia, Ontario, Nova Scotia, Quebec, Prince Edward Island, Newfoundland and Labrador, Manitoba, Alberta.
	Local Presence: Saskatchewan, Newfoundland and Labrador, Manitoba, Ontario.
Architectural services	Residency: Nova Scotia, Newfoundland and Labrador. Corporate Form: Prince Edward Island requires non-resident firms to maintain a higher percentage of practitioners in a partnership.
Engineering services and integrated engineering services	Residency: Saskatchewan, British Columbia, Ontario, New Brunswick, Alberta.
Urban planning and landscape architecture services	Residency: Newfoundland and Labrador, Saskatchewan.
Real estate services	Residency: Alberta, Quebec, Yukon, Manitoba, British Columbia, Nova Scotia, Prince Edward Island, Newfoundland and Labrador. Local Presence: Saskatchewan, Ontario, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Alberta.
Management consulting services	Residency: Newfoundland and Labrador.

Toll refining	Performance Requirement: Ontario requires treatment or refinement of base metals in Canada.
Placement and supply services of personnel	Local Presence: Ontario.
Investigation and security services	Senior Managers and Board of Directors: Newfoundland and Labrador. Local Presence: Ontario.
Related scientific and technical consulting services	Residency: Ontario, British Columbia, Newfoundland and Labrador. Citizenship: British Columbia, Manitoba. Local Presence: Saskatchewan. Training Requirement: Ontario requires training to be completed in province for accreditation in respect of land surveyors.
Other business services	Residency: Saskatchewan, Ontario, Nova Scotia. Local Presence: Saskatchewan, Newfoundland and Labrador, Nova Scotia, Prince Edward Island.
Distribution services	Citizenship: Quebec. Local Presence: Quebec, Saskatchewan, Newfoundland and Labrador, Nova Scotia, British Columbia, Ontario. Economic Needs Test: Prince Edward Island.
Tourism and travel related services	Residency: Alberta, British Columbia, Ontario. Residency/Citizenship: Alberta, Saskatchewan, Nova Scotia, Newfoundland and Labrador, Quebec. Local Presence: Ontario, Quebec. Taxation: Ontario requires non-residents to pay 20 per cent land transfer tax.
Road transport services (Passenger transportation)	Economic Needs Test: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, Newfoundland and Labrador, Nunavut, Northwest Territories.
Road transport services (Freight transportation)	Local Presence: Quebec. Economic Needs Test: Saskatchewan, Newfoundland and Labrador.

(1) This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from Canada's GATS May 2005 Revised Conditional Offer on Services (TN/S/O/CAN/Rev.1, 12 May 2005).

SCHEDULE OF CHILE

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the Measures element of that entry.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree Law 1.939, Official Gazette, November 10, 1977, Rules for acquisition, administration and disposal of State owned assets, Title I (Decreto Ley 1.939, Diario Oficial, noviembre 10, 1977, Normas sobre adquisición, administración y disposición de bienes del Estado, Título I) Decree with Force of Law (D.F.L.) 4 of the Ministry of Foreign Affairs, Official Gazette, November 10, 1967 (Decreto con Fuerza de Ley (D.F.L.) 4 del Ministerio de Relaciones Exteriores, Diario Oficial, noviembre 10, 1967)

Description: Investment

Chile may only dispose of the ownership or other rights over "State land" to Chilean natural or juridical persons, unless the applicable legal exceptions, such as in Decree Law 1939 (Decreto Ley 1.939), apply. "State land" for these purposes refers to State owned land up to a distance of 10 kilometres from the border and up to a distance of five kilometres from the coastline, measured from the high-tide line. Immovable property situated in areas declared "the borderland zone" by virtue of D.F.L. 4 of the Ministry of Foreign Affairs, 1967 (D.F.L. 4 del Ministerio de Relaciones Exteriores, 1967) may not be acquired, either as property or in any other title, by (1) natural persons with nationality of a neighbouring country; (2) juridical persons with their principal seat in a neighbouring country; (3) juridical persons with 40 per cent or more of capital owned by natural persons with nationality of a neighbouring country; or (4) juridical persons effectively controlled by such natural persons. Notwithstanding the foregoing, this limitation may not apply if an exemption is granted by a Supreme Decree (Decreto Supremo) based on considerations of national interest.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: D.F.L. 1 of the Ministry of Labour and Social Welfare, Official Gazette, January 24, 1994, Labour Code, Preliminary Title, Book I, Chapter III (D.F.L. 1 del Ministerio del Trabajo y Previsión Social, Diario Oficial, enero 24, 1994, Código del Trabajo, Título Preliminar, Libro I, Capítulo III)

Description: Cross-Border Trade in Services

A minimum of 85 per cent of employees who work for the same employer shall be Chilean natural persons or foreigners with more than five years of residence in Chile. This rule applies to employers with more than 25 employees under a contract of employment (contrato de trabajo1). Expert technical personnel shall not be subject to this provision, as determined by the Directorate of Labour (Dirección del Trabajo). An employee shall be understood to mean any natural person who supplies intellectual or material services, under dependency or subordination, pursuant to a contract of employment. 1 For greater certainty, a contract of employment (contrato de trabajo) is not mandatory for the supply of cross-border trade in services.

Sector: Communications

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 18.838, Official Gazette, September 30, 1989, National Television Council, Titles I, II and III (Ley 18.838, Diario Oficial, septiembre 30, 1989, Consejo Nacional de Televisión, Títulos I, II y III) Law 18.168, Official Gazette, October 2, 1982, General Telecommunications Law, Titles I, II and III (Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones, Títulos I, II y III) Law 19.733, Official Gazette, June 4, 2001, Law on Liberties of Opinion and Information and the Exercise of Journalism, Titles I and III (Ley 19.733, Diario Oficial, junio 4, 2001, Ley sobre las Libertades de Opinión e Información y Ejercicio del Periodismo, Títulos I y III)

Description: Investment and Cross-Border Trade in Services

The owner of a social communication medium, such as those that transmit on a regular basis sounds, texts or images, or a national news agency shall, in the case of a natural person, have a duly established domicile in Chile, and in the case of a juridical person, shall be constituted with domicile in Chile or have an agency authorised to operate within the national

territory. Only Chilean nationals may be presidents, administrators or legal representatives of the juridical person. The owner of a concession to supply (a) public telecommunication services; (b) intermediate telecommunication services supplied to telecommunications services through facilities and networks established for that purpose; and (c) sound broadcasting, shall be a juridical person constituted and domiciled in Chile. Only Chilean nationals may be presidents, managers, administrators or legal representatives of the juridical person. In the case of public radio broadcasting services, the board of directors may include foreigners, only if they do not represent the majority. In the case of a social communication medium, the legally responsible director and the person who subrogates him or her must be Chilean, with domicile and residence in Chile, unless the social communication medium uses a language other than Spanish. Requests for public radio broadcasting concessions submitted by juridical persons in which foreigners hold an interest exceeding 10 per cent of the capital shall be granted only if proof is previously provided verifying that similar rights and obligations as those that the applicants will enjoy in Chile are granted to Chilean nationals in their country of origin. The National Television Council (Consejo Nacional de Televisión) may establish, as a general requirement that, programs broadcasted through public (open) television channels include up to 40 per cent of Chilean production.

Sector: Energy

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Level of Government: Central

Measures: Political Constitution of the Republic of Chile, Chapter III (Constitución Política de la República de Chile, Capítulo III) Law 18.097, Official Gazette, January 21, 1982, Constitutional Organic Law on Mining Concessions, Titles I, II and III (Ley 18.097, Diario Oficial, enero 21, 1982, Orgánica Constitucional sobre Concesiones Mineras, Títulos I, II y III) Law 18.248, Official Gazette, October 14, 1983, Mining Code, Titles I and II (Ley 18.248, Diario Oficial, octubre 14, 1983, Código de Minería, Títulos I y II) Law 16.319, Official Gazette, October 23, 1965, Creates the Chilean Nuclear Energy Commission, Titles I, II and III (Ley 16.319, Diario Oficial, octubre 23, 1965, Crea la Comisión Chilena de Energía Nuclear, Títulos I, II y III)

Description: Investment

The exploration, exploitation, and treatment (beneficio) of liquid or gaseous hydrocarbons, deposits of any kind existing in sea waters subject to national jurisdiction, and deposits of any kind wholly or partially located in areas classified as important to national security with mining effects, which qualification shall be made by law only, can be the object of administrative concessions or special operating contracts, subject to the requirements and the conditions to be determined in each case by a Supreme Decree. For greater certainty, it is understood that the term “treatment” (beneficio) shall not include the storage, transportation or refining of the energy material referred to in this paragraph. The production of nuclear energy for peaceful purposes may only be carried out by the Chilean Nuclear Energy Commission (Comisión Chilena de Energía Nuclear) or, with its authorisation, jointly with third persons. Should the Commission grant such an authorisation, it may determine the terms and conditions thereof.

Sector: Mining

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Level of Government: Central Measures: Political Constitution of the Republic of Chile, Chapter III (Constitución Política de la República de Chile, Capítulo III) Law 18.097, Official Gazette, January 21, 1982, Constitutional Organic Law on Mining Concessions, Titles I, II and III (Ley 18.097, Diario Oficial, enero 21, 1982, Orgánica Constitucional sobre Concesiones Mineras, Títulos I, II y III) Law 18.248, Official Gazette, October 14, 1983, Mining Code, Titles I and III (Ley 18.248, Diario Oficial, octubre 14, 1983, Código de Minería, Títulos I y III) Law 16.319, Official Gazette, October 23, 1965, Creates the Chilean Nuclear Energy Commission, Titles I, II and III (Ley 16.319, Diario Oficial, octubre 23, 1965, Crea la Comisión Chilena de Energía Nuclear, Títulos I, II y III)

Description: Investment

The exploration, exploitation, and treatment (beneficio) of lithium, deposits of any kind existing in sea waters subject to national jurisdiction, and deposits of any kind wholly or partially located in areas classified as important to national security with mining effects, which qualification shall be made by law only, can be the object of administrative concessions or special operating contracts, subject to the requirements and the conditions to be determined, in each case by a Supreme Decree. Chile has the right of first offer at market prices and terms for the purchase of mineral products when thorium and uranium are contained in significant quantities. For greater certainty, Chile may require that producers separate from mining products the portion of: (a) liquid or gaseous hydrocarbons; (b) lithium; (c) deposits of any kind existing in sea waters subject to national jurisdiction; and (d) deposits of any kind wholly or partially located in areas classified as important to

national security with mining effects, which qualification shall be made by law only, that exists, in significant amounts, in such mining products and that can be economically and technically separated, for delivery to or for sale on behalf of the State. For these purposes, “economically and technically separated” means that the costs incurred to recover the four types of substances referred to above through a sound technical procedure and to commercialise and deliver those substances shall be lower than their commercial value. Furthermore, only the Chilean Nuclear Energy Commission (Comisión Chilena de Energía Nuclear), or parties authorised by the said Commission, may execute or enter into juridical acts regarding extracted natural atomic materials and lithium, as well as their concentrates, derivatives and compounds.

Sector: Fisheries

Sub-Sector: Aquaculture

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Law 18.892, Official Gazette, 23 December, 1989, General Law on Fisheries and Aquaculture, Titles I and VI (Ley 18.892, Diario Oficial, diciembre 23, 1989, Ley General de Pesca y Acuicultura, Títulos I y VI)

Description: Investment Only Chilean natural or juridical persons constituted in accordance with Chilean law and foreigners with permanent residency may hold an authorisation or concession to carry out aquaculture activities.

Sector: Fisheries and Fishing Related Activities

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 18.892, Official Gazette, December 23, 1989, General Law on Fisheries and Aquaculture, Titles I, III, IV and IX (Ley 18.892, Diario Oficial, diciembre 23, 1989, Ley General de Pesca y Acuicultura, Títulos I, III, IV y IX) Decree Law 2.222, Official Gazette, May 31, 1978, Navigation Law, Titles I and II (Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación, Títulos I y II)

Description: Investment and Cross-Border Trade in Services

Only Chilean natural persons or juridical persons constituted in accordance with Chilean law and foreigners with permanent residency may hold permits to harvest and catch hydrobiological species. Only Chilean vessels are permitted to fish in internal waters, in the territorial sea and in the exclusive economic zone. “Chilean vessels” are those defined in the Navigation Law (Ley de Navegación). Access to industrial extractive fishing activities shall be subject to prior registration of the vessel in Chile. Only a Chilean natural or juridical person may register a vessel in Chile. Such juridical person must be constituted in Chile with principal domicile and real and effective seat in Chile. The president, manager and the majority of the directors or administrators must be Chilean natural persons. In addition, more than 50 per cent of its equity capital must be held by Chilean natural or juridical persons. For these purposes, a juridical person with ownership participation in another juridical person that owns a vessel has to comply with all the requirements mentioned above. A joint ownership (comunidad) may register a vessel if (1) the majority of the joint ownership is Chilean with domicile and residency in Chile; (2) the administrators are Chilean natural persons; and (3) the majority of the rights of the joint ownership (comunidad) belong to a Chilean natural or juridical person. For these purposes, a juridical person with ownership participation in a joint ownership (comunidad) that owns a vessel has to comply with all the requirements mentioned above. An owner (natural or juridical person) of a fishing vessel registered in Chile prior to June 30, 1991 shall not be subject to the nationality requirement mentioned above. In cases of reciprocity granted to Chilean vessels by any other country, fishing vessels specifically authorised by the maritime authorities pursuant to powers conferred by law may be exempted from the requirements mentioned above on equivalent terms provided to Chilean vessels by that country. Access to artisanal fishing (pesca artesanal) activities shall be subject to registration in the Registry for Artisanal Fishing (Registro de Pesca Artesanal). Registration for artisanal fishing (pesca artesanal) is only granted to Chilean natural persons and foreign natural persons with permanent residency, or a Chilean juridical person constituted by the aforementioned persons.

Sector: Sports, Hunting, and Recreational Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 17.798, Official Gazette, October 21, 1972, Title I (Ley 17.798, Diario Oficial, octubre 21, 1972, Título I) Supreme Decree 83 of the Ministry of National Defense, Official Gazette, May 13, 2008 (Decreto Supremo 83 del Ministerio de Defensa Nacional, Diario Oficial, mayo 13, 2008)

Description: Cross-Border Trade in Services

Any person who owns guns, explosives or similar substances must register with the appropriate authority in its domicile, for which purpose a request shall be submitted to the General Directorate for National Mobilisation of the Ministry of National Defence (Dirección General de Movilización Nacional del Ministerio de Defensa Nacional). Any natural or juridical person registered as an importer of fireworks may request authorisation for importation and entrance thereof into Chile from the General Directorate for National Mobilisation (Dirección General de Movilización Nacional) and may keep stocks of the said elements for sale to persons holding authorisation to stage pyrotechnical shows. The Supervisory Authority (Autoridad Fiscalizadora) shall only authorise pyrotechnical shows if a report is available with regard to the installation, development and security measures for the show, which must be signed and approved by a fireworks programmer registered in the national registries of the General Directorate for National Mobilisation (Dirección General de Movilización Nacional) or by a professional certified by the said General Directorate. For the production and execution of pyrotechnical shows, the presence of at least a fireworks expert handler registered with the General Directorate shall be required.

Sector: Specialised Services

Sub-Sector: Customs agents (agentes de aduana) and brokers (despachadores de aduana)

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6) Level of Government: Central Measures: D.F.L. 30 of the Ministry of Finance, Official Gazette, April 13, 1983, Book IV (D.F.L. 30 del Ministerio de Hacienda, Diario Oficial, abril 13, 1983, Libro IV) D.F.L. 2 of the Ministry of Finance, 1998 (D.F.L. 2 del Ministerio de Hacienda, 1998)

Description: Cross-Border Trade in Services

Only Chilean natural persons with residency in Chile may act as customs brokers (Despachadores de Aduana) or agents (Agentes de Aduana).

Sector: Investigation and Security Services

Sub-Sector: Guard services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Decree 1.773 of the Ministry of Interior, Official Gazette, November 14, 1994 (Decreto 1.773 del Ministerio del Interior, Diario Oficial, noviembre 14, 1994)

Description: Cross-Border Trade in Services

Only Chilean nationals may provide services as private security guards.

Sector: Business Services

Sub-Sector: Research services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central Measures: Supreme Decree 711 of the Ministry of National Defence, Official Gazette, October 15, 1975 (Decreto Supremo 711 del Ministerio de Defensa Nacional, Diario Oficial, octubre 15, 1975)

Description: Cross-Border Trade in Services

Foreign natural and juridical persons intending to conduct research in the Chilean 200-mile maritime zone shall be required to submit a request six months in advance to the Chilean Army Hydrographic Institute (Instituto Hidrográfico de la Armada de Chile) and shall comply with the requirements established in the corresponding regulation. Chilean natural and juridical persons shall be required to submit a request three months in advance to the Chilean Army Hydrographic Institute (Instituto Hidrográfico de la Armada de Chile) and shall comply with the requirements established in the corresponding regulation.

Sector: Business Services

Sub-Sector: Research services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: D.F.L. 11 of the Ministry of Economic Affairs, Development and Reconstruction, Official Gazette, December 5, 1968 (D.F.L. 11 del Ministerio de Economía, Fomento y Reconstrucción, Diario Oficial, diciembre 5, 1968) Decree 559 of the Ministry of Foreign Affairs, Official Gazette, January 24, 1968 (Decreto 559 del Ministerio de Relaciones Exteriores, Diario Oficial, enero 24, 1968) D.F.L. 83 of the Ministry of Foreign Affairs, Official Gazette, March 27, 1979 (D.F.L. 83 del Ministerio de Relaciones Exteriores, Diario Oficial, marzo 27, 1979)

Description: Cross-Border Trade in Services

Natural persons representing foreign juridical persons, or natural persons residing abroad, intending to perform explorations for work of a scientific or technical nature, or mountain climbing, in areas that are adjacent to Chilean borders shall apply for the appropriate authorisation through a Chilean consul in the country of domicile of the natural person. The Chilean consul shall then send such application directly to the National Directorate of Borders and Frontiers of the State (Dirección Nacional de Fronteras y Límites del Estado). The Directorate may order that one or more Chilean natural persons working in the appropriate related activities shall join the explorations in order to become acquainted with the studies to be undertaken. The Operations Department of the National Directorate of Borders and Frontiers of the State (Departamento de Operaciones de la Dirección Nacional de Fronteras y Límites del Estado) shall decide and announce whether it authorises or rejects geographic or scientific explorations to be carried out by foreign juridical or natural persons in Chile. The National Directorate of Borders and Frontiers of the State (Dirección Nacional de Fronteras y Límites del Estado) shall authorise and will supervise all explorations involving work of a scientific or technical nature, or mountain climbing, that foreign juridical persons or natural persons residing abroad intend to carry out in areas adjacent to Chilean borders.

Sector: Business Services

Sub-Sector: Research in social sciences

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Law 17.288, Official Gazette, February 4, 1970, Title V (Ley 17.288, Diario Oficial, febrero 4, 1970, Título V) Supreme Decree 484 of the Ministry of Education, Official Gazette, April 2, 1991 (Decreto Supremo 484 del Ministerio de Educación, Diario Oficial, abril 2, 1991)

Description: Cross-Border Trade in Services

Foreign juridical or foreign natural persons intending to perform excavations, surveys, probing or collect anthropological, archaeological or paleontological material must apply for a permit from the National Monuments Council (Consejo de Monumentos Nacionales). In order to obtain the permit, the person in charge of the research must be engaged by a reliable foreign scientific institution and must be working in collaboration with a Chilean governmental scientific institution or a Chilean university. The aforementioned permit can be granted to (1) Chilean researchers having the pertinent scientific background in archaeology, anthropology or palaeontology, duly certified as appropriate, and also having a research project and due institutional sponsorship; and (2) foreign researchers, provided that they are engaged by a reliable scientific institution and that they work in collaboration with a Chilean governmental scientific institution or a Chilean university. Museum directors or curators recognised by the National Monuments Council (Consejo de Monumentos Nacionales), professional archaeologists, anthropologists or palaeontologists, as appropriate, and the members of the Chilean Society of Archeology (Sociedad Chilena de Arqueología) shall be authorised to perform salvage-related works. Salvage-related works involve the urgent recovery of data or archaeological, anthropological or paleontological artefacts or species threatened by imminent loss.

Sector: Business Services

Sub-Sector: Printing, publishing and other related industries

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 19.733, Official Gazette, June 4, 2001, Law on Liberties of Opinion and Information and the Exercise of

Journalism, Titles I and III (Ley 19.733, Diario Oficial, junio 4, 2001, Ley sobre las Libertades de Opinión e Información y Ejercicio del Periodismo, Títulos I y III)

Description: Investment and Cross-Border Trade in Services

The owner of a social communication medium such as newspapers, magazines or regularly published texts whose publishing address is located in Chile, or a national news agency, shall, in the case of a natural person, have a duly established domicile in Chile and, in the case of a juridical person, shall be constituted with domicile in Chile or have an agency authorised to operate within the national territory. Only Chilean nationals may be president, administrators or legal representatives of the juridical person. The director legally responsible and the person who replaces him or her must be Chilean with domicile and residence in Chile. Chilean nationality will not be required in case a social communication medium uses a language different from Spanish.

Sector: Professional Services

Sub-Sector: Accounting, auditing, book-keeping and taxation services

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 18.046, Official Gazette, October 22, 1981, Corporations Law, Title V (Ley 18.046, Diario Oficial, octubre 22, 1981, Ley de Sociedades Anónimas, Título V) Supreme Decree 702 of the Ministry of Finance, Official Gazette, July 6, 2012, Corporations Act (Decreto Supremo 702 del Ministerio de Hacienda, Diario Oficial, julio 6, 2012, Reglamento de Sociedades Anónimas) Decree Law 1.097, Official Gazette, July 25, 1975, Titles I, II, III and IV (Decreto Ley 1.097, Diario Oficial, julio 25, 1975, Títulos I, II, III y IV) Decree Law 3.538, Official Gazette, December 23, 1980, Titles I, II, III and IV (Decreto Ley 3.538, Diario Oficial, diciembre 23, 1980, Títulos I, II, III y IV) Circular 2.714, October 6, 1992; Circular 1, January 17, 1989; Chapter 19 Updated Collection, Superintendence of Banks and Financial Institutions Norms on External Auditors (Circular 2.714, octubre 6,1992; Circular 1, enero 17, 1989; Capítulo 19 de la Recopilación Actualizada de Normas de la Superintendencia de Bancos e Instituciones Financieras sobre Auditores Externos) Circular 327, June 29, 1983 and Circular 350, October 21, 1983, Superintendence of Securities and Insurance (Circular 327, junio 29, 1983 y Circular 350, octubre 21, 1983, de la Superintendencia de Valores y Seguros)

Description: Cross-Border Trade in Services

External auditors of financial institutions must be registered in the Registry of External Auditors kept by the Superintendence of Banks and Financial Institutions (Superintendencia de Bancos e Instituciones Financieras) and the Superintendence of Securities and Insurance (Superintendencia de Valores y Seguros). Only Chilean juridical persons legally incorporated as partnerships (sociedades de personas) or associations (asociaciones) and whose main line of business is auditing services may be inscribed in the Registry.

Sector: Professional Services

Sub-Sector: Legal services

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Tribunals Organic Code, Title XV, Official Gazette, July 9, 1943 (Código Orgánico de Tribunales, Título XV, Diario Oficial, julio 9, 1943) Decree 110 of the Ministry of Justice, Official Gazette, March 20, 1979 (Decreto 110 del Ministerio de Justicia, Diario Oficial, marzo 20, 1979) Law 18.120, Official Gazette, May 18, 1982 (Ley 18.120, Diario Oficial, mayo 18, 1982)

Description: Cross-Border Trade in Services

Only Chilean and foreign nationals with residence in Chile, who have completed the totality of their legal studies in the country, shall be authorised to practice as lawyers (abogados). Only lawyers (abogados) duly qualified to practise law shall be authorised to plead a case in Chilean courts and to file the first legal action or claim of each party. The following documents, among others, shall be drawn up solely by lawyers (abogados): drafting of articles of incorporation and amendments thereto; mutual termination of obligations or liquidation of corporations; liquidation of community property between spouses (sociedad conyugal); distribution of property; articles of incorporation of juridical persons, associations, water canal members (asociaciones de canalistas), and cooperative associations (cooperativas); agreements governing financial transactions; corporate bond issuance agreements; and sponsoring applications for legal representation made by corporations and foundations. None of these measures apply to foreign legal consultants who practise or advise on

international law or on the law of another Party.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Auxiliary services in the administration of justice

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Tribunals Organic Code, Titles XI and XII, Official Gazette, July 9, 1943, (Código Orgánico de Tribunales, Títulos XI y XII, Diario Oficial, julio 9, 1943) Real State Custodian Registry Act, Titles I, II and III, Official Gazette, June 24, 1857 (Reglamento del Registro Conservador de Bienes Raíces, Títulos I, II y III, Diario Oficial, junio 24, 1857) Law 18.118, Official Gazette, May 22, 1982, Title I (Ley 18.118, Diario Oficial, mayo 22, 1982, Título I) Decree 197 of the Ministry of Economic Affairs, Development and Reconstruction, Official Gazette, August 8, 1985 (Decreto 197 del Ministerio de Economía, Fomento y Reconstrucción, Diario Oficial, agosto 8, 1985) Law 18.175, Official Gazette, October 28, 1982, Title III (Ley 18.175, Diario Oficial, octubre 28, 1982, Título III)

Description: Cross-Border Trade in Services

Justice ancillaries (auxiliares de la administración de justicia) must have their residence in the same city or place where the court house for which they render services is domiciled. Public defenders (defensores públicos), public notaries (notarios públicos), and custodians (conservadores) shall be Chilean natural persons and fulfil the same requirements needed to become a judge. Archivists (archiveros), public defenders (defensores públicos) and arbitrators at law (árbitros de derecho) must be lawyers (abogados) and, therefore, must be Chilean or foreign nationals with residence in Chile who have completed the totality of their legal studies in the country. Another Party's lawyers may assist in arbitration when dealing with the law of another Party and international law and the private parties request it. Only Chilean natural persons with the right to vote, and foreign natural persons with permanent residence and the right to vote, can act as process servers (receptores judiciales) and superior court attorneys (procuradores del número). Only Chilean natural persons, foreign natural persons with permanent residence in Chile or Chilean juridical persons may be auctioneers (martilleros públicos). Receivers in bankruptcy (síndicos de quiebra) must have a professional or technical degree granted by a university or a professional or technical institute recognised by Chile. Receivers in bankruptcy must have at least three years of experience in the commercial, economic or juridical field.

Sector: Transportation

Sub-Sector: Air transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law 18.916, Official Gazette, February 8, 1990, Code of Aeronautics, Preliminary Title and Titles II and III (Ley 18.916, Diario Oficial, febrero 8, 1990, Código Aeronáutico, Título Preliminar y Títulos II y III) Decree Law 2.564, Official Gazette, June 22, 1979, Commercial Aviation Norms (Decreto Ley 2.564, Diario Oficial, junio 22, 1979, Normas sobre Aviación Comercial) Supreme Decree 624 of the Ministry of National Defence, Official Gazette, January 5, 1995 (Decreto Supremo 624 del Ministerio de Defensa Nacional, Diario Oficial, enero 5, 1995) Law 16.752, Official Gazette, February 17, 1968, Title II (Ley 16.752, Diario Oficial, febrero 17, 1968, Título II) Decree 34 of the Ministry of National Defence, Official Gazette, February 10, 1968 (Decreto 34 del Ministerio de Defensa Nacional, Diario Oficial, febrero 10, 1968) Supreme Decree 102 of the Ministry of Transport and Telecommunications, Official Gazette, June 17, 1981 (Decreto Supremo 102 del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, junio 17, 1981) Supreme Decree 172 of the Ministry of National Defence, Official Gazette, March 5, 1974 (Decreto Supremo 172 del Ministerio de Defensa Nacional, Diario Oficial, marzo 5, 1974) Supreme Decree 37 of the Ministry of National Defence, Official Gazette, December 10, 1991 (Decreto Supremo 37 del Ministerio de Defensa Nacional, Diario Oficial, diciembre 10, 1991) Decree 222 of the Ministry of National Defence, Official Gazette, October 05, 2005 (Decreto 222 del Ministerio de Defensa Nacional, Diario Oficial, octubre 5, 2005)

Description: Investment and Cross-Border Trade in Services

Only a Chilean natural or juridical person may register an aircraft in Chile. Such juridical person must be constituted in Chile with principal domicile and real and effective seat in Chile. In addition, a majority of its ownership must be held by Chilean natural or juridical persons, which in turn must comply with the aforementioned requisites. The aviation authority may allow the registration of aircrafts owned by foreign natural or juridical persons, provided they are employed in Chile or exercise a permanent professional activity or industry in Chile. The president, manager, majority of directors and administrators of the

juridical person must be Chilean natural persons. A foreign registered private aircraft engaged in non-commercial activities may not remain in Chile more than 30 days from its date of entry into Chile, unless authorised by the General Directorate for Civil Aeronautics (Dirección General de Aeronáutica Civil). For greater certainty, this measure shall not apply to specialty air services as defined in Article 9.1 (Definitions), except for glider towing and parachute jumping. Foreign aviation personnel that do not hold a licence granted by Chilean civil aviation authorities, shall be allowed to work in that capacity in Chile, provided that Chilean civil aviation authorities validate the licence or authorisation granted by a foreign country. In the absence of an international agreement regulating such validation, the licence or authorisation shall be granted under conditions of reciprocity. In that case, proof shall be submitted showing that the licences or authorisations were issued or validated by the pertinent authorities in the country where the aircraft is registered, that the documents are in force, and that the requirements for issuing or validating such licences and authorisations meet or exceed the standards required in Chile for analogous cases. Air services may be supplied by Chilean or foreign companies subject to the condition that foreigners grant similar rights to Chilean aviation companies when so requested. The Civil Aviation Board (Junta de Aeronáutica Civil), by means of a substantiated resolution (resolución fundada), may terminate, suspend or limit any class of commercial aviation services carried out solely in Chilean territory by foreign companies or aircraft, if in their country of origin the right to equal treatment for Chilean companies and aircraft is denied.

Sector: Transportation

Sub-Sector: Water transport services and shipping

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Level of Government: Central

Measures: Decree Law 3.059, Official Gazette, December 22, 1979, Merchant Fleet Promotion Law, Titles I and II (Decreto Ley 3.059, Diario Oficial, 22 de diciembre de 1979, Ley de Fomento a la Marina Mercante, Títulos I y II) Supreme Decree 237, Official Gazette, July 25, 2001, Act of Decree Law 3.059, Titles I and II (Decreto Supremo 237, Diario Oficial, julio 25, 2001, Reglamento del Decreto Ley 3.059, Títulos I y II) Code of Commerce, Book III, Titles I, IV and V (Código de Comercio, Libro III, Títulos I, IV y V)

Description: Investment and Cross-Border Trade in Services

Cabotage shall be reserved for Chilean vessels. Cabotage shall include the ocean, river or lake shipping of passengers and cargo between different points of the national territory and between such points and naval artefacts installed in territorial waters or in the exclusive economic zone. Foreign merchant vessels may be able to participate in cabotage when cargo volumes exceed 900 tons, following a public tender called by the user with due anticipation. When the cargo volumes involved are equal to or less than 900 tons, and no vessels flying the Chilean flag are available, the Maritime Authority may authorise embarking such cargo on foreign merchant vessels. International maritime transport of cargo to or from Chile is subject to the principle of reciprocity. In the event that Chile should adopt, for reasons of reciprocity, a cargo reservation measure applicable to international cargo transportation between Chile and a non-Party, the reserved cargo shall be transported in Chilean-flag vessels or in vessels considered as such.

Sector: Transportation

Sub-Sector: Water transport services and shipping

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Decree Law 2.222, Official Gazette, May 31, 1978, Navigation Law, Titles I, II, III, IV and V (Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación, Títulos I, II, III, IV y V) Code of Commerce, Book III, Titles I, IV and V (Código de Comercio, Libro III, Títulos I, IV y V)

Description: Investment and Cross-Border Trade in Services

Only a Chilean natural or juridical person may register a vessel in Chile. Such juridical person must be constituted with principal domicile and real and effective seat in Chile. In addition, more than 50 per cent of its capital must be held by Chilean natural or juridical persons. For these purposes, a juridical person with ownership participation in another juridical person that owns a vessel has to comply with all the aforementioned requisites. The president, manager and majority of the directors or administrators must be Chilean natural persons. A joint ownership (comunidad) may register a vessel if (1) the majority of the joint ownership is Chilean with domicile and residency in Chile; (2) the administrators are Chileans; and (3)

the majority of the rights of the joint ownership belong to a Chilean natural or juridical person. For these purposes, a juridical person with ownership participation in a joint ownership (comunidad) that owns a vessel has to comply with all the aforementioned requisites to be considered Chilean. Special vessels owned by foreign natural or juridical persons may be registered in Chile, if those persons meet the following conditions: (1) domicile in Chile; (2) principal head office in Chile; or (3) undertaking a profession or commercial activity in a permanent way in Chile. “Special vessels” are those used in services, operations or for specific purposes, with special features for the functions they perform, such as tugboats, dredgers, scientific or recreational vessels, among others. For the purposes of this paragraph, a special vessel does not include a fishing vessel. The maritime authority may provide better treatment based on the principle of reciprocity.

Sector: Transportation

Sub-Sector: Water transport services and shipping

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: Decree Law 2.222, Official Gazette, May 31, 1978, Navigation Law, Titles I, II, III, IV and V (Decreto Ley 2.222, Diario Oficial, 31 mayo de 1978, Ley de Navegación, Títulos I, II, III, IV y V) Supreme Decree 153, Official Gazette, March 11, 1966, Approves the Sea People, Fluvial and Lacustrine Personnel Registration General Act (Decreto Supremo 153, Diario Oficial, 11 marzo de 1966, Aprueba el Reglamento General de Matrícula del Personal de Gente de Mar, Fluvial y Lacustre) Code of Commerce, Book III, Titles I, IV and V (Código de Comercio, Libro III, Títulos I, IV y V)

Description: Cross-Border Trade in Services

Foreign vessels shall be required to use pilotage, anchoring and harbour pilotage services when the maritime authorities so require. In tugging activities or other manoeuvres performed in Chilean ports, only tugboats flying the Chilean flag shall be used. Captains shall be required to be Chilean nationals and to be acknowledged as such by the pertinent authorities. Officers on Chilean vessels must be Chilean natural persons registered in the Officers’ Registry (Registro de oficiales). Crewmembers of a Chilean vessel must be Chilean, have the permit granted by the Maritime Authority (Autoridad Marítima) and be registered in the respective Registry. Professional titles and licences granted by a foreign country may be considered valid for the discharge of officers’ duties on Chilean vessels pursuant to a substantiated resolution (resolución fundada) issued by the Director of the Maritime Authority. Ship captains (patrón de nave) shall be Chilean nationals. A ship captain is a natural person who, pursuant to the corresponding title awarded by the Director of the Maritime Authority, is empowered to exercise command on smaller vessels and on certain special larger vessels. Fishing boat captains (patrones de pesca), machinists (mecánicos-motoristas), machine operators (motoristas), sea-faring fishermen (marineros pescadores), small-scale fishermen (pescadores), industrial or maritime trade technical employees or workers, and industrial and general ship service crews on fishing factories or fishing boats shall be required to be Chilean nationals. Foreigners with domicile in Chile shall also be authorised to perform those activities when so requested by ship operators (armadores) for being indispensable to initiate those activities. In order to fly the Chilean flag, the ship captain (patrón de nave), officers and crew must be Chilean nationals. Nevertheless, if indispensable, the General Directorate for the Maritime Territory and Merchant Fleet (Dirección General del Territorio Marítimo y de Marina Mercante), on the basis of a substantiated resolution (resolución fundada) and on a temporary basis, may authorise the hiring of foreign personnel, with the exception of the captain, who must always be a Chilean national. Only Chilean natural or juridical persons shall be authorised to act in Chile as multimodal operators.

Sector: Transportation

Sub-Sector: Water transport services and shipping

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Code of Commerce, Book III, Titles I, IV and V (Código de Comercio, Libro III, Títulos I, IV y V) Decree Law 2.222, Official Gazette, May 31, 1978, Navigation Law, Titles I, II and IV (Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación, Títulos I, II y IV) Decree 90 of the Ministry of Labour and Social Welfare, Official Gazette, January 21, 2000 (Decreto 90 del Ministerio de Trabajo y Previsión Social, Diario Oficial, enero 21, 2000) Decree 49 of the Ministry of Labour and Social Welfare, July 16, 1999 (Decreto 49 del Ministerio de Trabajo y Previsión Social, Diario Oficial, julio 16, 1999) Labour Code, Book I, Title II, Chapter III, paragraph 2 (Código del Trabajo, Libro I, Título II, Capítulo III, párrafo 2)

Description: Investment and Cross-Border Trade in Services

Shipping agents or representatives of ship operators, owners or captains, whether they are natural or juridical persons, shall be required to be Chilean. Work of stowage and dockage performed by natural persons is reserved to Chileans who are duly accredited by the corresponding authority to carry out such work and have an office established in Chile. Whenever these activities are carried out by juridical persons, they must be legally constituted in Chile and have their principal domicile in Chile. The chairman, administrators, managers or directors must be Chilean. At least 50 per cent of the corporate capital must be held by Chilean natural or juridical persons. Such enterprises shall designate one or more empowered agents, who will act in their representation and who shall be Chilean nationals. Anyone unloading, transshipping and, generally, using continental or insular Chilean ports, particularly for landing fish catches or processing fish catches on board, shall also be required to be a Chilean natural or juridical person.

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree 212 of the Ministry of Transport and Telecommunications, Official Gazette, November 21, 1992 (Decreto Supremo 212 del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, noviembre 21, 1992) Decree 163 of the Ministry of Transport and Telecommunications, Official Gazette, January 4, 1985 (Decreto 163 del Ministerio de Transportes y Telecomunicaciones, Diario Oficial, enero 4, 1985) Supreme Decree 257 of the Ministry of Foreign Affairs, Official Gazette, October 17, 1991 (Decreto Supremo 257 del Ministerio de Relaciones Exteriores, Diario Oficial, octubre 17, 1991)

Description: Cross-Border Trade in Services

Land transportation service suppliers shall register in the National Registry by submitting an application to the Regional Secretary of Transport and Telecommunications (Secretaría Regional Ministerial del Ministerio de Transportes y Telecomunicaciones). In the case of urban services, applicants shall submit the application to the Regional Secretary responsible for the area in which the service is to be supplied and, in the case of rural and interurban services, in the region where the applicant is domiciled. The application shall provide the detailed information required by law, attaching thereto, among other documents, a properly certified photocopy of the National Identity Card and, in the case of juridical persons, the public instruments accrediting its constitution and name and the domicile of its legal representative and documents evidencing such capacity. Foreign natural and juridical persons qualified to supply international transportation services in Chilean territory cannot supply local transportation services or participate in any manner whatsoever in the said activities in the national territory. Only companies with actual and effective domicile in Chile and organised under the laws of Chile, Argentina, Bolivia, Brazil, Peru, Uruguay or Paraguay shall be authorised to supply international land transportation services between Chile and Argentina, Bolivia, Brazil, Peru, Uruguay or Paraguay. Furthermore, to obtain an international land transport permit, in the case of foreign juridical persons, more than 50 per cent of its corporate capital and effective control shall be held by nationals of Chile, Argentina, Bolivia, Brazil, Peru, Uruguay or Paraguay.

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Law 18.290, Official Gazette, February 7, 1984, Title IV (Ley 18.290, Diario Oficial, febrero 7, 1984, Título IV) Supreme Decree 485 of the Ministry of Foreign Affairs, Official Gazette, September 7, 1960, Geneva Convention (Decreto Supremo 485 del Ministerio de Relaciones Exteriores, Diario Oficial, septiembre 7, 1960, Convención de Ginebra)

Description: Cross-Border Trade in Services

Motor vehicles bearing foreign licence plates that enter Chile on a temporary basis, pursuant to provisions set forth in the 1949 Geneva Convention on Road Traffic, shall circulate freely throughout the national territory for the period established therein, provided that they comply with the requirements established by Chilean law. Holders of valid international driving licences or certificates issued in a foreign country in accordance with the Geneva Convention may drive anywhere within the national territory. The driver of a vehicle bearing foreign licence plates who holds an international driver’s licence shall

present, upon request by the authorities, the documents certifying both the roadworthiness of the vehicle and the use and validity of his or her personal documents.

SCHEDULE OF JAPAN

INTRODUCTORY NOTES

In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant provisions of the Chapters against which the entry is taken, and the Measures element shall prevail over all the other elements.

Sector: Agriculture, Forestry and Fisheries (Plant Breeder's Rights)

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: *Seeds and Seedlings Law* (Law No. 83 of1998), Article 10

Description: Investment

A foreign person who has neither a domicile nor residence (nor the place of business, in the case of a legal person) in Japan cannot enjoy plant breeder's rightsor related rights except in any of the following cases:

(a)where the country of which the person is a national or the country in which the person has a domicile or residence (or its place of business, in the case of a legal person) is a party tothe International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991;

(b)where the country of which the person is a national or the country in which the person has a domicile or residence (or its place of business, in the case of a legal person) is a party tothe International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, and on October 23, 1978 (hereinafter referred to in this Annex as "UPOV1978"), or a country in relation with which Japan shall apply UPOV1978in accordance with paragraph (2) of Article 34 of UPOV 1978, and further provides the protection for the plant genus and species to which the person's applied variety belongs; or

(c)where the country of which the person is a national provides Japanese nationals with the protection of varieties under the same condition as its own nationals (including a country which provides such protection for Japanese nationals under the condition that Japan allows enjoyment of plant breeder's rights or related rights for the nationals of that country), and further provides the protection for the plant genus and species to which the person's applied variety belongs.

Sector: Agriculture, Forestry and Fisheries, and Related Services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the entry at Annex II–JAPAN–12)

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (1), Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in agriculture, forestry and fisheries, and related services (except fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf provided for in the entry at Annex II –JAPAN–12) in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant

adverse effect is brought to the smooth operation of the Japanese economy. (2)

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(1) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

(2) For greater certainty, absence of reference in this description to “national security”, which is referred to at Annex I –JAPAN –14, 16, 18, 43, 58, 60, 71, 73and 74, does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Automobile Maintenance Business

Sub-Sector: Motor vehicle disassembling repair business

Industry Classification:

Obligations Concerned: Market Access (Article 10.5), Local Presence (Article 10.6)

Level of Government: Central

Measures: Road Vehicle Law (Law No. 185 of 1951), Chapter 6

Description: Cross-Border Trade in Services

A person who intends to conduct motor vehicle disassembling repair businesses is required to establish a workplace in Japan and to obtain approval from the Director-General of the District Transport Bureau having jurisdiction over the district where the workplace is located.

Sector: Business Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Employment Security Law (Law No. 141 of 1947), Chapter 3 and Chapter 3-3

Law Concerning Securing the Proper Operation of Worker Dispatching Undertakings and Protecting Dispatched Workers (Law No. 88 of 1985), Chapter 2

Port Labour Law (Law No. 40 of 1988), Chapter 4

Mariner’s Employment Security Law (Law No. 130 of 1948), Chapter 3

Law Concerning the Improvement of Employment of Construction Workers (Law No. 33 of 1976), Chapter 5 and Chapter 6

Description: Cross-Border Trade in Services

A person who intends to supply the following services for enterprises in Japan is required to have an establishment in Japan and to obtain permission from, or to submit notification to, the competent authority, as applicable:

(a) private job placement services including fee-charging job placement services for construction workers; or

(b) worker dispatching service including stevedore dispatching services, mariner dispatching services and work opportunities securing services for construction workers.

Labour supply services may be supplied only by a labour union which has obtained permission from the competent authority pursuant to the *Employment Security Law* or *Mariner’s Employment Security Law*.

Sector: Collection Agency Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Special Measures Law Concerning Credit Management and Collection Business (Law No. 126 of 1998),Article 3 and Article 4

Attorney Law (Law No. 205 of 1949), Article 72 and Article 73

Description: Cross-Border Trade in Services

A person who intends to supply collection agency services which constitute the practice of law in respect of legal cases is required to be qualified as an attorney at law under the laws and regulations of Japan (Bengoshi), a legal professional corporation under the laws and regulations of Japan (Bengoshi-hojin), or an enterprise established under theSpecial Measures Law Concerning Credit Management and Collection Businessand to establish an office in Japan.

No person may take over and recover another person's credits as business except an enterprise established under the Special Measures Law Concerning Credit Management and Collection Business that handles credits pursuant to provisions of that law.

Sector: Construction

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Construction Business Law (Law No. 100 of 1949), Chapter 2

Law Concerning Recycling of Construction Materials (Law No. 104 of 2000), Chapter 5

Description: Cross-Border Trade in Services

1. A person who intends to conduct construction business is required to establish a place of business in Japan and to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the place of business is located.

2. A person who intends to conduct demolition work business is required to establish a place of business in Japan and to be registered with the prefectural governor having jurisdiction over the district where the place of business is located.

Sector: Distribution Services

Sub-Sector: Wholesale trade services, retailing services, commission agents' services, related to alcoholic beverages

Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central

Measures: Liquor Tax Law (Law No. 6 of 1953), Article 9, Article 10 and Article 11

Description: Cross-Border Trade in Services

The number of licences conferred to service suppliers in the listed sub-sectors may be limited, where it is necessary to maintain a supply-demand balance of liquors in order to secure liquor tax revenue (paragraph 11 of Article 10 of theLiquor Tax Law).

Sector: Distribution Services

Sub-Sector: Wholesale trade services supplied at public wholesale market

Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central

Measures: Wholesale Market Law (Law No. 35 of 1971), Article 9, Article 10, Article 15, Article 17 and Article 33

Description: Cross-Border Trade in Services

The number of licences conferred to wholesale trade service suppliers at public wholesale markets may be limited, in cases where the public wholesale markets set the maximum number of the suppliers in order to secure the proper and sound operation of the public wholesale markets.

Sector: Education, Learning Support

Sub-Sector: Higher educational services

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Fundamental Law of Education (Law No.120 of 2006), Article 6

School Education Law (Law No. 26 of 1947), Article 2

Private School Law (Law No. 270 of 1949), Article 3

Description: Cross-Border Trade in Services

Higher educational services supplied as formal education in Japan must be supplied by formal education institutions. Formal education institutions must be established by school juridical persons.

“Formal education institutions” means elementary schools, lower secondary schools, secondary schools, compulsory education school, upper secondary schools, universities, junior colleges, colleges of technology, special support schools, kindergartens and integrated centres for early childhood education and care.

“School juridical person” means a non-profit juridical person established for the purposes of supplying educational services under the law of Japan.

Sector: Heat Supply

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law(Law No. 228 of 1949), Article 27 (3)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in the heat supply industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(3) For greater certainty, for the purpose of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign Exchange

and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

Sector: Information and Communications

Sub-Sector: Telecommunications

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Law Concerning Nippon Telegraph and Telephone Corporation, Etc. (Law No. 85 of 1984), Article 6 and Article 10

Description: Investment

1. Nippon Telegraph and Telephone Corporation may not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly or indirectly held by the persons set forth in subparagraphs (a) through (c) reaches or exceeds one-third:

(a) a natural person who does not have Japanese nationality;

(b) a foreign government or its representative; and

(c) a foreign legal person or a foreign entity.

2. Any natural person who does not have Japanese nationality may not assume the office of director or auditor of Nippon Telegraph and Telephone Corporation, Nippon Telegraph and Telephone East Corporation and Nippon Telegraph and Telephone West Corporation.

Sector: Information and Communications

Sub Sector: Telecommunications and internet based services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (4) Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in telecommunications business and internet based services in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(4) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of theForeign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

Sector: Manufacturing

Sub-Sector: Shipbuilding and repairing, and marine engines

Industry Classification: Market Access (Article 10.5)

Obligations Concerned:

Level of Government: Central

Measures: Shipbuilding Law (Law No. 129 of 1950), Article 2, Article 3 and Article 3-2

Description: Cross-Border Trade in Services

A person who intends to establish or extend docks, which can be used to manufacture or repair vessels of 500 gross tonnage or more or 50 metres in length or more, is required to obtain permission from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of a licence is subject to the requirements of an economic needs test.

Sector: Manufacturing

Sub-Sector: Drugs and medicines manufacturing

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (5)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in biological preparations manufacturing industry in Japan. For greater certainty, “biological preparations manufacturing industry” deals with economic activities in an establishment which produces vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(5) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

Sector: Manufacturing

Sub-Sector: Leather and leather products manufacturing

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law(Law No. 228 of 1949), Article 27 (6)

Cabinet Order on Foreign Direct Investment(Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1.The prior notification requirement and screening procedures undertheForeign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in leather and leather products manufacturing industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant adverse effect is brought to the smooth operation of the Japanese economy. (7)

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(6) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign

Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

(7) For greater certainty, absence of reference in this description to “national security”, which is referred to at Annex I –JAPAN –14, 16, 18, 43, 58, 60, 71, 73and 74, does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Matters Related to the Nationality of a Ship

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Level of Government: Central

Measures: Ship Law (Law No.46 of 1899), Article 1

Description: Investment and Cross-Border Trade in Services

Nationality requirement applies to the supply of international maritime transport services (including services of passenger transportation and freight transportation) through establishment of a registered company operating a fleet flying the flag of Japan.

“Nationality requirement” means that the ship must be owned by a Japanese national, or a company established under the laws and regulations of Japan, of which all the representatives and not less than two-thirds of the executives administering the affairs are Japanese nationals.

Sector: Measuring Services

Sub-Sector:

Industry Classification:

Obligations Concerned:Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Measurement Law(Law No. 51 of 1992), Chapter 3, Chapter 5, Chapter 6 and Chapter 8

Regulations on Measurement Law(Ministerial Ordinance of theMinistry of International Trade and Industry No. 69 of 1993)

Ministerial Ordinance for Designated Inspection Body, Designated Verification Body, Designated Measurement Certification Inspection Body and Specified Measurement Certification Accreditation Body(Ministerial Ordinance of the Ministry of International Trade and Industry No. 72 of 1993)

Description (8): Cross-Border Trade in Services

1. A person who intends to supply services of conducting the periodic inspection of specified measuring instruments is required to establish a legal person in Japan and to be designated by the prefectural governor having jurisdiction over the district where the person intends to conduct such inspection, or by the mayor of a designated city or the chief of a designated ward or village in case the place where the person intends to conduct such inspection is located within the district of such designated city, ward or village.

2. A person who intends to supply services of conducting the verification of specified measuring instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

3. A person who intends to conduct measurement certification business, including specified measurement certification business, is required to have an establishment in Japan and to be registered with the prefectural governor having jurisdiction over the district where the establishment is located.

4. A person who intends to supply services of conducting the inspection of specified measuring instruments used for the measurement certification is required to establish a legal person in Japan and to be designated by the prefectural governor

having jurisdiction over the district where the person intends to conduct such inspection.

5. A person who intends to supply services of conducting the accreditation for a person engaged in specified measurement certification business is required to establish a legal person in Japan, and to be designated by the Minister of Economy, Trade and Industry.

6. A person who intends to supply services of conducting the calibration of measuring instruments is required to establish a legal person in Japan and to be designated by the Minister of Economy, Trade and Industry.

(8) For the purposes of this entry: (a) “measuring instruments” means appliances, machines or equipment used for measurement; (b) “specified measuring instruments” means measuring instruments used in transactions or certifications,or measuring instruments principally for use in the life of general consumers, and those specified by a Cabinet Order as necessary to establish standards relating to their structure and instrumental error in order to ensure proper execution of measurements; (c) “measurement certification businesses” under the requirement described in paragraph 3 are listed in the following and the registration shall be in accordance with the business classification specified by the Ordinance of the Ministry of Economy, Trade and Industry: (I) the business of measurement certifications of length, weight, area, volume or heat concerning goods to be loaded/unloaded or entered/dispatched for transportation, deposit or sale or purchase (excluding the measurement certifications of mass or volume of goods to be loaded on or unloaded from ship); and (ii) the business of measurement certifications of concentration, sound pressure level or the quantity of other physical phenomena specified by a Cabinet Order (excludingwhat is listed in (I)); however, this requirement shall not apply to the case where a person engaged in the measurement certification business is a national government, a local government, or an incorporated administrative agency prescribed by Article 2, paragraph 1 of the Law onGeneral Rules for Incorporated Administrative Agency(Law No. 103 of 1999)who is designated by a Cabinet Order as competent to appropriately perform the measurement certification business, or where the measurement certification business is performed by aperson who has been registered or designated or received to conduct that business pursuant to the provision of the law specified by that Cabinet Order; and (d) “specified measurement certification business” means the business specified by a Cabinet Order as these requiring high levels of technology to certify measurement of considerably tiny quantities of physical phenomena prescribed in subparagraph (c)(ii).

Sector: Medical, Health Care and Welfare

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law Concerning Collection of Labour Insurance Premium (Law No. 84 of 1969), Chapter 4

Enforcement Regulations for the Law Concerning Collection of Labour Insurance Premium (MinisterialOrdinance of the Ministry of Labour No. 8 of 1972)

Description: Cross-Border Trade in Services

Only an association of business proprietors or a federation of such associations approved by the Minister of Health, Labour and Welfare under the laws and regulations of Japan may conduct labour insurance businesses entrusted by business proprietors. An association which intends to conduct such labour insurance businesses under the laws and regulations of Japan is required to establish an office in Japan, and to obtain the approval of the Minister of Health, Labour and Welfare.

Sector: Mining and Services incidental to Mining

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Mining Law (Law No. 289 of 1950), Chapter 2 and Chapter 3

Description: Investment and Cross-Border Trade in Services

Only a Japanese national or an enterprise of Japan may have mining rights or mining lease rights. (9)

(9) Services requiring mining rights or mining lease rights must be supplied by a Japanese national or an enterprise established under Japanese law, in accordance with the Chapter 2 and Chapter 3 of the Mining Law.

Sector: Oil Industry

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (10)

Cabinet Order on Foreign Direct Investment(Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures undertheForeign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in the oil industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant adverse effect is brought to the smooth operation of the Japanese economy. (11)

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the oil industry. Therefore, prior notification requirement and screening procedures under the*Foreign Exchange and Foreign Trade Law* do not apply to the investments in the manufacture of these products.

(10) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the Foreign Exchange and Foreign Trade Law shall apply with respect to the interpretation of this entry.

(11) For greater certainty, absence of reference in this description to "national security", which is referred to at Annex I –JAPAN –14, 16, 18, 43, 58, 60, 71,73and 74, does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Attorney Law (Law No. 205 of 1949), Chapter 3, Chapter 4, Chapter 4-2, Chapter 5 and Chapter 9

Description: Cross-Border Trade in Services

A natural person who intends to supply legal services is required to be qualified as an attorney-at-law under the laws and regulations of Japan (Bengoshi) and to establish an office within the district of the local bar association to which the natural person belongs.

An enterprise which intends to supply legal services is required to establish a legal professional corporation under the laws and regulations of Japan (Bengoshi-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers (Law No. 66 of 1986), Chapter 2 and Chapter 4

Description: Cross-Border Trade in Services

A natural person who intends to supply legal advisory services concerning foreign laws is required to be qualified as a registered foreign lawyer under the laws and regulations of Japan (Gaikoku-Ho-Jimu-Bengoshi) and to establish an office within the district of the local bar association to which the natural person belongs.

Gaikoku-Ho-Jimu-Bengoshiunder the laws and regulations of Japanisrequired to stay in Japan for not less than 180 days per year.

Sector: Professional Services

Sub-Sector:

IndustryClassification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Patent Attorney Law(Law No. 49 of 2000), Chapter 3, Chapter 6 and Chapter 8

Description: Cross-Border Trade in Services

A natural person who intends to supply patent attorney services is required to be qualified as a patent attorney under the laws and regulations of Japan (Benrishi).

An enterprise which intends to supply patent attorney services is required to establish a patent business corporation under the laws and regulations of Japan (Tokkyo-Gyomu-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Notary Law (Law No. 53 of 1908),Chapter 2 and Chapter 3

Description: Cross-Border Trade in Services

Only a Japanese national may be appointed as a notary in Japan.

The notary is required to establish an office in the place designated by the Minister of Justice.

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Judicial Scrivener Law(Law No. 197 of 1950), Chapter 3, Chapter 4, Chapter 5, Chapter 7 and Chapter 10

Description: Cross-Border Trade in Services

A natural person who intends to supply judicial scrivener services is required to be qualified as a judicial scrivener under the laws and regulations of Japan (Shiho-Shoshi) and to establish an office within the district of the judicial scrivener association to which the natural person belongs.

An enterprise which intends to supply judicial scrivener services is required to establish a judicial scrivener corporation under the laws and regulations of Japan (Shiho-Shoshi-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Certified Public Accountant Law (Law No. 103 of 1948), Chapter 3, Chapter 5-2 and Chapter 7

Description: Cross-Border Trade in Services

A natural person who intends to supply certified public accountants services is required to be qualified as a certified public accountant under the laws and regulations of Japan (Koninkaikeishi).

An enterprise which intends to supply certified public accountants services is required to establish an audit corporation under the laws and regulations of Japan (Kansa-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Certified Public Tax Accountant Law (Law No. 237 of 1951), Chapter 3, Chapter 4, Chapter 5-2, Chapter 6 and Chapter 7

Enforcement Regulation on Certified Public Tax Accountant Law (Ministerial Ordinance of the Ministry of Finance No. 55 of 1951)

Description: Cross-Border Trade in Services

A natural person who intends to supply certified public tax accountant services is required to be qualified as a certified public tax accountant under the laws and regulations of Japan (Zeirishi) and to establish an office within the district of certified public tax accountant association to which the natural person belongs.

An enterprise which intends to supply certified public tax accountant services is required to establish a certified public tax accountant corporation under the laws and regulations of Japan (Zeirishi-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Architect and/or Building Engineer Law(Law No. 202 of 1950), Chapter 1, Chapter 2 and Chapter 6

Description: Cross-Border Trade in Services

An architect or building engineer, qualified as such under the laws and regulations of Japan (Kenchikushi), or a person employing such an architect or building engineer, who intends to conduct business of design, superintendence of

construction work, administrative work related to construction work contracts, supervision of building construction work, survey and evaluation of buildings, and representation in procedures under the laws and regulations concerning construction, upon request from others for remuneration, is required to establish an office in Japan.

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Certified Social Insurance and Labour Consultant Law (Law No. 89 of 1968), Chapter2-2, Chapter 4-2, Chapter 4-3 and Chapter 5

Description: Cross-Border Trade in Services

A natural person who intends to supply social insurance and labour consultant services is required to be qualified as a certified social insurance and labour consultant under the laws and regulations of Japan (Shakai-Hoken-Roumushi) and to establish an office in Japan.

An enterprise which intends to supply social insurance and labour consultant services is required to establish a certified social insurance and labour consultant corporation under the laws and regulations of Japan (Shakai-Hoken-Roumushi-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Administrative Scrivener Law (Law No. 4 of 1951), Chapter3, Chapter 4, Chapter 5 and Chapter 8

Description: Cross-Border Trade in Services

A natural person who intends to supply administrative scrivener services is required to be qualified as an administrative scrivener under the laws and regulations of Japan (Gyousei-Shoshi) and to establish an office within the district of the administrative scrivener association to which the natural person belongs.

An enterprise which intends to supply administrative scrivener services is required to establish an administrative scrivener corporation under the laws and regulations of Japan (Gyousei-Shoshi-Hojin).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central

Measures: Maritime Procedure Agents Law (Law No.32 of 1951), Article 17

Description: Cross-Border Trade in Services

Maritime procedure agent services must be supplied by a natural person who is qualified as a maritime procedure agent under the laws and regulations of Japan (Kaijidairishi).

Sector: Professional Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Land and House Surveyor Law (Law No. 228 of 1950), Chapter3, Chapter 4, Chapter 5 , Chapter 7 and Chapter 10

Description: Cross-Border Trade in Services

A natural person who intends to supply land and house surveyor services is required to be qualified as a land and house surveyor under the laws and regulations of Japan (Tochi-Kaoku-Chosashi) and to establish an office within the district of the land and house surveyor association to which the natural person belongs.

An enterprise which intends to supply land and house surveyor services is required to establish a land and house surveyor corporation under the laws and regulations of Japan (Tochi-Kaoku-Chosashi-Hojin).

Sector: Real Estate

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Building Lots and Buildings Transaction Business Law (Law No. 176 of 1952), Chapter 2

Real Estate Syndication Law (LawNo. 77 of 1994), Chapter2 and Chapter 4-2

Law Concerning Improving Management of Condominiums (Law No. 149 of 2000), Chapter 3

Description: Cross-Border Trade in Services

1. A person who intends to conduct building lots and buildings transaction business is required to establish an office in Japan and to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism or from the prefectural governor having jurisdiction over the district where the office is located.

2. A person who intends to conduct real estate syndication business is required to establish an office in Japan and to obtain permission from the competent Minister or from the prefectural governor having jurisdiction over the district where the office is located or to submit notification to the competent Minister.

3. A person who intends to conduct condominiums management business is required to establish an office in Japan and to be registered in the list maintained by the Ministry of Land, Infrastructure, Transport and Tourism.

Sector: Real Estate Appraisal Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law Concerning the Appraisal of Real Estate(Law No. 152 of 1963), Chapter 3

Description: Cross-Border Trade in Services

A person who intends to supply real estate appraisal services is required to establish an office in Japan and to be registered in the list maintained by the Ministry of Land, Infrastructure, Transport and Tourism or the prefecture having jurisdiction over the district where the office is located.

Sector: Seafarers

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Mariners Law (Law No. 100 of 1947), Chapter 4

Official Notification of the Director General of Seafarers Department, MaritimeTechnology and Safety Bureau of the Ministry of Transport, No. 115, 1990

Official Notification of the Director General of Seafarers Department, Maritime Technology and Safety Bureau of the Ministry of Transport, No. 327, 1990

Official Notification of the Director General of Maritime Bureau of the Ministry of Land, Infrastructure and Transport, No. 153, 2004

Description: Cross-Border Trade in Services

Foreign nationals employed by Japanese enterprises, except for the seafarers referred to in the relevant official notifications, may not work on vessels flying the Japanese flag.

Sector: Security Guard Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (12)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in security guard services in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(12) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

Sector: Services Related to Occupational Safety and Health

Sub Sector:

Industry Classification:

Obligations Concerned: Market Access (Article Local Presence (Article 10.6)

Level of Government: Central

Measures: Industrial Safety and Health Law (Law No. 57 of 1972), Chapter 5 and Chapter 8 Ministerial Ordinance for Registration and Designation related to Industrial Safety and Health Law, and Orders based on the Law (Ministerial Ordinance of the Ministry of Labour No. 44 of 1972) Working Environment Measurement Law (Law No. 28 of 1975), Chapter 2 and Chapter 3 Enforcement Regulation of the Working Environment Measurement Law (Ministerial Ordinance of the Ministry of Labour No. 20 of 1975)

Description: Cross Border Trade in Services

A person who intends to supply inspection or verification services for working machines, skill training courses, and other related services in connection with occupational safety and health, or working environment measurement services is required to be resident or to establish an office in Japan, and to be registered with the Minister of Health, Labour and Welfare or Director General of the Prefectural Labour Bureau.

Sector: Surveying Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Survey Law(Law No. 188 of 1949), Chapter 6

Description: Cross-Border Trade in Services

A person who intends to supply surveying services is required to establish a place of business in Japan and to be registered with the Minister of Land, Infrastructure, Transport and Tourism.

Sector: Transport

Sub Sector: Air transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Most Favoured Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 (13) Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Civil Aeronautics Law (Law No. 231 of 1952), Chapter 7 and Chapter 8

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in air transport business in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant adverse effect is brought to the smooth operation of the Japanese economy. (14)

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting air transport businesses as a Japanese air carrier is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of voting rights are held by natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event that an air carrier becomes a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies such as holding companies, which have substantial control over the air carriers.

5. A Japanese air carrier or a company having substantial control over such air carrier, such as a holding company, may reject the request from a natural person or an entity set forth in paragraphs 4(a) through 4(c), who owns equity investments in such air carrier or company, to enter its name and address in the register of shareholders, in the event that such air carrier or company becomes a legal person referred to in paragraph 4(d) by accepting such request.

6. Foreign air carriers are required to obtain permission of the Minister of Land, Infrastructure, Transport and Tourism to conduct international air transport businesses.

7. Permission of the Minister of Land, Infrastructure, Transport and Tourism is required for the use of foreign aircraft for air transportation of passengers or cargoes to and from Japan for remuneration.

8. A foreign aircraft may not be used for a flight between points within Japan.

(13) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the Foreign Exchange and Foreign Trade Law shall apply with respect to the interpretation of this entry.

(14) For greater certainty, absence of reference in this description to "national security", which is referred to at Annex I JAPAN 14, 16, 18, 43, 58, 60, 71, 73 and 74, does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Transport

Sub-Sector: Air transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law(Law No. 228 of 1949), Article 27 (15)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Civil Aeronautics Law (Law No. 231 of 1952), Chapter 7 and Chapter 8

Description: Investment and Cross-Border Trade in Services

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in aerial work business in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant adverse effect is brought to the smooth operation of the Japanese economy. (16)

3.The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. Permission of the Minister of Land, Infrastructure, Transport and Tourism for conducting aerial work business is not granted to the following natural persons or entities applying for the permission:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

In the event that a person conducting aerial work business becomes a natural person or an entity referred to in subparagraphs (a) through (d), the permission will lose its effect. The conditions for the permission also apply to companies,

such as holding companies, which have substantial control over the person conducting aerial work business.

5. A foreign aircraft may not be used for a flight between points within Japan.

(15) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the Foreign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

(16) For greater certainty, absence of reference in this description to "national security", which is referred to at Annex I –JAPAN –14, 16, 18, 43, 58, 60, 71, 73 and 74, in this description does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Transport

Sub-Sector: Air transport (registration of aircraft in the national register)

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Level of Government: Central

Measures: Civil Aeronautics Law (Law No. 231 of 1952), Chapter 2

Description: Investment and Cross-Border Trade in Services

1. An aircraft owned by any of the following natural persons or entities may not be registered in the national register:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a), (b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a), (b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a), (b) or (c).

2.A foreign aircraft may not be registered in the national register.

Sector: Transport

Sub-Sector: Customs brokerage

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Customs Brokerage Law (Law No. 122 of 1967), Chapter 2

Description: Cross-Border Trade in Services

A person who intends to conduct customs brokerage business is required to have a place of business in Japan and to obtain permission of the Director-General of Customs having jurisdiction over the district where the person intends to conduct customs brokerage business.

Sector: Transport

Sub-Sector: Freight forwarding business (excluding freight forwarding business using air transportation)

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Freight Forwarding Business Law (Law No. 82 of 1989), Chapter 2, Chapter 3 and Chapter 4

Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of the Ministry of Transport No. 20 of 1990), Chapter 3, Chapter 4 and Chapter 5

Description: Investment and Cross-Border Trade in Services

1. The following natural persons or entities are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding business using international shipping:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a),(b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a),(b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a),(b) or (c).

Such registration shall be made, or such permission or approval shall be granted, on the basis of reciprocity.

2. A person who intends to conduct freight forwarding business is required to establish an office in Japan, and to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism.

Sector: Transport

Sub-Sector: Freight forwarding business (only freight forwarding business using air transportation)

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Freight Forwarding Business Law(Law No. 82 of 1989), Chapter 2, Chapter 3 and Chapter 4

Enforcement Regulation of Freight Forwarding Business Law (Ministerial Ordinance of Ministry of Transport No. 20 of 1990)

Description: Investment

1. The following natural persons or entities may not conduct freight forwarding businesses using air transportation between points within Japan:

(a) a natural person who does not have Japanese nationality;

(b) a foreign country, or a foreign public entity or its equivalent;

(c) a legal person or other entity constituted under the laws of any foreign country; and

(d) a legal person represented by the natural persons or entities referred to in subparagraph (a),(b) or (c); a legal person of which more than one-third of the members of the board of directors are composed of the natural persons or entities referred to in subparagraph (a),(b) or (c); or a legal person of which more than one-third of the voting rights are held by the natural persons or entities referred to in subparagraph (a),(b) or (c).

2. The natural persons or entities referred to in paragraphs 1(a) through 1(d) are required to be registered with, or to obtain permission or approval of, the Minister of Land, Infrastructure, Transport and Tourism for conducting freight forwarding businesses using international air transportation. Such Registration shall be permitted, or such permission or approval will

be granted, on the basis of reciprocity.

Sector: Transport

Sub-Sector: Railway transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 2717

Cabinet Order on Foreign Direct Investment(Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in railway transport industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. The manufacture of vehicles or parts and components for the railway transport industry is not included in railway transport industry. Therefore, the prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law do not apply to the investments in the manufacture of these products.

(17) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the ***Foreign Exchange and Foreign Trade Law*** shall apply with respect to the interpretation of this entry.

Sector: Transport

Sub-Sector: Road passenger transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government:Central

Measures: Foreign Exchange and Foreign Trade Law(Law No. 228of 1949), Article 2718

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures undertheForeign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in omnibus industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. The manufacture of vehicles or parts and components for omnibus industry is not included in omnibus industry. Therefore, the prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law do not apply to the investments in the manufacture of these products.

(18) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the***Foreign Exchange and Foreign Trade Law*** shall apply with respect to the interpretation of this entry.

Sector: Transport

Sub-Sector: Road transport

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 2

Special Measures Law concerning the proper management and revitalization of the taxi business in specified and sub-specified regions (Law No.64 of 2009) (hereinafter referred to in this entry "the Law"), Chapter 2 and Chapter 7

Trucking Business Law (Law No. 83 of 1989), Chapter 2

Description: Cross-Border Trade in Services

1. A person who intends to conduct road passenger transport business or road freight transport business is required to establish a place of business in Japan, and to obtain permission of, or to submit notification to, the Minister of Land, Infrastructure, Transport and Tourism.

2. In respect of common taxicab operators business, the Minister of Land, Infrastructure, Transport and Tourism may not grant permission to a person who intends to conduct the businesses, or may not approve a modification of the business plan of such businesses in the "specified regions" and in the "semi-specified regions" designated by the Minister of Land, Infrastructure, Transport and Tourism. Such permission may be granted, or such modification of the business plan may be approved with respect to "semi-specified regions" when the standards set out in the Law are met, including those that the capacity of common taxicab operators businesses in that region does not exceed the volumes of the traffic demand.

Such designation would be made when the capacity of common taxicab transportation businesses in that region exceeds or is likely to exceed the volumes of traffic demand to the extent that it would become difficult to secure the safety of transportation and the benefits of passengers.

3. In respect of common motor trucking business or motor trucking business (particularly-contracted), the Minister of Land, Infrastructure, Transport and Tourism may not grant permission to a person who intends to conduct the businesses, or may not approve a modification of the business plan of such businesses, in the "emergency supply/demand adjustment area" designated by the Minister of Land, Infrastructure, Transport and Tourism. Such designation would be made when the capacity of common motor trucking businesses or motor trucking businesses (particularly-contracted) in that area has significantly exceeded the volumes of transportation demand to the extent that the operation of existing businesses would become difficult.

Sector: Transport

Sub-Sector: Services incidental to transport

Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central

Measures: Road Transport Law (Law No. 183 of 1951), Chapter 4

Description: Cross-Border Trade in Services

A person who intends to conduct motorway businesses is required to obtain a licence from the Minister of Land, Infrastructure, Transport and Tourism. The issuance of alicence is subject to an economic needs test, such as whether the proposed motorway is appropriate in scale compared with the volume and nature of traffic demand in the proposed area.

Sector: Transport

Sub-Sector: Services incidental to transport

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Pilotage Law (Law No. 121 of 1949), Chapter2, Chapter 3 and Chapter 4

Description: Cross-Border Trade in Services

Only a Japanese national may become a pilot in Japan.

Pilots directing ships in the same pilotage district are required to establish a pilot association for the pilotage district.

Sector: Transport

Sub-Sector: Water transport

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Market Access (Article 10.5)

Level of Government: Central

Measures: Law Concerning Special Measures against Unfavorable Treatment to Japanese Oceangoing Ship Operators by Foreign Government (Law No. 60 of 1977)

Description: Cross-Border Trade in Services

Oceangoing ship operators of another Party may be restricted or prohibited from entering Japanese ports or from loading and unloading cargoes in Japan in cases where Japanese oceangoing ship operators are prejudiced by that Party.

Sector: Transport

Sub-Sector: Water transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 2719

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in the water transport industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which significant adverse effect is brought to the smooth operation of the Japanese economy.20

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. For greater certainty, “water transport industry” refers to oceangoing/seagoing transport, coastwise transport (*i.e.*maritime transport between ports in Japan), inland water transport, and ship leasing industry. However, oceangoing/seagoing transport industry and ship leasing industry excluding coastwise ship leasing industry are exempted from the prior notification requirement and screening procedures under the *Foreign Exchange and Foreign Trade Law.*

(19) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the Foreign Exchange and Foreign Trade Lawshall apply with respect to the interpretation of this entry.

(20) For greater certainty, absence of reference in this description to “national security”, which is referred to at Annex I –JAPAN –14, 16, 18, 43, 58, 60, 71, 73and 74, does not mean that Article 29.2 (Security Exceptions) does not apply to the screening or that Japan waives its right to

invoke Article 29.2 (Security Exceptions) to justify the screening.

Sector: Transport

Sub-Sector: Water transport

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5)

Level of Government: Central

Measures: Ship Law (Law No. 46 of 1899), Article 3

Description: Investment and Cross-Border Trade in Services

Unless otherwise specified in laws and regulations of Japan, or international agreements to which Japan is a party, ships not flying the Japanese flag are prohibited from entering ports in Japan which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.

Sector: Vocational Skills Test

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Human Resources Development Promotion Law(Law No. 64 of 1969), Chapter 5

Description: Cross-Border Trade in Services

Some of specific type of non-profit organisation (the employers' organisations, their federations, general incorporated associations, general incorporated foundations, incorporated labour unions or miscellaneous incorporated non-profit organisations) can supply the service. Such organisation which intends to carry out the vocational skills test for workers is required to establish an office in Japan and to be designated by the Minister of Health, Labour and Welfare.

Sector: Water Supply and Waterworks

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law(Law No. 228 of 1949), Article 27 (21)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3

Description: Investment

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intend to make investments in water supply and waterworks industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investor may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

(21) For greater certainty, for the purposes of this entry, the definition of "inward direct investment" provided in Article 26 of the ***Foreign Exchange and Foreign Trade Law*** shall apply with respect to the interpretation of this entry.

Sector: Wholesale and Retail Trade

Sub-Sector: Livestock

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Livestock Dealer Law (Law No. 208 of 1949), Article 3

Description: Cross-Border Trade in Services

A person who intends to conduct livestock trading business is required to be resident in Japan, and to obtain a licence from the prefectural governor having jurisdiction over the place of residence. For greater certainty, “livestock trading” means the trading or exchange of livestock, or the good offices for such trading or exchange.

Sector: Aerospace Industry

Sub-Sector: Aircraft manufacturing and repairing industry

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 and Article 30 (22)

Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 and Article 5

Aircraft Manufacturing Industry Law (Law No.237 of 1952), Article 2, Article 3, Article 4 and Article 5

Description: Investment and Cross-Border Trade in Services

1. The prior notification requirement and screening procedures under the Foreign Exchange and Foreign Trade Law apply to foreign investors who intended to make investments in the aircraft industry in Japan.

2. The screening is conducted from the viewpoint of whether the investment is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

3. The investors may be required to alter the content of the investment or discontinue the investment process, depending on the screening result.

4. A technology introduction contract between a resident and a non-resident related to the aircraft industry is subject to the prior notification requirement and screening procedure under the Foreign Exchange and Foreign Trade Law.

5. The screening is conducted from the viewpoint of whether the conclusion of the technology introduction contract is likely to cause a situation in which national security is impaired, the maintenance of public order is disturbed, or the protection of public safety is hindered.

6. The resident may be required to alter the provisions of the technology introduction contract or discontinue the conclusion of that contract, depending on the screening result.

7. The number of licences conferred to manufactures and service suppliers in those sectors may be limited.

8. An enterprise which intends to produce aircraft and supply repair services is required to establish a factory related to manufacture or repair aircraft under the laws and regulations of Japan.

(22) For greater certainty, for the purposes of this entry, the definition of “inward direct investment” provided in Article 26 of the *Foreign Exchange and Foreign Trade Law* shall apply with respect to the interpretation of this entry.

SCHEDULE OF MALAYSIA

INTRODUCTORY NOTES

1. Description sets out the non-conforming measures for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Registration of Business Act 1956 [Act 197]

Limited Liability Partnership Act 2012 [Act 743]

Co-operative Societies Act 1993 [Act 502]

Description: Investment

Only Malaysian nationals or permanent residents can register a sole proprietorship or partnership in Malaysia. Foreigners can register a Limited Liability Partnership (LLP) in Malaysia, but the compliance officer shall be a citizen or permanent resident of Malaysia that resides in Malaysia.

Foreigners are not allowed to establish or join cooperative societies in Malaysia.

Sector: Manufacturing

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Industrial Co-ordination Act 1975 [Act 156]

Administrative Guidelines

Description: Investment

1. Foreign equity is limited up to 49 per cent for investment in the manufacture or assembly of motor vehicles. However, no foreign equity restrictions are imposed on the following categories:

(a) luxury passenger vehicles with engine capacity of 1,800 c.c. and above and on the road price not less than RM150,000;

(b) pick-up trucks and commercial vehicles;

(c) hybrid and electric vehicles; and

(d) motorcycles with engine capacity of 200 c.c. and above.

2. Foreign equity is limited up to 30 per cent for the manufacture of batik fabric and apparel of batik.

Sector: Manufacturing

Obligations Concerned: Performance Requirements (Article 9.10)

Level of Government: Central and Regional

Measures: Industrial Co-ordination Act 1975 [Act 156]

Customs Act 1967 [Act 235]

Free Zone Act 1990 [Act 438]

Petroleum Development Act 1974 [Act 144]

Pineapple Industry (Cannery Control) Regulations 1959

Pineapple Industrial Act 1957 (Revised 1990) [Act 427]

Administrative Guidelines

Description: Investment

1. Companies located within the Licensed Manufacturing Warehouse (LMW) and Free Industrial Zone (FIZ) are subject to export conditions.

2. Companies engaging in petroleum refining activity are required to export 100 per cent of their products.

3. Expansion of existing projects in the manufacture of optical disc is subject to export conditions of 100 per cent export.

4. Expansion projects will be considered only for existing independent palm oil refineries which source 100 per cent from their own plantation. For Sabah and Sarawak, a manufacturing licence will only be considered for new integrated projects which source 50 per cent of crude palm oil from their own plantations. Integrated projects refer to projects with own plantation.

5. For pineapple canning, approval will only be granted for projects which source 100 per cent supply from their own plantation.

Sector: Marine Capture Fisheries

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central and Regional

Measures: Fisheries Act 1985 [Act 317]

Description: Investment and Cross-Border Trade in Services

No foreign fishing vessel shall load or unload any fish, fuel or supplies or tranship any fish, or fish or attempt to fish, or conduct any techno-economic research or waters survey of any fishery, in Malaysian fisheries waters unless authorised to do so.

An application for a licence or a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters shall be made through a Malaysian agent who shall undertake legal and financial responsibility for the activities to be carried out by such vessel.

Fishing vessel means any boat, craft, ship or other vessel which is used for, equipped to be used for, or of a type used for:

(a) fishing; or

(b) aiding or assisting another boat, craft, ship or other vessel in the performance of any activity related to fishing, including any of the activities of preparation, processing, refrigeration, storage, supply or transportation of fish.

Sector: Patent Agent Services

Trademark Agent Services

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Patent Act 1983 [Act 291]

Description: Cross-Border Trade in Services

Only natural persons registered with the Intellectual Property Corporation of Malaysia (MyIPO) and residing in Malaysia are allowed to carry out a business, practice or act as a patent and trademark agent in Malaysia.

Sector: Professional Services

Sub-Sector: Engineering services

Quantity surveying services

Land surveying services

Architectural services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central and Regional

Measures: Registration of Engineers Act 1967 (amended 2007) [Act 138]

Registration of Engineers Regulations 1990 (amended 2003)

Architect Act 1967 [Act 117]

Architect Rules 1996 (Amendment 2011)

Quantity Surveyors Act 1967 [Act 487]

Quantity Surveyors (Amendment) Rules 2004

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 [Act 520]

Administrative Guidelines

Description: Investment and Cross-Border Trade in Services

Any qualified natural persons, who are resident in Malaysia and registered with the relevant professional boards are allowed to supply engineering, quantity surveying, land surveying and architectural services.

Foreigners will be subject to temporary registration.

Engineering services and architectural services must be authenticated by a registered professional in Malaysia.

The shareholding of an engineering, architectural and quantity surveying services establishment shall be no less than 70 per cent held by any one of the registered professionals. For each of these establishments, the majority of directors shall be registered professionals. This shall also apply to multi-disciplinary practices (MDP) comprising of professional architects, professional engineers with a practicing certificate, and registered land or quantity surveyors with a practicing certificate.

Sector: Legal Services (other than arbitration)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central and Regional

Measures: Legal Profession Act 1976 [Act 166]

Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014

Offshore Companies Act 1990 [Act 441]

Labuan Trust Companies Act 1990 [Act 442] Advocates Ordinance of Sabah 1953 [Sabah Cap. 2]

Advocates Ordinance of Sarawak 1953 [Sarawak Cap. 110]

Description: Investment and Cross-Border Trade in Services

Peninsular Malaysia and the Federal Territory of Labuan

Foreign law firms and foreign lawyers are not permitted to practice Malaysian law save as provided for under section 40(O) of the Legal Profession Act 1976 [Act 166] and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014.

Foreign law firms from recognised jurisdictions must apply to a Selection Committee to be established as a Qualified Foreign Law Firm (QFLF) or an International Partnership (IP) with a Malaysian law firm. A maximum of five QFLF licences may be issued in the initial period and only to foreign law firms with proven expertise in International Islamic Finance.

Only foreign lawyers from recognised jurisdictions can apply to work in a QFLF, an IP or a Malaysian law firm. Such a foreign lawyer must be resident in Malaysia for not less than 182 days in any calendar year.

A QFLF and an IP, and a registered foreign lawyer working in a Malaysian law firm are subject to the provisions of the Legal Profession Act 1976 [Act 166].

Foreign lawyers providing legal services in Malaysia on a "fly-in and fly-out" basis shall be subject to the provisions under section 37(2B)(b) of the Legal Profession Act 1976 [Act 166].

Sabah and Sarawak

Foreign law firms and foreign lawyers are not permitted to practice in Sabah or Sarawak.

Sector: Real Estate Services on a fee or contract basis

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central and Regional

Measures: Section 18 of Valuers, Appraisers & Estate Agents Act 1981 [Act 242]

Valuers, Appraisers & Estate Agents Rules 1986

Description: Investment and Cross-Border Trade in Services

A natural person who is not a citizen or permanent resident of Malaysia shall not qualify for registration as a valuer.

Sector: Communications Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Communications and Multimedia Act of 1998 [Act 588]

Communications and Multimedia (Licensing) Regulations 2000

Description: Investment and Cross-Border Trade in Services

Licences for the supply of telecommunications services in Malaysia are divided into individual licences and class licences, depending on the character of the service.

The following persons or classes of persons shall be ineligible to apply for an individual licence:

(a) a foreign company defined under the Companies Act 1965 [Act 125];

(b) an individual or a sole proprietorship; and

(c) a partnership.

The following persons or classes of persons shall be ineligible to be registered as a class licensee:

(i) a foreign individual who is not a permanent resident; and

(ii) a foreign company as defined under the Companies Act 1965 [Act 125].

Foreigners are not permitted to apply for a licence for Content Applications Service Providers (CASP), a special subset of applications service providers that refers to satellite broadcasting, subscription broadcasting, terrestrial free to air TV or terrestrial radio broadcasting.

The Minister of Communication and Multimedia may, for good cause or as the public interest may require, permit either of the above to apply to be registered as any one of the licensee mentioned above.

Sector: Education Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Education Act 1996 [Act 550]

Private Higher Education Institutions Act 1996 [Act 555]

Description: Investment and Cross-Border Trade in Services

Education services provided in Malaysia can only be provided by education services suppliers that are registered and established in Malaysia.

Foreigners are not allowed to supply the following education services:

(a) preschool;

(b) primary and secondary school education services covering Malaysian national curriculum; and

(c) religious school.

Sector: Private Healthcare Facilities and Services

Allied Health Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Medical Regulations 1974

Private Healthcare Facilities and Services Act 1998 [Act 586] Private Healthcare Facilities and Services Regulations 2006

Registration of Pharmacists Act 1951 [Act 371]

Administrative Guidelines

Description: Investment and Cross-Border Trade in Services

Private healthcare facilities and services can only be supplied by service suppliers that are registered and established in Malaysia and with authorisation.

Foreigners are not allowed to establish blood banks, maternity homes, psychiatric hospitals, pathology laboratories or to practice as general dental practitioners, general medical practitioners, and general nurses including midwifery.

Specialised Dental Services

Foreigners are not allowed to provide specialised dental services or operate a specialised medical facility except in oral and maxillo-facial reconstructive surgery.

Pharmacists

Foreign pharmacists are not allowed to prepare, dispense, assemble or sell medicinal products.

Allied health services

Foreigners are not allowed to supply allied health services which cover services such as clinical scientist, microbiologist, clinical biochemist, medical geneticist, biomedical scientist, embryologist, medical physicist, entomologist, forensic scientist, nutritionist, speech language pathologist/speech language therapist, audiologist, physiotherapist, counsellors, diagnostic radiographer, radiotherapist, food technologist, dietician, medical social officer, optometrist, health education officer, environmental health officer, medical laboratory technologist, health care food service assistant officer, assistant medical officer and assistant food technologist.

Sector: Customs Agents and Brokers

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Customs Act 1967 [Act 235]

Customs Regulations 1977

Customs Standing Orders No.45/2003

Description: Cross-Border Trade in Services

Foreigners are not allowed to act as customs agents and brokers.

Sector: Tourist Guide Services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Tourism Industry Act 1992 [Act 482]

Description: Cross-Border Trade in Services

Foreigners are not allowed to provide tourist guide services.

Sector: Utilities

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central and Regional

Measures: Electricity Supply Act 1990 [Act 447]

Electricity (Amendment) Ordinance 2003 (Cap A109)

Electricity Rules 1999

Electricity (State Grid Code) Rules 2003

SESCO Ordinance 1962 (Cap 51)

Sarawak Electricity Supply (successor Company) Ordinance 2004 (Cap 59)

Energy Commission Act 2001 [Act 610]

Electricity Regulations 1994

Licensee Supply Regulations 1990

Gas Supply Act 1993

Gas Supply Regulation 1997

Energy Commission Act 2001 [Act 610]

Sarawak Gas Supply Services (Operating Company) Ordinance 1995

Waters Act 1920 [Act 418]

Description: Investment and Cross-Border Trade in Services

No person, other than a supply authority, is authorised to supply, use, work or operate any installation relating to gas, water and electricity.

Only persons that are registered and established in Malaysia can supply services for gas, water and electricity, and disposal of waste.

Sector: Transport Services

Sub-Sector: International maritime transport services (including maritime cabotage and government cargo)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central and Regional

Measures: Merchant Shipping Ordinance 1952 [Ordinance 70/1952]

Merchant Shipping Ordinance 1960 (Sabah) [Ordinance 11/1960]

Merchant Shipping Ordinance 1960 (Sarawak) [Ordinance 2/1960]

Merchant Shipping (Amendment and Extension) Act 2007 [Act A1316]

Administrative Guidelines

Description: Investment and Cross-Border Trade in Services

Foreign shipping vessels are not permitted to provide and supply domestic shipping services, maritime cabotage services and government cargo.

Malaysia International Ship Registry

Foreign persons may only provide international maritime services that are not plying in domestic waters only through a representative office, regional office or locally incorporated joint venture corporation with Malaysian individuals or Malaysian controlled corporations or both. Aggregate foreign shareholding in the joint venture corporation shall maintain not less than 51 per cent.

All joint venture or corporation seeking to register ships under this registry shall appoint a ship manager prior to registration of a ship, who shall be:

(a) a Malaysian citizen having his or her permanent residence in Malaysia; or

(b) a company incorporated in Malaysia and having its principal place of business in Malaysia.

Traditional Registry

Only ships registered on the Traditional Registry may provide domestic maritime services.

Foreign persons may only register a ship on the Traditional Registry through a representative office, regional office or locally incorporated joint venture corporation with Malaysian individuals or Malaysian controlled corporations or both. Aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.

All joint ventures or corporations seeking to register ships under this registry shall satisfy the following conditions:

(a) majority of senior managers and board of directors shall be Malaysians; and

(b) incorporated in Malaysia and having its main business operations in Malaysia.

Sector: Distribution Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Guidelines on Foreign Participation in the Distributive Trade Services in Malaysia (Amendment 2010)

Franchise Act 1998 [Act 590]

Companies Act 1965 [Act 125]

Guideline on Convenience Stores with Foreign Interest

Description: Investment and Cross-Border Trade in Service

Foreigners are not allowed to operate supermarkets, mini markets, permanent wet markets, permanent pavement markets, fuel stations with or without kiosk, news agent, medical hall, Malaysian cuisine restaurants, bistro, jewellery stores and textile stores.

All hypermarkets, superstores, departmental stores, specialty stores, franchise businesses, and convenience stores (as defined in the relevant Guidelines) with foreign equity must be incorporated locally under the Companies Act 1965 [Act 125].

All foreign involvement in distributive trade shall obtain the approval of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) on:

(a) acquisition;

(b) mergers or takeovers;

(c) opening of new branches/outlets/chain stores;

(d) relocation or expansion of existing and new branches/outlets/chain stores;

(e) acquisitions of outlets of other operators; and

(f) purchase and sale of properties to operate distributive trade activities prior to obtaining the approval or license from local authorities and other agencies to operate distributive trade activities.

All distributive trade companies with foreign equity shall:

(a) appoint Bumiputera directors;

(b) hire personnel at all levels including management to reflect the racial composition of the Malaysian population;

(c) formulate plans on human resource such as capacity building and transfer of knowledge to assist Bumiputera participation in the distributive trade sector; and

(d) hire at least one per cent of the total workforce from persons with disabilities.

The minimum capital investment is RM50 million for hypermarkets, RM25 million for superstores, RM20 million for department stores, and RM1 million for specialty stores and convenience stores, subject to review every three years.

No less than 30 per cent of the equity in hypermarkets, superstores and convenience stores is to be held by Bumiputera.

Hypermarkets, superstores, convenience stores and departmental stores shall seek to allocate 30 per cent of the Stock Keeping Units displayed on the shelf space for Bumiputera SME goods and products in each outlet within three years.

One hypermarket will be allowed for every 250,000 residents and one superstore for every 200,000 residents.

All hypermarkets, superstores and departmental stores shall begin operation within two years from the date of approval from MDTCC.

A specialty store may be allowed to operate if it fulfils the following objectives:

(a) there is an absence of local players in the proposed format;

(b) it creates employment opportunities;

(c) transfer of technology and skills; and

(d) the business has a unique or exclusive nature.

Foreigners are not allowed to apply for a franchise broker or consultant licence.

The sale of a franchise is deemed to be in Malaysia where an offer to sell or buy a franchise:

(a) is made in Malaysia and accepted within or outside Malaysia;

(b) is made outside Malaysia and accepted within Malaysia; and

(c) the franchised business is or will be operating in Malaysia.

There are three types of franchises as follows:

Type of Franchises	Definition
Franchisor	A person who grants a franchise to a franchisee and includes a master franchisee and his relationship with a sub-franchisee.
Master Franchisee	A person who has been granted the rights by a franchisor to sub-franchise to another person, at his own expense, the franchise of the franchisor.
Franchisee of Foreign Franchisor	A person who has been granted the rights by a foreign franchisor but does not sub-franchise to another person.

For convenience stores, only a foreign company that is not associated with the franchisor (according to *Franchise Act 1998* [Act 590]) may invest or own not more than 30 per cent equity interest.

For greater certainty, "only a foreign company that is not associated with the franchisor" means only a foreign company that is not the franchisor according to Franchise Act 1998 [Act 590].

Sector: Construction and Related Engineering Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Level of Government: Central

Measures: Registration of Engineers Act 1967 (amended 2007) [Act 138]

Registration of Engineers Regulations 1990 (amended 2003)

Architect Act 1967 [Act 117]

Quantity Surveyors Act 1967 [Act 487]

Quantity Surveyors (Amendment) Rules 2004

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 [Act 520]

Administrative Guidelines

Description: Investment and Cross-Border Trade in Services

Only an entity incorporated in Malaysia registered with the Malaysian Construction Industry Development Board (CIDB) and locally incorporated either through a representative office, regional office or joint venture corporation, with Malaysian individuals or Malaysian controlled corporations may be permitted to provide construction and related services.

Any entity incorporated in Malaysia, whose foreign equity exceeds more than 30 per cent by way of a joint venture corporation or consortium with Malaysian individuals or Malaysian controlled corporations, is subject to the registration requirements by CIDB.

The senior management and board of directors of each foreign entity shall be of Malaysian majority that shall have control over its management and investment.

Sector: Freight Road Transportation Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Land Public Transport Act 2010 [Act 715]

Panduan Dasar Pelesenan Suruhanjaya Pengangkutan Awam Darat (SPAD)

Description: Investment and Cross-Border Trade in Services

Only entities that are registered and established in Malaysia are allowed to provide freight road transportation services in Malaysia.

Foreigners are not allowed to own more than 49 per cent of equity shareholding in any entity supplying freight transportation services covering transportation of containerised freight based on a fee or contractual basis.

Sector: Wholesale and Distribution Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Price Control Act 1946 [Act 121]

Control of Supplies Act 1961 [Act 122]

Description: Investment and Cross-Border Trade in Services

Foreigners are not permitted to provide wholesale and distribution services for fabrics and apparels of batik, motor vehicles including motorcycles and scooters, passenger cars and commercial vehicles (excluding automotive components and parts of these vehicles).

Sector: Oil and Gas

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Petroleum Development Act 1974 [Act 144]

Other Implementing Measures

Description: Investment and Cross-Border Trade in Services

The Prime Minister of Malaysia may make non-conforming regulations for the purposes of carrying into effect the provisions of the Petroleum Development Act of 1974 [Act 144] with respect to the upstream oil and gas sector (1), and may in particular, provide for the conduct of or the carrying on of:

(a) any business or service relating to the exploration, exploitation, winning or obtaining of petroleum; and

(b) any business involving the manufacture and supply of equipment used in the petroleum industry,

except:

(c) regulations that impose non-conforming requirements shall not be adopted or maintained with respect to the supply of the following 12 goods or services (2):

(i) Seismic Data Acquisition;

(ii) Directional Drilling services, Gyro While Drilling services, Measurement While Drilling services, and Logging While Drilling services;

(iii) Cementing Related Services;

(iv) Gas Turbines and related maintenance and repair services;

(v) Control Valves services;

(vi) Oil Country Tubular Goods;

(vii) Induction motor services;

(viii) Distributed Control Systems (DCS) services;

(ix) Transformer services;

(x) Structural steel;

(xi) Linepipes; and

(xii) Process pipes;

(d) regulations shall not be adopted or maintained that impose restrictions on mode of entry for foreign entities that wish to participate in Malaysia's upstream oil and gas sector activities of exploring, exploiting, winning and obtaining petroleum that are more non-conforming than the following requirements:

(i) a requirement to have a local establishment;

(ii) a requirement to partner with a subsidiary of Petroliam Nasional Berhad (PETRONAS);

(iii) a requirement, during the exploration stage, that the PETRONAS subsidiary's participating interest as a Petroleum Arrangement Contractor is 'carried' at maximum of its participating interest (3); and

(iv) a requirement that the Petroleum Arrangement Contractors may only procure goods and services from PETRONAS' List of Licensed Registered Companies (LLRC);

(e) regulations shall not be adopted or maintained that impose restrictions on mode of entry for foreign entities that seek to supply goods and services to Malaysia's upstream oil and gas sector that are more non-conforming than the following requirements:

(i) a requirement to be licensed on the PETRONAS' LLRC; and

(ii) a requirement to appoint a local as an exclusive agent, or to establish in Malaysia and form a joint venture with a local company or individual;

(f) regulations with respect to local participation requirements for equity, board of directors and senior management positions for foreign entities licensed on the PETRONAS' LLRC that seek to supply goods and services shall not be adopted or maintained that are more non-conforming than the requirements for relevant work categories listed in the existing Standardised Work and Equipment Categories for products and services; and

(g) after Malaysia negotiates and executes a contract with an operator or service supplier, non-conforming regulations shall

not be applied in a manner that is inconsistent with the terms and conditions of the contract.

(1) For greater certainty, the Prime Minister may make non-conforming regulations pursuant to the Petroleum Development Act of 1974 that are more non-conforming than existing regulations made pursuant to the Act. This entry does not require the Prime Minister to maintain existing regulations.

(2) For greater certainty, in the event Malaysia decides to offer a contract to an investor or service supplier of another Party for the supply of above-listed goods or services together with other goods or services, the investor or service supplier of the other Party may hold the prime contract, subject to meeting the PETRONAS' List of Licensed Registered Companies requirements with respect to the supply of the other goods or services.

(3) During the exploration period, all exploration and other costs are borne by the Petroleum Arrangement Contractors other than the PETRONAS subsidiary. Consequently, upon the expiry of the carried interest period, the PETRONAS subsidiary will bear the costs of future operations in proportion to its participating interest in the production-sharing contract

SCHEDULE OF MEXICO

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the Measures element of that entry.

3. In the interpretation of an entry, all elements of the entry shall be considered. An entry shall be interpreted in the light of the relevant provisions of the Chapters against which the entry is taken. To the extent that:

(a) the Measures element is qualified by a liberalisation commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. For the purposes of this Annex:

The term "CMAP" means Mexican Classification of Activities and Products (Clasificación Mexicana de Actividades y Productos) numbers as set out in the National Institute for Statistics and Geography (Instituto Nacional de Estadística y Geografía), Mexican Classification of Activities and Products (Clasificación Mexicana de Actividades y Productos), 1994.

The term "concession" means an authorisation provided by the Mexican State to a person to exploit a natural resource or provide a service, for which Mexican nationals and Mexican enterprises are granted priority over foreigners.

The term "foreigners' exclusion clause" means the express provision in an enterprise's by-laws, stating that the enterprise shall not allow foreigners, directly or indirectly, to become partners or shareholders of the enterprise.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 27

Foreign Investment Law (Ley de Inversión Extranjera), Title II, Chapters I and II

Regulations to the Foreign Investment Law and the National Registry for Foreign Investment (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title II, Chapters I and II

Description: Investment

Foreign nationals or foreign enterprises may not acquire property rights (dominio directo) over land and water in a 100-kilometre strip along the country's borders or in a 50-kilometre strip inland from its coasts (Restricted Zone).

Mexican enterprises without a foreigners' exclusion clause may acquire property rights (dominio directo) over real estate located in the Restricted Zone, used for non-residential purposes. Notice of the acquisition must be given to the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores, SRE) within 60 business days following the date of acquisition.

Mexican enterprises without a foreigners' exclusion clause may not acquire property rights (dominio directo) over real estate located in the Restricted Zone, used for residential purposes.

Pursuant to the procedure described below, Mexican enterprises without a foreigners' exclusion clause may acquire rights for the use and enjoyment over real estate in the Restricted Zone, used for residential purposes. Such a procedure shall also apply when foreign nationals or foreign enterprises seek to acquire rights for the use and enjoyment over real estate in the Restricted Zone regardless of the purpose for which the real estate is used. A permit from the SRE is required for credit institutions to acquire, as trustees, rights to real estate located in the Restricted Zone, when the purpose of the trust is to allow the use and enjoyment of such real estate, without granting real property rights thereof, and the trust beneficiaries are the Mexican enterprises without a foreigners' exclusion clause, or the foreign nationals or foreign enterprises referred to above. The terms "use" and "enjoyment" of the real estate located in the Restricted Zone mean the rights to use or enjoy such real estate, including, as applicable, obtaining benefits, products and, in general, any yield resulting from lucrative operation and exploitation through third parties or through the credit institutions acting as trustees. The duration of the trust referred to in this entry shall be for a maximum period of 50 years, which may be renewed on request by the interested party. The SRE can verify at any time the compliance with the conditions under which the permits referred to in this entry are granted, as well as the submission and veracity of the notices mentioned above. The SRE shall decide on the permits, considering the economic and social benefits that these operations could have on the Nation. Foreign nationals or foreign enterprises seeking to acquire real estate outside the Restricted Zone, shall previously submit to the SRE a statement agreeing to consider themselves Mexican nationals for the above mentioned purposes, and waiving the right to invoke the protection of their governments with respect to such real estate.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Market Access (Article 10.5)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera),Title VI, Chapter III

Description: Investment and Cross-Border Trade in Services

The National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE), in order to evaluate applications submitted for its consideration (acquisitions or establishment of investments in restricted activities as set out in this Schedule), shall take into account the following criteria: (a) the effects on employment and training of workers; (b) the technological contribution; (c) the compliance with the environmental provisions contained in the environmental legislation; and (d) in general, the contribution to increase the competitiveness of the Mexican productive system. When deciding on an application, the CNIE may only impose requirements that do not distort international trade and that are not prohibited by Article 9.10 (Performance Requirements).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera),Title I, Chapter III As qualified by the Description element

Description: Investment

Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to participate, directly or indirectly, in more than 49 per cent of the ownership interest of a Mexican enterprise in an unrestricted sector, only when the total value of the assets of the Mexican enterprise exceeds the applicable threshold at the time the application for acquisition is submitted. The applicable threshold for the review of an acquisition of a Mexican enterprise shall be the amount determined by the CNIE. The threshold at the date of entry into force of this Agreement for Mexico will be the equivalent in Mexican pesos to one billion US dollars, using the official exchange rate on October 5th, 2015. Each year, the threshold will be adjusted according to the nominal growth rate of the Mexican Gross Domestic Product, as published by the National Institute for Statistics and Geography (Instituto Nacional de Estadística y Geografía, INEGI).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 25 General Law of Cooperative Companies (Ley General de Sociedades Cooperativas), Title I, and Title II, Chapter II Federal Labor Law (Ley Federal del Trabajo), Title I Foreign Investment Law (Ley de Inversión Extranjera),Title I, Chapter III

Description: Investment No more than 10 per cent of the persons participating in a Mexican cooperative production enterprise may be foreign nationals. Investors of another Party or their investments may only own, directly or indirectly, up to 10 per cent of the ownership interest in a Mexican cooperative production enterprise. No foreign nationals may engage in general administrative functions or perform managerial activities in that enterprise. A cooperative production enterprise is an enterprise whose members join their personal work, whether physical or intellectual, with the purpose of producing goods or services.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Federal Law to Foster the Microindustry and Handicraft Activity (Ley Federal para el Fomento de la Microindustria y la Actividad Artesanal), Chapters I, II, III and IV

Description: Investment Only Mexican nationals may apply for a licence (cédula) to qualify as a microindustry enterprise. Mexican microindustry enterprises may not have foreign persons as partners. The Federal Law to Foster the Microindustry and Handicraft Activity (Ley Federal para el Fomento de la Microindustria y Actividad Artesanal) defines “microindustry enterprise” as the enterprise integrated by up to 15 workers, that is engaged in the transformation of goods, and whose annual sales do not exceed the amount determined periodically by the Ministry of Economy (Secretaría de Economía, SE).

Sector: Agriculture, Livestock, Forestry, and Lumber Activities

Sub-Sector: Agriculture, livestock or forestry

Industry Classification: CMAP 1111 Agriculture CMAP 1112 Livestock and hunting (limited to livestock) CMAP 1200 Forestry and felling Trees

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 27

Agrarian Law (Ley Agraria), Title VI Foreign Investment Law (Ley de Inversión Extranjera),Title I, Chapter III

Description: Investment

Only Mexican nationals or Mexican enterprises may own land for agriculture, livestock or forestry purposes. Such enterprises must issue a special type of share (“T” share) representing the value of that land at the time of its acquisition. Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of “T” shares.

Sector: Retail Trade

Sub-Sector: Sale of non-food products in specialised establishments

Industry Classification: CMAP 623087 Retail Trade of Firearms, Cartridges and Munitions CMAP 612024 Wholesale Trade Not Elsewhere Classified (limited to firearms, cartridges and munitions)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico that is engaged in the sale of explosives, firearms, cartridges, ammunition and fireworks, excluding the acquisition and use of explosives for industrial and extractive activities, and the preparation of explosive mixtures for such activities.

Sector: Communications

Sub-Sector: Broadcasting (radio and free to air television)

Industry Classification: CMAP 941104 Private Production and Transmission of Radio Programs (limited to production and transmission of sound broadcasting (radio) programs) CMAP 941105 Private Services of production, Transmission and Retransmission of Television Programming (limited to transmission and retransmission of free-to-air television programming)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Articles 28 and 32 Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión), Title IV, Chapters I, III and IV, Title XI, Chapter II General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapter III (when it does not oppose to the Federal Telecommunication and Broadcasting Law) Regulations to the Radio and Television Federal Law, in the Matter of Concessions, Permits and Content of Radio and Television Transmissions (Reglamento de la Ley Federal de Radio y Televisión, en Materia de Concesiones, Permisos y Contenido de las Transmisiones del Radio y Televisión) Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapters II and III Regulations to the Foreign Investment Law and the National Registry for Foreign Investment (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title VI

Description: Investment and Cross-Border Trade in Services

According to their purposes, sole concessions and frequency band concessions will be granted only to Mexican nationals or enterprises constituted under Mexican laws and regulations. Investors of a Party or their investments may participate up to 49 per cent in concessionaire enterprises providing broadcasting services. This maximum foreign investment, will be applied according to the reciprocity existent with the country in which the investor or trader who ultimately controls it, directly or indirectly, is constituted. For the purposes of the above paragraph, a favourable opinion of the Mexican Foreign Investment Commission is required before granting the sole concession for providing broadcasting services in which foreign investment participate. Among concessions, concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop and preserve languages, culture, knowledge, traditions, identity and their internal rules that, under principles of gender equality, enable the integration of indigenous women in the accomplishment of the purposes for which the concession is granted. Under no circumstances may a concession, the rights conferred therein, facilities, auxiliary services, offices or accessories and properties affected thereto, be assigned, encumbered, pledged or given in trust, mortgaged, or transferred totally or partially to any foreign government or state. The State shall guarantee that the broadcasting promotes the values of national identity. The broadcasting concessions shall use and stimulate local and national artistic values and expressions of Mexican culture. The daily

programme starring actors shall include a larger time covered by Mexicans.

Sector: Communications

Sub-Sector: Telecommunications (Including resellers and restricted television and audio service)

Industry Classification: CMAP 720006 Other Telecommunications Services (limited to satellite communications) CMAP 720006 Other Telecommunications services (Not including Enhanced or Value Added Services) CMAP 502003 Telecommunications installations CMAP 720006 Other Telecommunications Services (limited to resellers)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 28 Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión),Title IV, Chapters I, III and IV, Title V, chapter VIII, and Title VI, Unique Chapter General Means of Communication Law (Ley de Vías Generales de Comunicación) (when it does not oppose to the Federal Telecommunications and Broadcasting Law) Foreign Investment Law (Ley de Inversión Extranjera) Title I, Chapter II Regulations to the Foreign Investment Law and the National Registry for Foreign Investment (Reglamento de la Ley de Inversión Extranjera y del Registro Nacional de Inversiones Extranjeras), Title VI

Description: Investment and Cross-Border Trade in Services According to their purposes, sole concessions and frequency band concessions will be granted only to Mexican nationals or enterprises constituted under Mexican Laws and regulations.

Among concessions, concessions for indigenous social use shall be granted to indigenous people and indigenous communities of Mexico, with the objective to promote, develop and preserve languages, culture, knowledge, traditions, identity and their internal rules that, under principles of gender equality, enable the integration of indigenous women in the accomplishment of the purposes for which the concession is granted. Concessions for indigenous social use shall only be granted to indigenous people and indigenous communities in Mexico without any kind of foreign investment. Under no circumstances may a concession, the rights conferred therein, facilities, auxiliary services, offices or accessories and properties affected thereto, be assigned encumbered, pledged or given in trust, mortgaged, or transferred totally or partially to any foreign government or state. Only Mexican nationals and enterprises established under Mexican laws may obtain authorisation to provide telecommunication services as a reseller without being a concessionaire.

Sector: Communications

Sub-Sector: Transportation and telecommunications

Industry Classification: CMAP 7200 Communications (including telecommunications and postal services) CMAP 7100 Transport

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central Measures Ports Law (Ley de Puertos), Chapter IV Regulatory Law of the Railway Service (Ley Reglamentaria del Servicio Ferroviario), Chapter II, Section III Civil Aviation Law (Ley de Aviación Civil), Chapter III, Section III Airports Law (Ley de Aeropuertos), Chapter IV Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión),Title IV, Chapters I, III and IV General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters III and V

Description: Investment

Foreign governments and foreign States may not invest, directly or indirectly, in Mexican enterprises engaged in communications, transportation and other general means of communications.

Sector: Transportation

Sub-Sector: Land transportation and water transportation

Industry Classification: CMAP 501421 Construction of Maritime and River Works CMAP 501422 Construction of Roadworks and Works for Land Transport Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal),Title I, Chapter III Ports Law (Ley de Puertos), Chapter IV Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II

Description: Investment and Cross-Border Trade in Services

A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to construct and operate, or only operate, marine or river works. A concession is also required to build, operate, exploit, conserve or maintain federal roads and bridges. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Sector: Energy

Sub-Sector: Oil and other hydrocarbons exploration and production

Transportation, treatment, refining, processing, storage, distribution, compression, liquefaction, decompression, regasification, sale to the public and commercialisation of hydrocarbons, petroleum products and petrochemicals, as well as the users of such products and services. Exporting and importing of hydrocarbons and petroleum products

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Articles 25, 27 and 28 Hydrocarbons Law (Ley de Hidrocarburos), Articles 1, 3, 5, 6, 11, 18, 41, 46, 83, 120, 128 and Twenty Fourth Transitory Provision Foreign Trade Law (Ley de Comercio Exterior) Hydrocarbons Law Regulations (Reglamento de la Ley de Hidrocarburos), Articles 14 and 36. Regulation of the activities referred to by the Third Title of the Hydrocarbons Law (Reglamento de las actividades a que se refiere el Título Tercero de la Ley de Hidrocarburos), Article 51 Methodology for the Measurement of the National Content in the Entitlements and Exploration and Production Contracts of Hydrocarbons, and the permits in the Hydrocarbons Industry, issued by the Ministry of Economy (Metodología para la Medición del Contenido Nacional en Asignaciones y Contratos para la Exploración y Extracción de Hidrocarburos, así como para los permisos en la Industria de Hidrocarburos, emitida por la Secretaría de Economía)

Description: Investment and Cross-Border Trade in Services

The Nation has the direct, inalienable and imprescriptible ownership of all hydrocarbons in the subsoil of the national territory, including the continental shelf and the exclusive economic zone located outside the territorial sea and adjacent thereto, in strata or deposits, regardless of their physical conditions. Only the Nation shall conduct the exploration and production of hydrocarbons, through entitlements or contracts. The exploration and production contracts shall invariably stipulate that the hydrocarbons in the subsoil are property of the Nation. The Ministry of Energy (Secretaría de Energía) shall establish the appropriate contract model for each contractual area that undergoes a bidding process and is awarded according to the laws; for which it may choose among other contracting models: services, profit-sharing, production-sharing or licenses. The exploration and production activities of hydrocarbons conducted in the national territory through entitlements and exploration and production contracts must comply with a minimum national content percentage goal on average. This national content average goal will not take into account exploration and production of hydrocarbons in deep-water and ultra-deep water, which will have a different national content requirement established by the Ministry of Economy (Secretaría de Economía, SE) with the opinion of the Ministry of Energy considering the characteristics of those activities. The above mentioned mandate must comply with the methodology established by the Ministry of Economy, and must consider that it does not affect the competitive position of the Petróleos Mexicanos (PEMEX) or any other state productive enterprises and other economic agents developing exploration and production of hydrocarbons. The Federal Executive shall establish safeguard zones in the areas in which the State decides to prohibit exploration and production activities, different from protected natural areas in which entitlements and contracts cannot be awarded. The Mexican Government should include within the conditions for the entitlements and exploration and production contracts, as well as in the permits, that under the same circumstances of prices, quality and timely delivery, preference should be given to the purchase of national goods and the contracting of domestic services, including the training and hiring, at a technical and management level, of Mexican nationals. The Ministry of Energy and the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE) will establish the permit models for the transportation, treatment, refining, processing, storage, distribution, compression, liquefaction, decompression, regasification, sale to the public and commercialisation of hydrocarbons, petroleum products and petrochemicals, taking into account that permit-holders must have an address in

Mexico. The permits for the exporting and importing of hydrocarbons and petroleum products will be issued according to the Foreign Trade Law, which requires permit-holders to have a domicile in Mexico.

Sector: Energy

Sub-Sector: Oil and other hydrocarbons exploration and production

Transportation, treatment, refining, processing, storage, distribution, compression, liquefaction, decompression, regasification, sale to the public and commercialisation of hydrocarbons, petroleum products and petrochemicals, as well as the users of such products and services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Articles, 25, 27 and 28. Decree amending and supplementing various provisions of the Articles 25, 27 and 28 of the United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos) Hydrocarbons Law (Ley de Hidrocarburos), Articles 1, 3, 5, 6, 8, 11, 12, 16, 17, 18, 19, 29, 41, 46 83, 122, 128 and transitory provisions 8, 24, and 28 Petróleos Mexicanos Law (Ley de Petróleos Mexicanos), Articles 2, 4, 5, 7, 59, 63, 76, 77, and 78. Hydrocarbons Law Regulations (Reglamento de la Ley de Hidrocarburos), Articles 14 and 36

Description: Investment and Cross-Border Trade in Services

The Nation has the direct, inalienable and imprescriptible ownership of all hydrocarbons in the subsoil of the national territory, including the continental shelf and the exclusive economic zone located outside the territorial sea and adjacent thereto, in strata or deposits, regardless of their physical conditions. Only the Nation shall conduct the exploration and production of hydrocarbons, through entitlements or contracts, which must invariably stipulate that the hydrocarbons in the subsoil are property of the Nation. The Ministry of Energy (Secretaría de Energía), with technical assistance from the National Hydrocarbons Commission (Comisión Nacional de Hidrocarburos), might award entitlements to Petróleos Mexicanos (PEMEX), as a state productive enterprise, for the exploration and production of hydrocarbons. In that regard, PEMEX may only transfer an entitlement to another state productive enterprise. In order to perform the activities related to the entitlements, PEMEX shall only execute service contracts with private parties. The State may mandate PEMEX through its entitlements, exploration and production contracts, and permits, to include preferences for the purchase of national goods, contracting domestic services, as well as a preference for nationals, including technicians and senior management. The above mentioned mandate must comply with the methodology established by the Ministry of Economy (Secretaría de Economía, SE), and consider that it does not affect the competitive position of the state productive enterprise and other economic agents developing exploration and production of hydrocarbons. The Ministry of Energy (Secretaría de Energía) might establish a direct participation for PEMEX, or another state productive enterprise, in the contracts for exploration and production of hydrocarbons, when the contractual area coexists with an entitlement, when there are opportunities to transfer knowledge and technology, and when there is the possibility of finding a transboundary reservoir. Until December 31, 2017 PEMEX may be the sole entity in charge of the commercialisation of hydrocarbons. Until December 31, 2016 PEMEX will be the only permit-holder for the importing and exporting of gasolines and diesel. The Ministry of Energy (Secretaría de Energía) and the Energy Regulatory Commission (Comisión Reguladora de Energía) will establish the permit models for the transportation, treatment, refining, processing, storage, distribution, compression, liquefaction, decompression, regasification, sale to the public and commercialisation of hydrocarbons, petroleum products and petrochemicals, taking into account that permit-holders must have an address in Mexico. The permits for the exporting and importing of hydrocarbons and petroleum products will be issued according to the Foreign Trade Law, which requires permit-holders to have a domicile in Mexico.

Sector: Energy

Sub-Sector: Electricity

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central Measures: Decree amending and supplementing various provisions of Articles 25, 27 and 28 of the United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos) Electric Industry Law

(Ley de la Industria Eléctrica), Articles 30, 91, 93, and 130 Federal Electricity Commission Law (Ley de la Comisión Federal de Electricidad), Articles 5 and 78 Hydrocarbons Law (Ley de Hidrocarburos), Article 128 Geothermal Energy Law (Ley de Energía Geotérmica), Article 30

Description: Investment and Cross-Border Trade in Services

Through contracts, private persons, on behalf of the Nation, may perform, among other activities, the financing, installation, maintenance, management, operation and expansion of the infrastructure needed to provide the public service of transmission and distribution of electricity. The modalities of contracts to perform the above mentioned activities must be subject to a minimum percentage of national content, which will be determined by the Ministry of Energy (Secretaría de Energía) and the Energy Regulatory Commission (Comisión Reguladora de Energía) with the opinion of the Ministry of Economy (Secretaría de Economía), except when there are not national suppliers to fulfill that requirement. Regarding all other corporate activities of the Federal Electricity Commission (Comisión Federal de Electricidad, CFE), and its subsidiary productive enterprises, according to CFE's Law the Board of Directors will issue regulations for the acquisition, leasing, contracting of services and execution of works. Among others, the Board may require minimum national content percentages according to the nature of the contracting, the tariff regulation and in accordance with the international treaties in which Mexico is a signatory. The Ministry of Energy and the Energy Regulatory Commission, with the opinion of the Ministry of the Economy, should include within the conditions for the assignation and Exploration and Production contracts, as well as for the permits, that under the same circumstances of prices, quality, and timely delivery, preference should be given to the purchase of national goods and the hiring of domestic services, including training and hiring, at a technical and management level, persons with Mexican nationality. The Ministry of Energy will grant permits for the exploration and concessions for the exploitation of areas with geothermal resources to natural persons or to enterprises incorporated under the Mexican legislation, in order to generate electricity or for other purposes. All permits granted under the Electric Industry Law will be granted by the Energy Regulatory Commission (Comisión Reguladora de Energía (CRE)). Permit holders must be natural persons or enterprises incorporated under the Mexican legislation.

Sector: Energy

Sub-Sector: Hydrocarbons and petroleum products

Industry Classification: CMAP 626000 Retail Trade of Gasoline and Diesel (including lubricants, oils and additives sold at service stations)

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central Measures: Hydrocarbons Law (Ley de Hidrocarburos) Transitory Provision 14 Regulation of the activities referred to by the Third Title of the Hydrocarbons Law (Reglamento de las actividades a que se refiere el Título Tercero de la Ley de Hidrocarburos), Article 51

Description: Cross-Border Trade in Services

Permits for the sale to the public of gasoline and diesel fuel will be granted by the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE) starting on January 1, 2016 to economic agents established in the Mexican territory.

Sector: Energy

Sub-Sector: Hydrocarbons and petroleum products (supply of fuel and lubricants for aircraft, ships and railway equipment)

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment

Investors of another Party or their investments may own, directly or indirectly, up to 49 per cent of the ownership interest of a Mexican enterprise which supplies fuel and lubricants for aircraft, vessels and railway equipment.

Sector: Energy

Sub-Sector:

Industry Classification: CMAP 623090 Retail Trade of other Articles and Goods Not Elsewhere Classified (limited to

distribution, transportation and storage of natural gas)

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Hydrocarbons Law (Ley de Hidrocarburos), Article 48 Regulation of the activities referred to by the Third Title of the Hydrocarbons Law (Reglamento de las actividades a que se refiere el Título Tercero de la Ley de Hidrocarburos), Article 51

Description: Cross-Border Trade in Services

A permit granted by the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE) is required to provide services of commercialisation, distribution, transportation, storage compression, decompression, liquefaction, regasification and sale to the public of natural gas, to economic agents established in the Mexican territory. To obtain such permit the interested party must prove that they have their domicile in Mexico.

Sector: Printing, Editing and Associated Industries

Sub-Sector: Newspaper publishing

Industry Classification: CMAP 342001 Publishing of Newspapers, Magazines and Periodicals (limited to newspapers)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III As qualified by the Description element

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in the printing or publication of daily newspapers written primarily for a Mexican audience and distributed in the territory of Mexico. For the purposes of this entry, daily newspapers are those published at least five days a week.

Sector: Manufacture of Goods

Sub-Sector: Explosives, fireworks, firearms and cartridges

Industry Classification: CMAP 352236 Manufacture of Explosives and Fireworks CMAP 382208 Manufacture of Firearms and Cartridges

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico that manufactures explosives, fireworks, firearms, cartridges and ammunition, excluding the preparation of explosive mixtures for industrial and extractive activities.

Sector: Fishing

Sub-Sector: Fishing-related services

Industry Classification: CMAP 1300 Fishing

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 General Law on Sustainable Fishing and Aquaculture (Ley General de Pesca y Acuacultura Sustentables), Title Six, Chapter IV; Title Seven, Chapter II Law of Navigation and Maritime Commerce (Ley de Navegación y Comercio Marítimos), Title I, Chapter

I; Title II, Chapter IV, Title Three, Chapter II Ports Law (Ley de Puertos), Chapters I, IV and VI Regulations to the Fishing Law (Reglamento de la Ley de Pesca), Title Two Chapter I; Chapter II, Sixth Section

Description: Cross-Border Trade in Services

A permit issued by the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca, y Alimentación, SAGARPA) through the National Commission of Aquaculture and Fishing (Comisión Nacional de Acuacultura y Pesca, CONAPESCA); or by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT), in the scope of their competence, is required to engage in fishing activities. A permit issued by SAGARPA is required to carry out activities, such as fishing jobs needed to justify applications for a concession, and the installation of fixed fishing gear in federal waters. Such permit shall be given preferentially to residents of local communities. In equal circumstances, applications of indigenous communities will be preferred. An authorisation issued by SCT is required for foreign-flagged vessels to provide dredging services. A permit issued by SCT is required to provide port services related to fishing, like loading operations and supply vessels, maintenance of communication equipment, electricity works, garbage or waste collection and sewage disposal. Only Mexican nationals and Mexican enterprises may obtain such permit.

Sector: Fishing

Sub-Sector: Fishing

Industry Classification: CMAP 130011 Fishing on the High Seas CMAP 130012 Coastal Fishing CMAP 130013 Fresh Water Fishing

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: General Law on Sustainable Fishing and Aquaculture (Ley General de Pesca y Acuacultura Sustentables), Title VI, Chapter IV; Title VII, Chapter I; Title XIII, Unique Chapter; Title XIV, Chapter I,II and III Law on Navigation and Maritime Commerce (Ley de Navegación y Comercio Marítimos), Title II, Chapter I Sea Federal Law (Ley Federal del Mar), Title I, Chapters I and III National Waters Federal Law (Ley de Aguas Nacionales), Title I, and Title IV, Chapter I Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Regulations to the Fishing Law (Reglamento de la Ley de Pesca), Title I, Chapter I; Title II, Chapters I, III, IV, V, and VI: Title III, Chapters III and IV

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico performing coastal fishing, fresh water fishing and fishing in the Exclusive Economic Zone, excluding aquaculture. Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico performing fishing on the high seas.

Sector: Educational Services

Sub-Sector: Private schools

Industry Classification: CMAP 921101 Private Pre-school Educational Services CMAP 921102 Private Primary Educational Services CMAP 921103 Private Secondary Educational Services CMAP 921104 Private High School Educational Services CMAP 921105 Private Higher Education Services CMAP 921106 Private Education Services that Combine Pre-school, Primary, Secondary, High School and Higher Education Levels

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Law for the Coordination of Higher Education (Ley para la Coordinación de la Educación Superior), Chapter II General Law of Education (Ley General de Educación), Chapter III

Description: Investment

Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of

the ownership interest in an enterprise established or to be established in the territory of Mexico that provides pre-school, primary, secondary, high school, higher and combined private educational services.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Medical services

Industry Classification: CMAP 9231 Medical, Dental and Veterinary Services provided by the Private Sector (limited to medical services)

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central Measures: Federal Labor Law (Ley Federal del Trabajo), Chapter I

Description: Cross-Border Trade in Services

Only Mexican nationals licensed as doctors in the territory of Mexico may supply in-house medical services in Mexican enterprises.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Specialised personnel

Industry Classification: CMAP 951012 Services of Customs and Representative Agencies

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Customs Law (Ley Aduanera), Title II, Chapters I and III, and Title VII, Chapter I Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II

Description: Investment and Cross-Border Trade in Services

Only a Mexican national by birth may be a customs broker. Only customs brokers acting as consignees or legal representatives (mandatarios) of an importer or exporter, as well as customs broker's assignees, may carry out the formalities related to the customs clearance of the goods of such importer or exporter. Investors of another Party or their investments may not participate, directly or indirectly, in a customs broker's agency.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Specialised services (Commercial Notary Public)

Industry Classification: Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Commercial Notary Public Federal Law (Ley Federal de Correduría Pública), Articles 7, 8, 12 and 15 Regulations to the Commercial Notary Public Federal Law (Reglamento de la Ley Federal de Correduría Pública), Chapter I, and Chapter II, Sections I and II Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II

Description: Investment and Cross-Border Trade in Services

Only a Mexican national by birth may be licensed to be a commercial notary public (corredor público). A commercial notary public may not have a business affiliation with any person for the supply of commercial notary public services. A commercial notary public shall establish an office in the place where he has been authorised to practise. Only Mexican nationals and Mexican enterprises with foreigners' exclusion clause may obtain such a licence. Foreign investment may not participate in commercial notary public activities and companies, directly or through trusts, agreements, social pacts or statutory, pyramiding schemes, or other mechanism that gives them some control or participation.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Professional services

Industry Classification: CMAP 951002 Legal Services (including foreign legal consultancy)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and

Article 10.4)

Level of Government: Central

Measures: Regulatory Law of the Constitutional Article 5th relating to the Practice of the Professions in the Federal District (Ley Reglamentaria del Artículo 5º Constitucional, relativo al Ejercicio de las Profesiones en el Distrito Federal), Chapter III, Section III, and Chapter V Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment and Cross-Border Trade in Services

Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico that provides legal services. In the absence of an international treaty on the matter, the professional practice by foreigners will be subject to reciprocity in the place of residence of the applicant and to compliance with the rest of the requirements established in the Mexican laws and regulations. Except as provided for in this entry, only lawyers licensed in Mexico may have an ownership interest in a law firm established in the territory of Mexico.

Lawyers licensed to practise in another Party will be permitted to form a partnership with lawyers licensed in Mexico. The number of lawyers licensed to practise in another Party serving as partners in a firm in Mexico may not exceed the number of lawyers licensed in Mexico serving as partners of that firm. Lawyers licensed to practise in another Party may practise and provide legal consultations on Mexican law, whenever they comply with the requirements to practise as a lawyer in Mexico. A law firm established by a partnership of lawyers licensed to practise in another Party and lawyers licensed to practise in Mexico may hire lawyers licensed in Mexico as employees. For greater certainty, this entry does not apply to the supply, on a temporary fly-in, fly-out basis or through the use of web based or telecommunications technology, of legal advisory services in foreign law and international law and, in relation to foreign and international law only, legal arbitration and conciliation/mediation services by foreign lawyers.

Sector: Professional, Technical and Specialised Services

Sub-Sector: Professional services

Industry Classification: CMAP 9510 Provision of Professional, Technical and Specialised Services (limited to professional services)

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Regulatory Law of the Constitutional Article 5th relating to the Practice of the Professions in the Federal District (Ley reglamentaria del Artículo 5º Constitucional, relativo al Ejercicio de las Profesiones en el Distrito Federal), Chapter III, Section III, and Chapter V Regulations to the Regulatory Law of the Constitutional Article 5th relating to the Practice of the Professions in the Federal District (Reglamento de la Ley Reglamentaria del Artículo 5ºConstitucional, relativo al Ejercicio de las Profesiones en el Distrito Federal), Chapter III Population General Law (Ley General de Población), Chapter III

Description: Cross-Border Trade in Services

Pursuant to the relevant international treaties of which Mexico is a party; foreigners may practice in the Federal District the professions set forth in the Regulatory Law of the Constitutional Article 5 related to the Practice of the Professions in the Federal District. In the absence of an international treaty on the matter, the professional practice by foreigners will be subject to reciprocity in the place of residence of the applicant and to compliance with the rest of the requirements established in the Mexican laws and regulations.

Sector: Religious Services

Sub-Sector:

Industry Classification: CMAP 929001 Services of Religious Organisations

Obligations Concerned: Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Religious Associations and Public Worship Law (Ley de Asociaciones Religiosas y Culto Público), Title II, Chapters I and II

Description: Investment and Cross-Border Trade in Services

Representatives of religious associations in Mexico must be Mexican nationals. Religious associations must be associations constituted in accordance with the Religious Associations and Public Worship Law (Ley de Asociaciones Religiosas y Culto Público). Religious associations must register before the Ministry of Internal Affairs (Secretaría de Gobernación, SEGOB). To be registered, the religious associations must be established in Mexico.

Sector: Agriculture Services

Sub-Sector:

Industry Classification: CMAP 971010 Provision of Agricultural Services

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 Plant Health Federal Law (Ley Federal de Sanidad Vegetal), Title II, Chapter IV Regulations to the Phytosanitary Law of the United Mexican States (Reglamento de la Ley de Sanidad Fitopecuaria de los Estados Unidos Mexicanos), Chapter VII

Description: Cross-Border Trade in Services

A concession granted by the Ministry of Agriculture, Livestock, Rural Development, Fishing and Food (Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación, SAGARPA) is required to spray pesticides. Only Mexican nationals or Mexican enterprises may obtain such a concession.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 384205 Manufacture, Assembly and Repair of Aircraft (limited to repair of aircrafts)

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Civil Aviation Law (Ley de Aviación Civil), Chapter III, Section II Civil Aviation Regulations (Reglamento de la Ley de Aviación Civil), Chapter VII

Description: Cross-Border Trade in Services

A permit issued by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to establish and operate, or operate and exploit, an aircraft repair facility and centres for teaching and training of personnel. To obtain such permission the interested party must prove that the aircraft repair facilities and centres for teaching and training of personnel have their domicile in Mexico.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 973302 Airport and Heliport Management Services

Obligations Concerned: National Treatment (Article 9.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I,II and III Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Civil Aviation Law (Ley de Aviación Civil), Chapters I and IV Airports Law (Ley de Aeropuertos), Chapter III Regulations to the Airports Law (Reglamento de la Ley de Aeropuertos), Title II, Chapters I, II and III

Description: Investment and Cross-Border Trade in Services

A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to construct and operate, or operate, airports and heliports. Only Mexican enterprises may obtain such a

concession. Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico that is a concessionaire or permissionaire of airfields for public service. When deciding, the CNIE will consider that the national and technological development be favoured, and that the sovereign ANNEX I – MEXICO – 45 integrity of the Nation be protected.

Sector: Transportation

Sub-Sector: Air transportation

Industry Classification: CMAP 713001 Scheduled Air Transport Services on Domestically Registered Aircraft CMAP 713002 Non-Scheduled Air Transport (Air Taxis)

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Civil Aviation Law (Ley de Aviación Civil), Chapters IX and X Regulations to the Civil Aviation Law (Reglamento de la Ley de Aviación Civil), Title II, Chapter I Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III As qualified by the Description element

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 25 per cent of the voting interests in an enterprise established or to be established in the territory of Mexico that provides commercial air services on Mexican-registered aircraft. The chairman and at least two-thirds of the boards of directors and two-thirds of the managing officers of such an enterprise must be Mexican nationals. Only Mexican nationals and Mexican enterprises in which 75 per cent of the voting interest is owned or controlled by Mexican nationals and of which the chairman and at least two-thirds of the managing officers are Mexican nationals, may register an aircraft in Mexico.

Sector: Transportation

Sub-Sector: Specialty air services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: General Means of Communications Law (Ley de Vías Generales de Comunicación), Book I, Chapter III Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Civil Aviation Law (Ley de Aviación Civil), Chapters I, II, IV and IX As qualified by the Description element

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 25 per cent of the voting interests in an enterprise established or to be established in the territory of Mexico that provides specialty air services using Mexican-registered aircraft. The chairman and at least two-thirds of the board of directors and two-thirds of the managing officers of such an enterprise must be Mexican nationals. Only Mexican nationals and Mexican enterprises in which 75 per cent of the voting interests is owned or controlled by Mexican nationals and of which the chairman and at least two-thirds of the managing officers are Mexican nationals may register an aircraft in Mexico. Cross-Border Trade in Services A permit issued by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, is required to provide all specialty air services in the territory of Mexico. Such a permit may only be granted when the person interested in the supply of these services has domicile in the territory of Mexico.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973203 Maritime Port Administration, Lake and Rivers

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Ports Law (Ley de Puertos), Chapters IV and V Regulations to the Ports Law (Reglamento de la Ley de Puertos) Title I, Chapters I and VI Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III

Description: Investment

Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest of a Mexican enterprise authorised to act as an integral port administrator.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 384201 Manufacture and Repair of Vessels

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II Ports Law (Ley de Puertos), Chapter IV

Description: Cross-Border Trade in Services

A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to establish and operate, or operate, a shipyard. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973201 Water Transport Loading and Unloading Services (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; waterfront terminal operations)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos), Title I, Chapter II, and Title II, Chapters IV and V Ports Law (Ley de Puertos), Chapters II, IV and VI General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III Regulations to the Use and Enjoyment of the Territorial Sea, Water Ways, Beaches, Relevant Federal Coastal Zone and Lands Gained to the Sea (Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar), Chapter II, Section II As qualified by the Description element

Description: Investment and Cross-Border Trade in Services

Favourable resolution from the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of the ownership interest in an enterprise, established or to be established in the territory of Mexico providing port services to vessels for inland navigation such as towing, mooring and tendering. A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to construct and operate, or operate, maritime and inland port terminals, including docks, cranes and related facilities. Only Mexican nationals and Mexican enterprises may obtain such a concession. A permit issued by the SCT is required to provide stevedoring and warehousing services. Only Mexican nationals and Mexican enterprises may obtain such a permit.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 973203 Maritime and Inland (Lake and Rivers Ports Administration)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos), Title III, Chapter III Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Ports Law (Ley de Puertos), Chapters IV and VI

Description: Investment

Investors of another Party or their investments may only participate, directly or indirectly, up to 49 per cent in Mexican enterprises engaged in the supply of piloting port services to vessels operating in inland navigation.

Sector: Transportation

Sub-Sector: Water transportation

Industry Classification: CMAP 712011 International Maritime Transportation Services CMAP 712012 Cabotage Maritime Services CMAP 712013 International and Cabotage Towing Services CMAP 712021 River and Lake Transportation Services CMAP 712022 Internal Port Water Transportation Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Level of Government: Central

Measures: Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos), Title III, Chapter I Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Economic Competition Federal Law (Ley Federal de Competencia Económica), Chapter IV As qualified by the Description element

Description: Investment and Cross-Border Trade in Services

The operation or exploitation of high-seas navigation vessels, including transport and international towing services is open to ship-owners and vessels of all countries, on the basis of reciprocity according to international treaties. With the prior opinion of the Federal Competition Commission (Comisión Federal de Competencia, CFC), the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) may reserve, totally or partially, certain international high-seas freight transportation services, which could only be carried out by Mexican shipping enterprises with Mexican-flagged vessels or vessels reputed as such when the principles of free competition are not respected or the national economy is affected. For greater certainty the previous sentence does not apply to Canada.

The operation and exploitation of cabotage and inland navigation is reserved for Mexican ship-owners with Mexican vessels. When Mexican vessels are not appropriate and available with the same technical conditions, or it is required by the public interest, the SCT may provide temporary navigation permits to operate and exploit to Mexican ship-owners with a foreign vessel in accordance with the following priorities: (a) Mexican ship-owner with a foreign vessel under a bareboat charter party; and (b) Mexican ship-owner with a foreign vessel under any type of charter party. The operation and exploitation in inland navigation and cabotage of tourist cruises as well as dredges and maritime devices for the construction, preservation and operation of ports may be carried out by Mexican or foreign shipping enterprises using Mexican or foreign vessels or maritime devices, on the basis of reciprocity with a Party, endeavouring to give priority to Mexican enterprises and complying with applicable laws. With the prior opinion of the CFC, the SCT may resolve that totally or partially, certain cabotage or high-seas traffic could only be carried by Mexican shipping enterprises with Mexican vessels or reputed as such in the absence of conditions of effective competition on the relevant market as per the terms of the Economic Competition Federal Law. Investors of another Party or their investments may only own, directly or indirectly, up to 49 per cent of the ownership interest in a Mexican shipping enterprise or Mexican vessels, established or to be established in the territory of Mexico, which is engaged in the commercial exploitation of vessels for inland and coastal navigation, excluding tourism cruises and exploitation of dredges and maritime devices for the construction, preservation and operation of ports. Favourable resolution from the National Commission of Foreign Investments (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to own, directly or indirectly, more than 49 per cent of the ownership interest in an enterprise established or to be established in the territory of Mexico engaged in high-seas navigation services and port towing services.

Sector: Transportation

Sub-Sector: Non-energy pipelines Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I, II and III National Waters Federal Law (Ley de Aguas Nacionales), Title I, Chapter II, and Title IV, Chapter II

Description: Cross-Border Trade in Services

A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to construct and operate, or operate, pipelines carrying goods other than energy or basic petrochemicals. Only Mexican nationals and Mexican enterprises may obtain such a concession.

Sector: Transportation

Sub-Sector: Railway transportation services

Industry Classification: CMAP 711101 Railway Transport Services

Obligations Concerned: National Treatment (Articles 9.4 and 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter III Regulatory Law of the Railway Service (Ley Reglamentaria del Servicio Ferroviario) Chapters I and II, Section III Regulations to the Railway Service (Reglamento del Servicio Ferroviario), Title I, Chapters I, II and III, Title II, Chapters I and IV, and Title III, Chapter I, Sections I and II

Description: Investment and Cross-Border Trade in Services

Favourable resolution from the National Commission of Foreign Investment (Comisión Nacional de Inversiones Extranjeras, CNIE) is required for investors of another Party or their investments to participate, directly or indirectly, in more than 49 per cent of the ownership interest of an enterprise established or to be established in the territory of Mexico engaged in the construction, operation and exploitation of railroads deemed general means of communication, or in the supply of railway transportation public service. When deciding, the CNIE will consider that the national and technological development be favoured, and that the sovereign integrity of the Nation be protected. A concession granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to construct, operate and exploit railway transportation services and to provide railway transportation public service. Only Mexican enterprises may obtain such a concession. A permit issued by SCT is required to provide auxiliary services; the construction of entry and exit facilities, crossings and marginal facilities in the right of way; the installation of advertisements and publicity signs in the right of way; and the construction and operation of bridges over railway lines. Only Mexican nationals and Mexican enterprises may obtain such a permit.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 973101 Management Services of Passenger Bus Terminals and Auxiliary Services (limited to main bus and truck terminals and bus and truck stations)

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III Regulations to the Enjoyment of the Right of Way of the Federal Roads and Surrounding Zones (Reglamento para el Aprovechamiento del Derecho de Vía de las Carreteras Federales y Zonas Aledañas), Chapters II and IV Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I

Description: Cross-Border Trade in Services

A permit issued by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to establish, or operate, a bus or truck station or terminal. Only Mexican nationals and Mexican enterprises may obtain such a permit. To obtain such permit the interested party must prove that they have their domicile in Mexico.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 973102 Management Services of Roads, Bridges and Auxiliary Services Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32 Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapters I and V.

Description: Cross-Border Trade in Services

A permit granted by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, SCT) is required to provide auxiliary services to federal road transportation. Only Mexican nationals and Mexican enterprises may obtain such a permit. For greater certainty, auxiliary services are not part of federal road transportation of passengers, tourism or cargo, but they complement their operation and exploitation.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 711201 Construction Materials Transport Services CMAP 711202 Moving Services CMAP 711203 Other Specialised Freight Transport Services CMAP 711204 General Freight Transport Services CMAP 711311 Long-Distance Passenger Bus and Coach Transport Services CMAP 711318 School and Tourist Transport Services (limited to tourist transport services) CMAP 720002 Courier services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6) Level of Government: Central Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter I and III Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I As qualified by the Description element

Description: Investment and Cross-Border Trade in Services

Investors of another Party or their investments may not own, directly or indirectly, an ownership interest in an enterprise established or to be established in the territory of Mexico, engaged in transportation services of domestic cargo between points in the territory of Mexico, except for parcel and courier services. A permit issued by the Ministry of Communications and Transportation (Secretaría de Comunicaciones y Transportes, is required to provide inter-city bus services, tourist transportation services or truck services for the transportation of goods or passengers to or from the territory of Mexico. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause, using Mexican registered equipment that is Mexican-built or legally imported, and drivers who are Mexican nationals, may provide bus or truck services for transportation of goods or passengers between points in the territory of Mexico. A permit issued by the SCT is required to provide parcel and courier services. Only Mexican nationals and Mexican enterprises may provide such services.

Sector: Transportation

Sub-Sector: Railway transportation services

Industry Classification: CMAP 711101 Transport Services Via Railway (limited to railway crew) Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Federal Labor Law (Ley Federal del Trabajo), Title VI, Chapter V

Description: Cross-Border Trade in Services

Railway crew members must be Mexican nationals.

Sector: Transportation

Sub-Sector: Land transportation

Industry Classification: CMAP 711312 Urban and Suburban Passenger Bus and Coach Transport Services CMAP 711315

Motor Vehicle Taxi Transport Services CMAP 711316 Motor Vehicle Fixed Route Transport Services CMAP 711317 Transport Services in Motor Vehicles from Taxi-Ranks CMAP 711318 School and Tourist Transport Services (limited to school transport services)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Foreign Investment Law (Ley de Inversión Extranjera), Title I, Chapter II General Means of Communication Law (Ley de Vías Generales de Comunicación), Book I, Chapters I and II Roads, Bridges and Federal Road Transport Law (Ley de Caminos, Puentes y Autotransporte Federal), Title I, Chapter III Regulations to the Federal Road Transport and Auxiliary Services (Reglamento de Autotransporte Federal y Servicios Auxiliares), Chapter I

Description: Investment and Cross-Border Trade in Services

Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may supply local urban and suburban passenger bus services, school bus services, and taxi and other collective transportation services.

Sector: Communications

Sub-Sector: Entertainment services (Cinema)

Industry Classification: CMAP 941103 Private Exhibition of Films

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) National Treatment (Article 10.3)

Level of Government: Central

Measures: Federal Cinematography Law (Ley Federal de Cinematografía), Chapter III Regulations to the Federal Cinematography Law (Reglamento de la Ley Federal de Cinematografía), Chapter V

Description: Investment and Cross-Border Trade in Services

Exhibitors shall reserve 10 per cent of the total screen time to the projection of national films.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10. 6)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United Mexican States

Description: Investment and Cross-Border Trade in Services

SCHEDULE OF NEW ZEALAND

INTRODUCTORY NOTES

1. Description sets out the non-conforming measure to which the entry applies.

2. In accordance with Article 9.12 (Non-Conforming Measures) and Article 10.7 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the laws, regulations, rules, procedures, decisions, administrative actions, practices or other measures identified in the Description element of that entry.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Companies Act 1993

Financial Reporting Act 1993

Description: Investment

Consistent with New Zealand's financial reporting regime established under the Companies Act 1993 and Financial Reporting Act 1993, the following overseas non-issuer companies are required to file audited financial statements with the Registrar of Companies:

(a) any company that is incorporated outside New Zealand that carries on business in New Zealand;

(b) any large company incorporated in New Zealand in which shares that carry the right to exercise or control the exercise of 25 per cent or more of the voting power are held by:

(i) a subsidiary of a company or body corporate incorporated outside New Zealand;

(ii) a company or body corporate incorporated outside New Zealand; or

(iii) a person not ordinarily resident in New Zealand; and

(c) any company that is a subsidiary of a company or body corporate incorporated outside New Zealand.

A company is "large" if it meets at least two of the following criteria:

(a) the total assets of the company and its subsidiaries exceeds NZ$10 million;

(b) the company and its subsidiaries have a total turnover of NZ$20 million or more; and

(c) the company and its subsidiaries have 50 or more full-time equivalent employees.

These requirements do not apply if the overseas company is a subsidiary of a New Zealand company that has already filed audited group financial statements with the Registrar of Companies."

Sector: Business Services

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Level of Government: Central

Measures: Section 100(2)(a) of the Patents Act 1953

Description: Cross-Border Trade in Services

Registration of patent attorneys is restricted to those who satisfy the criteria set out in section 100(2)(a) of the Patents Act 1953, being any person who is a British subject or a citizen of the Republic of Ireland.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Dairy Industry Restructuring Act 2001

Description: Investment and Cross-Border Trade in Services

The Dairy Industry Restructuring Act 2001 (DIRA) and Regulations provide for the management of a national database for herd testing data. The database is currently held by the Livestock Improvement Corporation Ltd (LIC).

The DIRA:

(a) provides for the New Zealand government to determine arrangements for the database to be managed by another dairy industry entity. In doing so the New Zealand government may:

(i) take into account the nationality and residency of the entity, persons that own or control the entity, and the senior management and board of directors of the entity; and

(ii) restrict who may hold shares in the entity, including on the basis of nationality;

(b) requires the transfer of data by those engaged in herd testing of dairy cattle to the LIC or successor entity;

(c) establishes rules regarding access to the database and that access may be denied on the basis that its the database's intended use could be "harmful to the New Zealand dairy industry, which may take into account the nationality or residency of the person seeking access.

Sector: Communication Services Telecommunications

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Constitution of Chorus Limited

Description: Investment

The Constitution of Chorus Limited requires New Zealand government approval for the shareholding of any single overseas entity to exceed 49.9 per cent.

At least half of the Board directors are required to be New Zealand citizens.

Sector: Communication Services Audio-visual Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6) Performance Requirements (Article 9.10)

Level of Government: Central

Measures: Radiocommunications Act 1989

Description: Investment and Cross-Border Trade in Services

The acquisition of licences or management rights to use the radio frequency spectrum, or any interest in such licences or management rights, under the Radiocommunications Act 1989 by foreign governments or agents on behalf of foreign governments is subject to the written approval of the Chief Executive of the Ministry of Business, Innovation and Employment.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Primary Products Marketing Act 1953

Description: Investment

Under the Primary Products Marketing Act 1953, the New Zealand Government may impose regulations to enable the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers) for "primary products", being products derived from beekeeping, fruit growing, hop growing, deer farming or game deer, or goats, being the fur bristles or fibres grown by the goat.

Regulations may be issued under the Primary Products Marketing Act 1953 concerning a broad range of the marketing authority's functions, powers and activities. In particular, regulations may require that board members or personnel be nationals of or resident in New Zealand.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Civil Aviation Act 1990

Ministerial Guidelines

Description: Investment

Only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Licences to provide international scheduled air services as a New Zealand international airline are subject to certain conditions to ensure compliance with New Zealand's air services agreements. Such conditions may include requirements that an airline is substantially owned and effectively controlled by New Zealand nationals, has its principal place of business in New Zealand or is subject to the effective regulatory control of the New Zealand Civil Aviation Authority.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Constitution of Air New Zealand Limited

Description: Investment

No one foreign national may hold more than 10 per cent of shares that confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder (1). In addition:

(a) at least three members of the Board of Directors must be ordinarily resident in New Zealand; and

(b) more than half of the Board of Directors must be New Zealand citizens.

(1) The Kiwi Share in Air New Zealand is a single NZ$1 special rights convertible preference share issued to the Crown. The Kiwi Shareholder is Her Majesty the Queen in Right of New Zealand.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Overseas Investment Act 2005 Fisheries Act 1996

Overseas Investment Regulations 2005

Description: Investment

Consistent with New Zealand's overseas investment regime as set out in the relevant provisions of the Overseas Investment Act 2005, the Fisheries Act 1996 and the Overseas Investment Regulations 2005, the following investment activities require prior approval from the New Zealand Government:

(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares (2) or voting power (3) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$200 million;

(b) commencement of business operations or acquisition of an existing business by non- government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$200 million;

(c) acquisition or control by government sources of 25 per cent or more of any class of shares (4) or voting power (5) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million;

(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million;

(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and

(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.

Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by

the regulator and the relevant Minister or Ministers.

This entry should be read in conjunction with Annex II – New Zealand – 7 and 8.

(2) For greater certainty, the term “shares” includes shares and other types of securities.

(3) For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity."

(4) For greater certainty, the term “shares” includes shares and other types of securities.

(5) For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

Sector: All

Obligations concerned: Performance Requirements (Article 9.10)

Level of Government: Central

Measures: Income Tax Act 2007

Goods and Services Tax Act 1985 Estate and Gift Duties Act 1968 Stamp and Cheque Duties Act 1971 Gaming Duties Act 1971

Tax Administration Act 1994

Description: Any existing non-conforming taxation measures.

SCHEDULE OF PERU

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation or other measure identified in the Measures element of that entry.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Political Constitution of Peru (Constitución Política del Perú) (1993), article 71

Legislative Decree N° 757, “El Peruano” Official Gazette of November 13, 1991, Framework Law for Private Investment Growth (Ley Marco para el Crecimiento de la Inversión Privada), article 13

Description: Investment

No foreign national, enterprise constituted under foreign law or enterprise constituted under Peruvian law, and owned in whole or part, directly or indirectly, by foreign nationals may acquire or own, directly or indirectly, by any title, land or water (including mines, forest or energy sources) located within 50 kilometres of the Peruvian border. Exceptions may be authorised by Supreme Decree approved by the Council of Ministers in conformity with law in cases of expressly declared public necessity.

For each case of acquisition or possession within the referred area, the investor shall hand in the correspondent request to

the relevant Ministry, pursuant to laws in force. For example, authorisations of this kind have been given in the mining sector.

Sector: Services related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Supreme Decree N° 012-2001-PE, "El Peruano" Official Gazette of March 14, 2001, Regulation of the Fisheries Law (Reglamento de la Ley General de Pesca), articles 67, 68, 69 and 70

Description: Cross-Border Trade in Services

Before commencing operations, shipowners of foreign- flagged fishing vessels must present an unconditional, irrevocable, letter of guarantee with automatic execution and joint liability, which will be valid for no more than 30 calendar days after the expiry of the fishing permit, issued for the benefit and to the satisfaction of the Ministry of Production by a financial, banking or insurance institution recognised by the Superintendence of Banking, Insurance and and Private Administrators of Pension Funds (Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones (AFP)). Such letter shall be issued in an amount equal to 25 per cent of the amount that must be paid for fishing rights.

A shipowner of a foreign-flagged fishing vessel that is not of large scale (according to the regulation mentioned above) and that operates in Peruvian jurisdictional waters must have the Satellite Tracking System in its vessel, except for shipowners operating in highly migratory fisheries who are excepted from this obligation by a Ministerial Resolution.

Foreign-flagged fishing vessels with a fishing permit must have on board a scientific technical observer appointed by the Sea Institute of Peru (Instituto del Mar del Perú (IMARPE)). The shipowner must provide accommodation on board for that representative and a daily stipend, which must be deposited in a special account to be administered by IMARPE.

Shipowners of foreign-flagged fishing vessels that operate in Peruvian jurisdictional waters must hire a minimum of 30 per cent of Peruvian crew, subject to applicable domestic legislation.

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law Nº 28278, "El Peruano" Official Gazette of July 16 2004, Radio and Television Law (Ley de Radio y Televisión), article 24

Description: Investment and Cross-Border Trade in Services

Only Peruvian nationals or juridical persons organised under Peruvian law and domiciled in Peru may be authorised or licensed to offer radio or television broadcast services.

No foreign national may hold an authorisation or a licence directly or through a sole proprietorship.

Sector: Audio-Visual Services

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 9.10) National Treatment (Article 10.3)

Level of Government: Central

Measures: Law Nº 28278, "El Peruano" Official Gazette of July 16, 2004, Radio and Television Law (Ley de Radio y Televisión), Eighth Complementary and Final Provision

Description: Investment and Cross-Border Trade in Services

At least 30 per cent, on average, of the total weekly programs by free-to-air television broadcasters must be produced in Peru and broadcasted between the hours of 05:00 and 24:00.

Sector: Radio Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Level of Government: Central

Measures: Supreme Decree N° 005-2005-MTC, "El Peruano" Official Gazette of February 15, 2005, Regulation of the Radio and Television Law (Reglamento de la Ley de Radio y Televisión), article 20

Description: Investment and Cross-Border Trade in Services

If a foreign national is, directly or indirectly, a shareholder, partner, or associate in a juridical person, that juridical person may not hold a broadcasting authorisation in a zone bordering that foreign national's country of origin, except in a case of public necessity authorised by the Council of Ministers.

This restriction does not apply to juridical persons with foreign equity which have two or more current authorisations, as long as they are of the same frequency band.

Sector: All

Sub-Sector:

Obligations Concerned: Senior Management and Boards of Directors (Article 9.11) National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4)

Level of Government: Central

Measures: Legislative Decree N° 689, "El Peruano" Official Gazette of November 5, 1991, Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros), articles 1, 3, 4, 5 (modified by Law N° 26196) and 6

Description: Investment and Cross-Border Trade in Services

All employers in Peru, independently of their activity or nationality, shall give preferential treatment to nationals when hiring its employees.

Foreign natural persons who are service suppliers and who are employed by a service-supplying enterprise may supply services in Peru under a written and time-limited employment contract, which may not exceed three years.

The contract may be subsequently extended for like periods of time. Service-supplying enterprises must show proof of the company's commitment to train national personnel in the same occupation.

Foreign natural persons may not represent more than 20 per cent of the total number of employees of an enterprise, and their pay may not exceed 30 per cent of the total payroll for wages and salaries. These percentages will not apply in the following cases:

(a) when the foreign national supplying the service is the spouse, parent, child or sibling of a Peruvian national;

(b) when the personnel is working for a foreign enterprise supplying international land, air and water transport services under a foreign flag and registration;

(c) when the foreign personnel works in a multinational bank or an enterprise that supplies multinational services, subject to the laws governing specific cases;

(d) for a foreign investor, provided that its investment permanently maintains in Peru at least five tax units (Unidad Impositiva Tributaria - UIT) (1) during the life of its contract;

(e) for artists, athletes or other service suppliers engaged in public performances in Peruvian territory, for a maximum of three months a year;

(f) when a foreign national has an immigrant visa;

(g) for a foreign national whose country of origin has a labour reciprocity or dual nationality agreement with Peru; and

(h) when foreign personnel supplies services in Peru under a bilateral or multilateral agreement concluded by the Peruvian

Government.

Employers may request waivers for the percentages related to the number of foreign employees and their share of the company's payroll in those cases involving:

(a) specialised professional or technical personnel;

(b) directors or management personnel for new a business activity or reconverted business activity;

(c) teachers hired for post-secondary education, or for foreign private elementary and high schools; or for language teaching in local private schools; or for specialised language centres;

(d) personnel working for public or private enterprises with contractual agreements with public organisations, institutions or enterprises; and

(e) in any other case determined by Supreme Decree pursuant to specialisation, qualification or experience criteria.

(1) The "Unidad Impositiva Tributaria" (UIT) is an amount used as a reference in taxation rules in order to maintain in constant values the tax basis, deductions, affectation limits and other aspects of the tax that the legislator considers convenient.

Sector: Professional Services

Sub-Sector: Legal services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Legislative Decree N° 1049, "El Peruano" Official Gazette of June 26, 2008, Notaries Law (Ley del Notariado), article 10

Description: Investment and Cross-Border Trade in Services

Only a Peruvian national by birth may supply notary services.

Sector: Professional Services

Sub-Sector: Architectural services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Law Nº 14085, "El Peruano" Official Gazette of June 30, 1962, Law establishing the Peruvian Association of Architects (Ley de Creación del Colegio de Arquitectos del Perú)

Law Nº 16053, "El Peruano" Official Gazette of February 14, 1966, Professional Practice Law, authorises the Peruvian Associations of Architects and Engineers to supervise Engineering and Architecture professionals of the Nation (Ley del Ejercicio Profesional, Autoriza a los Colegios de Arquitectos e Ingenieros del Perú para supervisar a los profesionales de Ingeniería y Arquitectura de la República), article 1

National Architects Council Agreement (Acuerdo del Consejo Nacional de Arquitectos), approved in Session Nº 04-2009 of December 15, 2009

Description: Investment and Cross-Border Trade in Services

To practice as an architect in Peru, an individual must join the Peruvian Association of Architects (Colegio de Arquitectos del Perú). The enrolment fees are different for Peruvians and foreigners, and subject to review by the Peruvian Association of Architects (Colegio de Arquitectos del Perú). For greater transparency, the current enrolment fees are:

(a) S/. 775 for a Peruvian national with a degree from a Peruvian university;

(b) S/. 1,240 for a Peruvian national with a degree from a foreign university;

(c) S/. 1,240 for a foreign national with a degree from a Peruvian university; or

(d) S/. 3,100 for a foreign national with a degree from a foreign university.

Also, to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru.

Sector: Professional Services

Sub-Sector: Auditing services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Rules of the Association of Public Accountants of Lima (Reglamento Interno del Colegio de Contadores Públicos de Lima), articles 145 and 14

Description: Investment and Cross-Border Trade in Services

Auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima).

Sector: Security Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree N° 003-2011-IN, “El Peruano” Official Gazette of March 31, 2011, Regulation of Private Security Services (Reglamento de Servicios de Seguridad Privada), articles 12, 18, 22, 36, 40, 41, 46, 47 and 48

Description: Investment and Cross-Border Trade in Services

The supply of personal and heritage security services by natural persons is reserved to Peruvian nationals.

Only juridical persons constituted in Peru may apply for an authorisation to supply security services. They must prove its constitution in Peru by a copy of the registration form of the constitution for the enterprise.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: National artistic audio-visual production services

Obligations Concerned: National Treatment (Article 10.3)"

Level of Government: Central

Measures: Law N° 28131, “El Peruano” Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), articles 23 and 25

Description: Cross-Border Trade in Services

Any domestic artistic audio-visual production must be comprised at least of 80 per cent of national artists.

Any domestic artistic live performances must be comprised at least of 80 per cent of national artists.

In any domestic artistic audio-visual production and any domestic artistic live performance, national artists shall receive no less than 60 per cent the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Circus services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Law Nº 28131, “El Peruano” Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), article 26

Description: Cross-Border Trade in Services

A foreign circus may stay in Peru with its original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

Sector: Commercial Advertising Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Law Nº 28131, “El Peruano” Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), articles 25 and 27.2

Description: Cross-Border Trade in Services

Commercial advertising produced in Peru, must have at least 80 per cent of national artists.

In any commercial advertising produced in Peru, national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists.

The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Bullfighting

Obligations Concerned: National Treatment (Article 10.3)

"Level of Government:" "Central"

Measures: Law N° 28131, “El Peruano” Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), article 28

Description: Cross-Border Trade in Services

At least one bullfighter of Peruvian nationality must participate in any bullfighting fair. At least one apprentice bullfighter of Peruvian nationality must participate in fights involving young bulls.

Sector: Radio and Television Broadcasting Services

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 9.10) National Treatment (Article 10.3)

Level of Government: Central

Measures: Law N° 28131, “El Peruano” Official Gazette of December 18, 2003, Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante), articles 25 and 45

Description: Investment and Cross-Border Trade in Services

Free to air radio and television broadcast companies must dedicate at least 10 per cent of their daily programming to folklore and national music and to series or programs produced in Peru on the Peruvian history, literature, culture or current issues with artists hired in the following percentages:

(a) a minimum of 80 per cent of national artists;

(b) national artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists; and

(c) the same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in

artistic activities.

Sector: Customs Warehouses Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree Nº 08-95-EF, “El Peruano” Official Gazette of February 5, 1995, Approve the Regulation of Customs Warehouse (Aprueban el Reglamento de Almacenes Aduaneros), article 7

Description: Cross-Border Trade in Services

Only natural or juridical persons domiciled in Peru may apply for an authorisation to operate a customs warehouse.

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Supreme Decree N° 020-2007-MTC, “El Peruano” Official Gazette of July 04, 2007, Consolidated Text of the General Rules of the Telecommunications Law (Texto Único Ordenado del Reglamento General de la Ley de Telecomunicaciones), article 258

Description: Cross-Border Trade in Services

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

Sector: Transportation

Sub-Sector: Air Transportation and Specialty Air Services

Obligations Concerned:" "National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law N° 27261, “El Peruano” Official Gazette of May 10, 2000, Civil Aviation Law (Ley de Aeronáutica Civil), articles 75 (modified by Legislative Decree N° 999, April 19, 2008) and 79

Peruvian Aviation Regulation N° 61 (Regulación Aeronáutica del Perú – RAP N° 61), “El Peruano” Official Gazette of December 14, 2013

Supreme Decree N° 050-2001-MTC, “El Peruano” Official Gazette of December 26, 2001, Regulation of the Civil Aviation Law (Reglamento de la Ley de Aeronáutica Civil), articles 159, 160 and VI Complementary Provision

Description: Investment and Cross-Border Trade in Services

National Commercial Aviation (2) is reserved to a Peruvian natural or juridical person.

For purposes of this entry, a Peruvian juridical person is an enterprise that fulfils the following requirements:

(a) is constituted under Peruvian law, specifies commercial aviation as its corporate purpose, is domiciled in Peru, and has its principal activities and administration located in Peru;

(b) at least half plus one of the directors, managers and persons who control and manage the enterprise are Peruvian nationals or have permanent domicile or are resident in Peru; and

(c) at least 51 per cent of the capital stock must be owned by Peruvian nationals and be under the real and effective control of Peruvian shareholders or partners permanently domiciled in Peru. (This limitation shall not apply to the enterprises constituted under Law Nº 24882, which may maintain the ownership percentages set in such law.) Six months after the date

of authorisation of the enterprise to provide commercial air transportation services, foreign nationals may own up to 70 per cent of the capital stock of the enterprise.

In those operations conducted by national commercial aviation operators (explotadores nacionales), personnel performing aeronautical functions on board must be Peruvian nationals or foreign residents with a Peruvian licence.

In order to perform activities as a pilot of a Peruvian juridical person, the foreign pilot must prove, at least, two years of residence in Peru. This requirement is not applicable to the foreign resident who has the immigration category of "spouse" of a Peruvian national.

Notwithstanding the preceding paragraphs, the General Directorate of Civil Aviation (Dirección General de Aeronáutica Civil) may, for technical reasons, authorise foreign personnel without Peruvian licence to perform these functions for a period not to exceed six months from the date on which the authorisation was granted, extendable due to ascertained nonexistence of such skilled personnel.

(2) For greater certainty, National Commercial Aviation includes Specialty Air Services.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law Nº 28583, "El Peruano" Official Gazette of July 22, 2005, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), articles 4.1, 6.1, 7.1, 7.2, 7.4 and Law Nº 29475, Law that modifies Law Nº 28583, "El Peruano" Official Gazette of December 17, 2009, Law of the Reactivation and Promotion of the National Merchant Marine (Ley de Reactivación y Promoción de la Marina Mercante Nacional), article 13.6 and Tenth Transitory and Final Provision

Supreme Decree Nº 028 DE/MGP, "El Peruano" Official Gazette of May 25, 2001, Regulation of the Law Nº 26620 (Reglamento de la Ley Nº 26620), article I-010106, paragraph (a)

Description: Investment and Cross-Border Trade in Services

1. A "National Shipowner" or "National Ship Enterprise" is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide services in water transportation in national traffic or sabotage (3) or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

2. At least 51 per cent of the subscribed and paid-in capital stock must be owned by Peruvian citizens.

3. The chairman of the board of directors, the majority of the directors, and the General Manager must be Peruvian nationals and residents in Peru.

4. The captain and crew of Peruvian-flagged vessels must be entirely Peruvian nationals authorised by the General Directorate of Captaincy and Coastguards (Dirección General de Capitanías y Guardacostas). In exceptional cases and after ascertaining that there is no Peruvian qualified personnel with experience in that type of vessel available, foreign nationals could be hired to a maximum of 15 per cent of the total crew, and for a limited period of time. The latter exception does not include the captain of the vessel.

5. Only a Peruvian national may be a licensed harbour pilot.

6. Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(a) up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

(b) foreign-flagged vessels may be operated exclusively by National Shipowners or National Ship Enterprises for a non-renewable period of no more than six months for water transportation exclusively between Peruvian ports or cabotage

when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned.

(3) For greater certainty, water transportation includes transportation by lakes and rivers.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree Nº 056-2000-MTC, “El Peruano” Official Gazette of December 31, 2000, Provide that aquatic transportation services and related services conducted in bays and port areas must be provided by authorised natural and juridical persons, with vessels and artifacts of national flag (Disponen que servicios de transporte marítimo y conexos realizados en bahías y áreas portuarias deberán ser prestados por personas naturales y jurídicas autorizadas, con embarcaciones y artefactos de bandera nacional), article 1 Ministerial Resolution Nº 259-2003-MTC/02, “El Peruano” Official Gazette of April 4, 2003, Approve Regulation of Aquatic Transportation services and related services rendered in bay traffic and port areas (Aprueban Reglamento de los servicios de Transporte Acuático y Conexos Prestados en Tráfico de Bahía y Áreas Portuarias), articles 5 and 7

Description: Investment and Cross-Border Trade in Services

Water transport and related services supplied in bay and port areas must be supplied by natural persons domiciled in Peru, and juridical persons constituted and domiciled in Peru, properly authorised with Peruvian flag vessels and equipment:

(a) fuel replenishment services;

(b) mooring and unmooring services;

(c) diving services;

(d) victualing services;

(e) dredging services;

(f) harbour pilotage services;

(g) waste collection services;

(h) tug boat services; and

(i) transport of persons.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree N° 006-2011-MTC, “El Peruano” Official Gazette of February 4, 2011, Supreme Decree that approves the Regulation of Tourist Water Transportation (Decreto Supremo que aprueba el Reglamento de Transporte Turístico Acuático), article 1

Description: Cross-Border Trade in Services

The tourist water transport service will be provided by natural or juridical persons, domiciled and constituted in Peru. At the regional and national level, the tourist water transport service is reserved to be provided exclusively with own or chartered Peruvian flagged ships or in the form of fifinancial lease or a bareboat charter, with purchase option mandatory.

Sector: Transportation

Sub-Sector: Aquatic transportation

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Law Nº 27866, “El Peruano” Official Gazette of November 16, 2002, Port Labour Law (Ley del Trabajo Portuario), articles 3 and 7

Description: Cross-Border Trade in Services

Only Peruvian citizens may register in the Registry of Port Workers.

Sector: Transportation

Sub-Sector: Land transportation of passengers

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Supreme Decree N° 017-2009-MTC, “El Peruano” Official Gazette of April 22, 2009, National Regulation of Transport Management (Reglamento Nacional de Administración de Transportes), article 33, modified by Supreme Decree N° 006-2010-MTC of January 22, 2010

Description: Cross-Border Trade in Services

To supply land transport services it is necessary to have adequate physical infrastructure, which includes, when appropriate: offices; bus terminals for persons or goods; route stations; bus stops; all other infrastructure used as a place for loading, unloading and storage of goods; maintenance workshops; and any other necessary for the supply of the service.

Sector: Transportation

Sub-Sector: Land transportation

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Agreement on International Land Transport (Acuerdo sobre Transporte Internacional Terrestre - ATIT), signed between the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay, signed in Montevideo on January 1, 1990.

Description: Cross-Border Trade in Services

"Foreign vehicles allowed by Peru, in conformity with the ATIT (4), which carry out international transportation by road, are not able to supply local transport (cabotage) in the Peruvian territory.

(4) The Agreement on International Land Transport (ATIT) applies to international land transport between signatory countries (the Governments of the Republic of Chile, the Republic of Argentina, the Republic of Bolivia, the Federal Republic of Brazil, the Republic of Paraguay, the Republic of Peru and the Oriental Republic of Uruguay) for purposes of land transportation between two signatory countries as well as transit to a third country.

Sector: Research and Development Services

Sub-Sector: Archaeological services

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Measures: Supreme Decree Nº 003-2014-MC, “El Peruano” Official Gazette of October 3, 2014, Regulation of Archaeological Interventions (Reglamento de Intervenciones Arqueológicas), article 30

Description: Cross-Border Trade in Services

Archaeological research programs and projects headed by a foreign archaeologist, who does not reside in Peru, must have a

Peruvian director.

Both directors shall be registered in the National Registry of Archaeologists and shall assume the same responsibilities in the formulation and the integral execution of the project (field and office work), and in the elaboration of the final report.

Sector: Services related to Energy Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Measures: Law Nº 26221, "El Peruano" Official Gazette of August 19, 1993, General Law of Hydrocarbons (Ley General de Hidrocarburos), article 15

Description: Cross-Border Trade in Services

In order to enter into an exploration contract in Peru, foreign natural persons must register in the Public Registry and provide a power of attorney to a Peruvian national resident in the capital of the Republic of Peru.

Foreign enterprises must establish a branch or constitute a society under the General Law of Corporations (Ley General de Sociedades), be domiciled in the capital of the Republic of Peru, and appoint a Peruvian national as an executive agent.

SCHEDULE OF SINGAPORE

INTRODUCTORY NOTES

1. Description sets out the non-conforming aspects of the measure to which the entry applies.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

3. In the interpretation of an entry, all elements of the entry shall be considered.

4. For greater certainty, the fact that Singapore has described a measure in the Description element of an entry does not necessarily mean that, in the absence of such an entry, the measure would be inconsistent with Singapore's obligation under Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services).

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: This is an administrative policy of the Government of Singapore and is inscribed in the Memorandum and Articles of Association of PSA Corporation.

Description: Investment

The aggregate of foreign shareholdings in PSA Corporation or its successor body is subject to a 49 per cent limit.

The "aggregate of foreign shareholdings" is defined as the total number of shares owned by:

(a) any individual who is not a Singapore citizen;

(b) any corporation which is not more than 50 per cent owned by Singapore citizens or by the Singapore Government; or

(c) any other enterprise which is not owned or controlled by the Singapore Government.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: This is an administrative policy of the Government of Singapore and is inscribed in the Memorandum and Articles of Association of the relevant enterprises below.

Description: Investment

All individual investors, apart from the Singapore government, will be subject to the following equity ownership limits in the enterprises, or its successor bodies, as listed below: (a) Singapore Technologies Engineering – 15 per cent; (b) PSA Corporation – 5 per cent; and (c) Singapore Airlines – 5 per cent. For the purposes of this entry, ownership of equity by an investor in these enterprises or its successor bodies includes both direct and indirect ownership of equity.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Business Registration Act, Cap. 32 Business Registration Regulations

Description: Cross-Border Trade in Services

Where a person required to be registered under the Business Registration Act, Cap. 32, 2001 Rev Ed, is, or, in the case of any corporation, the directors are, or the secretary of the corporation is, not ordinarily resident in Singapore, a local manager (1) must be appointed.

(1) Persons who qualify to be appointed in such a capacity are primarily Singapore nationals and EntrePass holders (all with local addresses).

Sector: Business Services

Sub-Sector: Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Industry Classification: CPC 83101, 83102, 83105 Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Road Traffic Act, Cap. 276, 2004 Rev Ed

Description: Cross-Border Trade in Services

The cross-border rental of private cars, goods transport vehicles and other land transport equipment without operator by Singapore residents with the intent to use the vehicles in Singapore is prohibited.

Sector: Business Services

Sub-Sector: Patent agent services

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Measures: Patents Act, Cap. 221, 2005 Rev Ed

Description: Cross-Border Trade in Services

Only service suppliers registered with the Intellectual Property Office of Singapore (IPOS) or its successor body and resident in Singapore shall be allowed to carry on a business, practise or act as a patent agent in Singapore. Only service suppliers which have at least one Singapore-registered patent agent resident in Singapore either as a director or partner, shall be allowed to carry on a business, practise or act as a patent agent in Singapore.

Sector: Business Services

Sub-Sector: Placement and supply services of personnel

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Employment Agencies Act, Cap. 92

Description: Cross-Border Trade in Services

Only service suppliers with local presence shall be allowed to set up employment agencies and place foreign workers in Singapore.

Sector: Business Services

Sub-Sector: Private investigation services, Unarmed guard services

Industry Classification: CPC 87301 Investigation Services CPC 87302 Security Consultation Services CPC 87305 Guard Services (only applies to unarmed security guard services)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Private Security Industry Act, Cap. 250A, 2008 Rev Ed

Description: Investment and Cross-Border Trade in Services

Foreigners are permitted to set up security agencies to provide unarmed guards for hire but must register a company with local participation. At least two of the directors must be a Singapore national. Foreigners, except Malaysians, shall not be allowed to work as guards, but can be involved in the administration of the company. The foreign directors shall produce a certificate of no criminal conviction from their country of origin or a statutory declaration before a Singapore commissioner of oaths, to the effect that they have never been convicted in any court of law for any criminal offence.

Sector: Community, Personal and Social Services

Sub-Sector: Services furnished by co-operative societies

Industry Classification: CPC 959 Services furnished by membership organizations n.e.c (only applies to co-operative society services)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Existing Measures: Co-operative Societies Act, Cap. 62, 2009 Rev Ed Co-operative Societies Rules 2009

Description: Investment and Cross-Border Trade in Services

Only service suppliers with a local presence can be registered under the Co-operative Societies Act. Registration allows a co-operative society to be exempt from taxation measures applicable to other enterprises. Instead, co-operative societies are required to make a two-tier contribution of their surplus to the Central Co-operative Fund (CCF) and CCF/Singapore Labour Foundation respectively as the society may opt. As a general rule, only Singapore citizens are allowed to hold office or be a member of the management committee of a co-operative society. Foreigners may be allowed to hold office or be a member of the management committee of a co-operative society, with the approval of the Registrar of Co-operative Societies. A person who is not a Singapore citizen can form and join a co-operative society if he or she is resident in Singapore.

Sector: Education Services

Sub-Sector: Higher education services in relation to the training of doctors

Industry Classification: CPC 92390 Other Higher Education Services (Only applies to Higher Education Services in relation to the training of doctors)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Medical Registration Act, Part V, Specialist Accreditation Board, Sections 2, 3, 34 and 35 Private Education Act, Cap. 247A, 2011 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only local tertiary institutions which are established pursuant to an Act of Parliament, or as designated by the Ministry of Education shall be allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore. Currently, only the National University of Singapore and the Nanyang Technological University are allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore.

Sector: Health and Social Services

Sub-Sector: Medical services Pharmacy services Deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services Optometrists and opticians

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Medical Registration Act, Cap. 174 Pharmacists Registration Act, Cap. 230 Medicines Act, Cap. 176, Medicines (Registration of Pharmacies) Regulations, Cap. 176, Regulation 4 Nurses and Midwives Act, Cap. 209 Allied Health Professions Act, Act 1 of 2011 Optometrists and Opticians Act, Cap. 213A

Description: Cross-Border Trade in Services

Only persons who are resident in Singapore are allowed to provide the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services and optometry and opticianry services.

Sector: Import, export and trading services

Sub-Sector:

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Regulation of Imports and Exports Act, Cap. 272A Regulation of Imports and Exports Regulations

Description: Cross-Border Trade in Services

Only services suppliers with local presence shall be allowed to apply for import/export permits, certificates of origin or other trade documents from the relevant authorities.

Sector: Postal Services

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Postal Services Act, Cap. 237A

Description: Cross-Border Trade in Services

For the provision of basic letter services, all service suppliers must be incorporated as companies under the Companies Act, Cap. 50, 2006 Rev Ed.

Sector: Telecommunications Services

Sub-Sector: Telecommunications services

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Info-communications Development Authority of Singapore Act, Cap. 137A Telecommunications Act, Cap. 323

Description: Cross-Border Trade in Services

1. Facilities-based operators and service-based operators must be locally incorporated under the Companies Act, Cap. 50, 2006 Rev Ed. “Facilities-based operators” are operators who deploy any form of telecommunication networks, systems and facilities, outside of their own property boundaries, to offer telecommunication services to third parties, which may include other licensed telecommunication operators, business customers, or the general public. “Services-based operators” are operators who lease telecommunication network elements (such as transmission capacity and switching services) from any Facilities-Based Operator (FBO) licensed by the IDA so as to provide their own telecommunication services, or to resell the telecommunication services of FBOs to third parties.

2. The number of licences granted will be limited only by resource constraints, such as the availability of radio frequency spectrum. In view of spectrum constraints, parties interested in deploying networks based on wireless technology may be licensed to use radio frequency spectrum via a tender or auction process.

Sector: Telecommunications Services

Sub-Sector: Telecommunications services Domain name allocation policies in Internet country code top level domains (ccTLDs) corresponding to Singapore territories (.sg)

Industry Classification:

Obligations concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Info-communications Development Authority of Singapore Act, Cap. 137A Telecommunications Act, Cap. 323 The Internet Corporation for Assigned Names and Numbers (ICANN), which recognises the ultimate authority of sovereign Governments over ccTLDs corresponding to their territories.

Description: Cross-Border Trade in Services

A registrar must be a company incorporated or a foreign company registered under the Companies Act, Cap. 50, 2006 Rev Ed.

Sector: Power Supply

Sub-Sector: Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1)

Description: Cross-Border Trade in Services

Power producers shall not be allowed to sell power directly to consumers and shall only sell power through the Singapore electricity wholesale market operators licensed by the Energy Market Authority. The amount of power supplied cumulatively by power producers located outside of Singapore to Singapore’s wholesale power market shall not exceed 600 MW.

Sector: Power Supply

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1)

Description: Investment and Cross-Border Trade in Services

Only a Market Support Service Licensee shall be allowed to supply electricity to: (a) all household consumers of electricity; and (b) non-household consumers of electricity whose average monthly consumption is below 4,000 kWh.

Sector: Power Transmission and Distribution

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1)

Description: Investment and Cross-Border Trade in Services

Only a Transmission Licensee shall be the owner and operator of the electricity transmission and distribution network in Singapore.

Sector: Tourism and Travel Related Services

Sub-Sector: Food or beverage serving services in eating facilities run by the government Food or beverage catering services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Environmental Public Health Act, Cap. 95, 2002 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only a Singapore national can apply for a licence to operate a stall in government-run markets or hawker centres, in their personal capacity. To supply food or beverage catering services in Singapore, a foreign service supplier must incorporate as a limited company in Singapore, and apply for the food establishment licence in the name of the limited company.

Sector: Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

Sub-Sector: Waste management, including collection, disposal, and treatment of hazardous waste

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Environmental Public Health Act, Cap. 95

Description: Cross-Border Trade in Services

Foreign service suppliers must be locally incorporated in Singapore. The public waste collectors (PWCs) rendering services to domestic and trade premises are appointed by public competitive tender. The number of PWCs is limited by the number of geographical sectors in Singapore. For industrial and commercial waste, the market is opened to any licensed general waste

collectors (GWCs).

Sector: Trade Services

Sub-Sector: Distribution and Sale of Hazardous Substances

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Environmental Protection and Management Act, Cap. 94A, 2002 Rev Ed, Section 22

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to distribute and sell hazardous substances as defined in the Environmental Protection and Management Act. Singapore reserves the right and flexibility to modify or increase the list of hazardous substances as defined or listed in the Environmental Protection and Management Act.

Sector: Trade Services

Sub-Sector: Distribution services Retailing services Wholesale trade services

Industry Classification:

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Medicines Act, Cap. 176, 1985 Rev Ed Health Products Act, Cap. 122D, 2008 Rev Ed

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to supply wholesale, retail and distribution services for medical and health-related products and materials as defined under the Medicines Act and Health Products Act, intended for purposes such as treating, alleviating, preventing or diagnosing any medical condition, disease or injury, as well as any other such items that may have an impact on the health and well-being of the human body. Such products and materials include but are not limited to drugs and pharmaceuticals, traditional medicines, health supplements, diagnostic test kits, medical devices, cosmetics, tobacco products, radioactive materials and irradiating apparatuses. Singapore reserves the right and flexibility to modify or increase the list of medical and health-related products and materials as defined or listed in the Medicines Act and Health Products Act.

Sector: Transport Services

Sub-Sector: Air transport services Passengers transportation by air Freight transportation by air

Industry Classification: CPC 731 Passenger Transportation by Air CPC 732 Freight Transportation by Air

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Air Navigation (Licensing of Air Services) Regulations, Cap. 6, Regulation 2

Description: Investment

Service suppliers providing air transport services (for both passenger and freight) as a Singapore designated airline may have to be “effectively controlled” and/ or “substantially owned” by the Government or citizens of Singapore or both.

Sector: Transport Services

Sub-Sector: Maritime transport services, Cargo handling services, Pilotage Services Supply of desalinated water to ships berthed at Singapore ports or in Singapore territorial waters

Industry Classification: CPC 741 Cargo Handling Services CPC 74520 Pilotage and Berthing Services (only applies to Pilotage Services) CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Article 9.4 and Article10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Maritime and Port Authority of Singapore Act, Cap. 170A, 1997 Rev Ed, Section 81

Description: Investment and Cross-Border Trade in Services

Only PSA Corporation Ltd and Jurong Port Pte Ltd or their respective successor bodies shall be allowed to provide cargo handling services. Only PSA Marine Pte Ltd or its successor body shall be allowed to provide pilotage services and supply desalinated water to ships berthed at Singapore ports or in Singapore territorial waters.

Sector: Transport Services

Sub-Sector: Maritime transport services Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central

Measures: Maritime and Port Authority of Singapore Act, Cap. 170A, 1997 Rev Ed, Section 81

Description: Investment and Cross-Border Trade in Services

Only local service suppliers shall be allowed to operate and manage cruise and ferry terminals. Local service suppliers are either Singapore citizens or legal persons which are more than 50 per cent owned by Singapore citizens.

Sector: Transportation and Distribution of Manufactured Gas and Natural Gas

Sub-Sector: Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5)

Level of Government: Central Measures: Gas Act, Cap. 116A, 2002 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only the holder of a gas transporter licence shall be allowed to transport and distribute manufactured and natural gas. Only one gas transport licence has been issued given the size of the Singapore market.

Sector: Manufacturing and Services Incidental to Manufacturing

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10)

Level of Government: Central

Measures: Control of Manufacture Act, Cap. 57, 2004 Rev Ed

Description: Investment and Cross-Border Trade in Services

The manufacture of the following products, and services incidental to the manufacture of these products, in Singapore, may be subject to certain restrictions: (a) beer and stout; (b) cigars; (c) drawn steel products; (d) chewing gum, bubble gum, dental chewing gum or any like substance (not being a medicinal product within the meaning of the Medicines Act, Cap. 176, or a substance in respect of which an order under section 54 of the Act has been made); (e) cigarettes; and (f) matches.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Banking Act, Cap. 19, MAS Notice 757 Monetary Authority of Singapore Act, Cap. 186, MAS Notice 1105 Finance Companies Act, Cap. 108, MAS Notice 816 Insurance Act, Cap. 142, MAS Notice 109 Securities and Futures Act, Cap. 289, MAS Notice SFA 04-N04

Description: Investment and Cross-Border Trade in Services

A non-resident financial institution may in certain circumstances be unable to borrow in Singapore dollars more than S$5 million from a resident financial institution owing to the following restrictions placed on financial institutions' lending of the Singapore dollar to non-resident financial institutions. A financial institution shall not extend to any non-resident financial institution Singapore dollar credit facilities exceeding S$5 million per non-resident financial institution: (a) where the Singapore dollar proceeds are to be used outside of Singapore, unless: (i) such proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad; or (ii) such proceeds are for the purpose of preventing settlement failures where the financial institution extends a temporary Singapore dollar overdraft to any vostro account of any non-resident financial institution, and the financial institution takes reasonable efforts to ensure that the overdraft is covered within two business days; and (b) where there is reason to believe that the Singapore dollar proceeds may be used for Singapore dollar currency speculation, regardless of whether the Singapore dollar proceeds are to be used in Singapore or outside of Singapore. A financial institution shall not arrange Singapore dollar equity or bond issues for any non-resident financial institution where the Singapore dollar proceeds are to be used outside Singapore, unless the proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad. "Non-residents financial institution" means any financial institution which is not a resident as defined in the relevant notice.

Sector: Business Services

Sub-Sector: Credit bureau services

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Level of Government: Central

Measures: Administrative measure pursuant to the Monetary Authority of Singapore Act, Cap. 186

Description: Cross-Border Trade in Services

Singapore reserves the right to limit the number of suppliers of credit bureau services where information provided by the supplier of credit bureau services is obtained from financial institutions in Singapore. The supplier must be established in Singapore.

INTRODUCTORY NOTES

1. Description provides a general non-binding description of the measure for which the entry is made.

2. In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

Sector: Atomic Energy

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.

Description: Investment

A licence issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a licence may not be issued to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government (42 U.S.C. 2133(d)). A licence issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities," for use in medical therapy, or for research and development activities. The issuance of such a licence

to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government is also prohibited (42 U.S.C. 2134(d)).

Sector: Business Services

Obligations Concerned: National Treatment (Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Export Trading Company Act of 1982, 15 U.S.C. 4011-4021

15 C.F.R. Part 325

Description: Cross-Border Trade in Services

Title III of the Export Trading Company Act of 1982 authorises the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

Sector: Business Services

Obligations Concerned: National Treatment (Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420

International Emergency Economic Powers Act, 50 U.S.C. 1701-1706

Export Administration Regulations, 15 C.F.R. Parts 730-774

Description: Cross-Border Trade in Services

Certain exports and re-exports of commodities, software and technology subject to the Export Administration Regulations require a licence from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a licence from BIS. An application for a licence must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorisation from BIS as an export from the territory of the United States.

Sector: Mining

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: Mineral Lands Leasing Act of 1920, 30 U.S.C. Chapter 3A 10 U.S.C. 7435

Description: Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 per cent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. 181, 185(a)).

Nationalisation is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States (10 U.S.C. 7435).

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: 22 U.S.C. 2194 and 2198(c)

Description: Investment

Overseas Private Investment Corporation (OPIC) programmes are not available to non-U.S. citizens as individuals. The availability of these programmes to foreign enterprises and foreign owned or controlled domestic enterprises depends upon the extent of U.S. ownership or other U.S. participation, as well as the form of business organisation.

OPIC insurance and loan guaranties are available only to eligible investors, which are: (i) United States citizens; (ii) corporations, partnerships or other associations, including non-profit associations, created under the laws of the United States, any state or territory thereof, or the District of Columbia, and substantially beneficially owned by United States citizens; and (iii) foreign partnerships or associations 100 per cent owned, or foreign corporations at least 95 per cent owned, by one or more such United States citizens, corporations, partnerships or associations.

OPIC may issue insurance to investors not otherwise eligible in connection with arrangements with foreign governments (including agencies, instrumentalities or political subdivisions thereof) or with multilateral organisations and institutions, such as the Multilateral Investment Guarantee Agency, for sharing liabilities assumed under such investment insurance, except that the maximum share of liabilities so assumed may not exceed the proportionate participation by eligible investors in the project.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: 49 U.S.C. Subtitle VII, Aviation Programs

14 C.F.R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

Description: Investment

Only air carriers that are citizens of the United States may operate aircraft in domestic air service (cabotage) and may supply international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. 40102(a)(15), a "citizen of the United States" means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least 75 per cent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Air Transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: 49 U.S.C., Subtitle VII, Aviation Programs

49 U.S.C. 41703

14 C.F.R. Part 375

Description: Cross-Border Trade in Services

Authorisation from the Department of Transportation is required for the supply of specialty air services in the territory of the United States. A person of a Party will be able to obtain such an authorisation if the Party provides effective reciprocity by virtue of this Agreement.

Investment

Foreign civil aircraft require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality accords U.S. civil aircraft operators effective reciprocity. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. 375.1). Under 49 U.S.C. 40102(a)(15), a "citizen of the United States" means an individual who is a U.S. citizen; a partnership in which each member is a U.S. citizen; or a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, which is under the actual control of U.S. citizens, and in which at least 75 per cent of the voting interest in the corporation is owned or controlled by U.S. citizens.

Sector: Land Transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Local Presence (Article 10.6)

Level of Government: Central

Measures: 49 U.S.C. 13902(c) (1)

49 U.S.C. 13102

49 U.S.C. 13501

49 CFR Parts 365, 368, 385, 387, 393, 396

Sec. 350, PL 107-87, as amended

Sec. 6901, PL 110-28, as amended

Description:

Cross-Border Trade in Services

Only persons of the United States, using U.S.-registered and either U.S.-built or duty-paid trucks or buses, may supply truck or bus services between points in the territory of the United States.

Operating authority from the Department of Transportation is required to supply interstate or cross-border for hire bus or truck services in the territory of the United States. For persons of Mexico, grants of operating authority are subject to certain statutory and regulatory requirements.

Investment

Grants of authority for the supply of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo is subject to reciprocity.

(1) Without prejudice to the reservation in this entry with respect to 49 U.S.C. 13902(c), the United States acknowledges the relevant reservation and phase-out in its schedule to Annex I of the North American Free Trade Agreement, located at pages 18-20 of that schedule.

Sector: Transportation Services – Customs Brokers

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Local Presence (Article 10.6)

Level of Government: Central

Measures: 19 U.S.C. 1641(b)

Description: Investment and Cross-Border Trade in Services

A customs broker's licence is required to conduct customs business on behalf of another person. An individual may obtain such a licence only if that individual is a U.S. citizen. A corporation, association or partnership may receive a customs broker's licence only if it is established under the laws of any state and at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's licence.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Measures: Securities Act of 1933, 15 U.S.C. 77c(b), 77f, 77g, 77h, 77j, and 77s(a)

17 C.F.R. 230.251 and 230.405

Securities Exchange Act of 1934, 15 U.S.C. 78l, 78m, 78o(d), and 78w(a)

17 C.F.R. 240.12b-2

Description: Investment

Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

Sector: Communications – Radiocommunications (2)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: 47 U.S.C. 310 (a)-(b)

Foreign Participation Order 12 FCC Rcd 23891, paras. 97-118 (1997)

Description: Investment

The United States restricts ownership of radio licences in accordance with the above statutory and regulatory provisions,

which provide that, inter alia:

(a) no station licence may be granted to or held by a foreign government or representative thereof;

(b) no broadcast or common carrier or aeronautical en route or aeronautical fixed station licence may be granted to or held by:

(i) an alien or its representative;

(ii) a corporation organised under the laws of a foreign government; or

(iii) a corporation of which more than one-fifth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organised under the laws of a foreign country; and

(c) absent a specific finding that that the public interest would be served by permitting foreign ownership of a broadcast licence, no broadcast station licence shall be granted to any corporation directly or indirectly controlled by another corporation of which more than one-fourth of the capital stock is owned of record or voted by an alien or its representative, a foreign government or its representative, or a corporation organised under the laws of a foreign country.

(2) Radiocommunications consists of all communications by radio, including broadcasting.

Sector: Professional Services – Patent Attorneys, Patent Agents, and Other Practice before the Patent and Trademark Office

Obligations Concerned: National Treatment (Article 10.3)

Most-Favoured-Nation Treatment (Article 10.4)

Local Presence (Article 10.6)

Level of Government: Central

Measures: 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Part 11 (representation of others before the U.S. Patent and Trademark Office)

Description: Cross-Border Trade in Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. 11.6(a));

(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. 11.6(c)); and

(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a “grandfathered” agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country; the latter two are permitted to practice for the limited purpose of representing parties located in the country in which he or she resides (37 C.F.R. 11.14(a)-(c)).

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Local Presence (Article 10.6)

Level of Government: Regional

Measures: All existing non-conforming measures of all states of the United States, the District of Columbia, and Puerto Rico

Description: Investment and Cross-Border Trade in Services

For purposes of transparency, Appendix I-A sets out an illustrative, non-binding list of non-conforming measures maintained at the regional level of government.

APPENDIX I-A. Illustrative list of U.S. regional non-conforming measures (3)

	Sectors in which regional measures are described	Sectors in which regional measures do not currently affect U.S. specific commitments under GATS
Business services		
Professional services		
Legal services	x	
Accounting, auditing and bookkeeping services	x	
Architectural services	x	
Engineering services	x	
Integrated engineering services	x	
Urban planning and landscape architectural services	x	
Computer and related services		x
Research and development services		x
Real estate services	x	
Rental/leasing services without operators		x
Advertising services		x
Market research and public opinion polling services		x
Management consulting service		x
Services related to management consulting		x
Technical testing and analysis services		x

Services incidental to agriculture, hunting and forestry		x
Services incidental to fishing		x
Services incidental to mining		x
Services incidental to energy distribution		x
Placement and supply services of personnel	x	
Investigation and security	x	
Related scientific and technical consulting services		x
Maintenance and repair of equipment.		x
Building-cleaning services		x
Photographic services		x
Packaging services		x
Printing, publishing		x
Convention services		x
Other		x
Communication services		
Express delivery services		x
Other delivery services		x
Telecommunication services		x
Audiovisual services		x
Construction and related engineering services	x	
Distribution services		x
Educational services	x	

Environmental services		x
Health related and social services	x	
Tourism and travel related services		x
Recreational, cultural and sporting services (other than audiovisual services)		
Entertainment services (including theatre, live bands and circus services)		x
News agency services		x
Libraries, archives, museums and other cultural services		x
Sporting and other recreational services		x
Transport services		
Air Transport Services (Maintenance and repair of aircraft)		x
Rail Transport Services	x	
Road Transport Services		x
Pipeline Transport		x
Services auxiliary to all modes of transport		x
Cargo-handling services		x
Storage and warehouse services		x
Freight transport agency services		x

(3) This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under GATS, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

APPENDIX I-A. Illustrative list of U.S. regional non-conforming measures (4)

Sector	Non-conforming measure by jurisdiction
Legal services (practice of U.S. law)	Residency: Iowa, Kansas, Massachusetts, Michigan, Minnesota (or maintain an office in Minnesota), Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia and Wyoming.
	In-state office: District of Columbia, Indiana, Michigan, Minnesota (or maintain individual residency in Minnesota), Mississippi, New Jersey, Ohio, South Dakota and Tennessee.
Legal services (foreign legal consulting)	Residency: Michigan and Texas.
	In-state office: Arizona, District of Columbia, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio and Utah.
Accounting, auditing and bookkeeping services	Residency: Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee and West Virginia.
	In-state office: Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont and Wyoming.
	Citizenship: North Carolina.
Architectural services, urban planning and landscape architecture services	Senior Managers and Boards of Directors: Michigan.
Engineering services and integrated engineering services	Residency: Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and West Virginia.
Real estate services	Residency: South Dakota.
	Citizenship: Mississippi and New York.
Placement and supply services of personnel	Citizenship: Arkansas.
Investigation and security	Residency: Maine, Michigan and New York.

Construction and related engineering services	In-state office: Michigan.
Educational services (Cosmetology schools)	Limited number of licenses: Kentucky.
Health and related social services	Corporate form: Michigan and New York.
Rail transport services	Incorporation requirement: Vermont.

(4) This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under GATS, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

SCHEDULE OF VIET NAM

INTRODUCTORY NOTES

1. Description sets out the non-conforming measure for which the entry is made.

2. In accordance with Article 9.12 (Non-Conforming Measures) and Article 10.7 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

3. Classification numbers, where referenced in the Sub-Sector element, refers to the activity covered by the non-conforming measure according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Sector: Professional Services

Sub-Sector: Legal Services (CPC 861)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Law No 20/2012/QH13 amending the Law on Lawyers No. 65/2006/QH11 dated 29 June 2006

Description: Investment and Cross-Border Trade in Services

Foreign lawyers organisations (1) and foreign lawyers may provide legal services in Viet Nam, through the following forms:

(a) branches of foreign lawyers organisations;

(b) wholly foreign limited liability law firm;

(c) joint venture limited liability law firm; and

(d) partnerships between foreign lawyer organisations and Viet Nam’s law partnerships.

These entities are not allowed to:

(i) participate in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Viet Nam; and

(ii) participate in legal documentation and certification services (2) of the laws of Viet Nam.

Foreign lawyers practising law in Viet Nam are not permitted to advise on Vietnamese law unless they have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese lawyers. They are not allowed to defend or represent clients before the courts of Viet Nam.

(1) A "foreign lawyers organisation" is an organisation of practising lawyers established in any commercial corporate form in a foreign country (including firms, companies, corporations, etc.) by one or more foreign lawyers or law firms.

(2) For greater certainty, "legal documentation and certification services" include notary services and other services as provided in Vietnamese law, but do not include commercial contracts and business charters. Drafting on such matters as commercial contracts and business charters may be conducted by Vietnamese lawyers working in foreign lawyer organisations.

Sector: Professional Services

Sub-Sector: Auditing services (CPC 862)

Obligations Concerned: Local Presence (Article 10.6)

Level of Government: Central

Measures: Decree No. 17/2012/ND-CP dated 13 March 2012

Description: Cross-Border Trade in Services

Foreign services suppliers are not permitted to supply auditing services unless they meet the requirements of local presence in Viet Nam.

Sector: Professional Services

Sub-Sector: Veterinary services (CPC 932)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to supply veterinary services may not be permitted in Viet Nam unless such services are supplied by natural persons in the form of private professional practice.

Sector: Distribution services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 23/2007/ND-CP dated 12 February 2007 Circular No. 09/2007/TT-BTM dated 17 July 2007 Circular No. 05/2008/TT-BCT dated 14 April 2008 Decision No. 10/2007/QD-BTM dated 21 May 2007

Description: Investment

The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of an Economic Needs Test (ENT). Applications to establish more than one outlet shall be subject to pre-established publicly available procedures, and approval shall be based on objective criteria. The main criteria of the ENT include the number of existing service suppliers in a particular geographic area, the stability of market and geographic scale. The establishment of outlets for retail services with area of less than 500 square metres in areas that are planned for commercial activities by the People's

Committee of cities and provinces, and on which the construction of infrastructure has been finished, is not subject to the ENT requirement. Five years after the date of entry into force of this Agreement for Viet Nam, the ENT shall be removed and this entry shall no longer have effect.

Sector: Other Business Services

Sub-Sector: Technical testing and analysis services (CPC 8676)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 140/2007/ND-CP dated 5 September 2007

Description: Investment

Where Viet Nam allows private suppliers of technical testing and analysis services access to a sector previously closed to private sector competition on the grounds that these services had been supplied in the exercise of governmental authority, such services shall be allowed without limitation on foreign ownership five years after such access to private sector competition is allowed.

Sector: Other Business Services

Sub-Sector: Services incidental to agriculture, hunting and forestry (CPC 881)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to supply services incidental to agriculture, hunting and forestry may not be supplied except through a business cooperation contract, a joint venture or the purchase of shares in a Vietnamese enterprise. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 51 per cent.

Sector: Telecommunications Services

Sub-Sector: Basic services Value-added services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Administrative measures

Description: Cross-Border Trade in Services

Satellite-based services: Foreign service suppliers are not allowed to supply satellite-based services unless the services are offered through commercial arrangements with Vietnamese international satellite service suppliers duly licensed in Viet Nam, except satellite-based services offered to off-shore/on sea based business customers, government institutions, facilities-based service suppliers, radio and television broadcasters, official international organisations' representative offices, diplomatic representatives and consulates, high tech and software development parks and multinational companies (3) that are licensed to use satellite-earth stations. Investment (a) Non facilities-based services: (4) Basic and valued added services: foreign investment to supply non facilities-based services may not be permitted except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 65 per cent, or 70 per cent in the case of virtual private networks. No later than five years after the date of entry into force of this Agreement, Viet Nam shall eliminate any foreign equity limitation or joint venture requirement. (b) Facilities-based services: (i) Basic services: foreign investment to provide facilities-based services may not be permitted except through a joint venture or the purchase of shares in a Vietnamese enterprise duly licensed in Viet Nam, with foreign equity not exceeding 49 per cent. (ii) Valued added services: foreign investment to provide facilities-based services may not be permitted except through a joint venture or the purchase of shares in a Vietnamese enterprise duly licensed in Viet Nam, with foreign equity not exceeding 51 per cent. No later than five years after the date of entry into force of this Agreement, Viet Nam shall permit foreign equity up to 65 per cent. Foreign service suppliers shall be permitted up to 100 per cent ownership of submarine cable transmission capacity landing at a licensed submarine cable landing station in Viet Nam, and may sell such capacity to any licensed

telecommunications operator in Viet Nam, including Internet Service Providers, in Viet Nam.

(3) For the purposes of this entry, a multinational is a corporation which: (a) has a commercial presence in Viet Nam; (b) operates in at least one other Party; (c) has been in operation for at least five years; and (d) is licensed to use satellite services in at least one other Party.

(4) For the purposes of this entry, a "non-facilities based service supplier" means a service supplier which does not own transmission capacity but contracts for such capacity including submarine cable capacity, including on a long-term basis, from a facilities-based supplier. A non facilities-based supplier is not otherwise excluded from owning telecommunications equipment within their premises and permitted public service provision points (POP).

Sector: Audio-visual Services

Sub-Sector: Motion picture production (CPC 96112) Motion picture distribution (CPC 96113) Motion picture projection service (CPC 96121) Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to provide motion picture production, distribution and projection services may not be permitted except through a business cooperation contract or a joint venture with a Vietnamese partner legally authorised to provide such services, or the purchase of shares in a Vietnamese enterprise legally authorised to provide such services. In the case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 51 per cent. For motion picture projection service, foreign organisations and individuals are not permitted to engage in business cooperation contract or joint-venture with Viet Nam's houses of culture, public cinema clubs and societies, mobile projection teams, or owners or operators of temporary film-projection locations.

Sector: Audio-visual Services

Sub-Sector:

Obligations Concerned: Performance Requirement (Article 9.10)

Level of Government: Central

Measures: The Law on Cinemamatography 2006, Law No. 62/2006/QH11 The Law Amending and Supplementing A Number of Articles on the Law of Cinematography 2009, Law No. 31/2009/QH12 Decree No 54/2010/NĐ-CP dated 21 May 2010

Description: Investment

Cinemas must screen Vietnamese films on the occasion of major anniversaries of the country. The ratio of screening Vietnamese films to total films shall not be less than 20 per cent on an annual basis. Cinemas should show at least one Vietnamese film between the hours of 18:00 and 22:00.

Sector: Educational Services

Sub-Sector: Higher education services (CPC 923) Adult education (CPC 924) Other education services (CPC 929 including foreign language training)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to supply educational services in the following fields of study is not permitted: national security, defence, political science, religion, Vietnamese culture and other fields of study necessary to protect Vietnamese public morals. This limitation shall not prevent the supply of educational services in fields of study where Viet Nam is bound under any other trade agreement.

Sector: Tourism and travel related services

Sub-Sector: Travel agencies and tour operator services (CPC 7471)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment Only foreign investment to supply inbound services and domestic travel for inbound tourists as an integral part of inbound services is permitted.

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Entertainment services (including theatre, live bands and circus services) (CPC 9619)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to provide entertainment services covered by CPC 9619 (including theatre, live bands and circus services) may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 49 per cent. Three years after the date of entry into force of this Agreement, a joint venture or purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 51 per cent shall be permitted.

Sector: Recreational, Cultural and Sporting Services Sub-Sector: Electronic games business

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Administrative measures

Description: Investment and Cross-Border Trade in Services

Foreign investment to supply electronic games services may not be supplied except through a business cooperation contract or a joint venture with Vietnamese partner authorised to supply such services or the purchase of shares in a Vietnamese enterprise authorised to supply such services. In case of a joint venture or the purchase of shares in an enterprise, foreign equity shall not exceed 49 per cent. No later than two years after the date of entry into force of this Agreement, Viet Nam shall permit 51 per cent foreign investment in electronic game services offered over the Internet. Five years after the date of entry into force of this Agreement, Viet Nam shall impose no limitations on foreign equity. For greater certainty, the absence of an entry against the cross-border services obligations does not preclude Viet Nam from ensuring that the cross-border supply of electronic games services complies with Viet Nam's laws and regulations, including applicable registration and licensing requirements.

Sector: Maritime Transport Services

Sub-Sector: Passenger transportation (CPC 7211) Freight transportation (CPC 7212)

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to supply maritime passenger and freight transportation services under the national flag of Viet Nam may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent. In addition, foreign seafarers may not exceed one-third of total employees of the ships. The Master or first chief executive must be a Vietnamese citizen.

Sector: Services auxiliary to all modes of transport

Sub-Sector: Container handling services, except services provided at airports (CPC 7411)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 140/2007/ND-CP dated 5 September 2007 Administrative measures

Description: Investment

Foreign investment to supply container handling services may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 50 per cent.

Sector: Maritime Auxiliary Services

Sub-Sector: Shipping agency services

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 115/ND-CP dated 5 July 2007 Admistrative measures

Description: Investment

Foreign investment to supply shipping agency services may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

Sector: Internal Waterways Transport

Sub-Sector: Passenger transport (CPC 7221) Freight transport (CPC 7222)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 140/2007/ND-CP dated 5 September 2007 Administrative measures

Description: Investment

Foreign investment to supply internal waterway transport services may not be supplied except through a joint venture with a Vietnamese partner or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

Sector: Rail Transport Services

Sub-Sector: Passenger transportation (CPC 7111) Freight transportation (CPC 7112)

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 140/2007/ND-CP dated 5 September 2007 Administrative measures

Description: Investment

Foreign investment to supply rail freight transport services may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent. Foreign investment to supply passenger rail transport services is not permitted. ANNEX I – VIET NAM – 22 Sector: Road Transport Services Sub-Sector: Passenger transportation (CPC 7121 and 7122) Freight transportation (CPC 7123) Obligations Concerned: National Treatment (Article 9.4) Level of Government: Central Measures: Decree No. 140/2007/ND-CP dated 5 September 2007 Administrative measures Description: Investment Foreign investment to supply road passenger and freight transport services may not be supplied except through a business cooperation contract, a joint-venture or the purchase of shares in a Vietnamese enterprise, with foreign equity not exceeding 49 per cent. In the case of road freight transport services, subject to the needs of the market (5), the foreign equity limitation may be raised to but shall not exceed 51 per cent. 100 per cent of joint venture drivers shall be Vietnamese citizens.

(5) The criteria taken into account are, among others: creation of new jobs; positive foreign currency balance; introduction of advanced technology, including management skill; reduced industrial pollution; professional training for Vietnamese workers; etc.

Sector: Manufacturing

Sub-Sector: Aircraft manufacture industry Manufacture of railway rolling stock, spare parts, wagon and coach

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment in the manufacture of aircraft, railway rolling stock, spare parts, wagon and coach may not be permitted except through a joint venture or the purchase of shares in Vietnamese enterprise, with foreign equity not exceeding 49 per cent.

Sector: All

Sub-sector:

Obligations concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Law No. 45/2013/QH13 on Land dated 29 November 2013 and the relevant regulations

Description: Investment

Foreign organisations, individuals and foreign invested enterprises may only acquire and use land-use rights in Viet Nam in accordance with the Law on Land.

Sector: Power Development

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to own or operate power transmission facilities in Viet Nam may not be permitted. Viet Nam Electricity Corporation (EVN) is currently the sole authorised owner and operator of power transmission facilities in Viet Nam.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment to establish a commercial presence in the form of a branch may not be permitted, except for the following sectors and sub-sectors: (a) Legal services (CPC 861); (b) Computer and Related Services (CPC 841-845, CPC 849); (c) Management consultant services (CPC 865); (d) Services related to management consulting (CPC 866); (e) Construction and related engineering services (CPC 51); and (f) Franchising services (CPC 8929). For greater certainty, and consistent with Article 9.12.1(c) (Non-Conforming Measures), the removal of a branching restriction in a sector or sub-sector does not require the removal of a branching restriction in all sectors.

Sector: Import/Export Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Admininistrative measures

Description: Investment

Foreign investment in state-trading enterprises of Viet Nam that import certain tobacco products, oil products, publications, recorded media, aircraft and aircraft parts, as specified in Table 8(c) of the Report of the Working Party on the Accession of Viet Nam in the WTO may not be permitted. For greater certainty, and consistent with Article 9.12.1(c) (Non-Conforming Measures), the liberalisation of a state-trading enterprise does not require the liberalisation of all state-trading enterprises.

Sector: Geodesy and Cartography

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 12/2002/ND-CP dated January 22, 2002

Description: Investment

Foreign organisations and individuals carrying out, directly or in cooperation with domestic organisations, geodesic and cartographic activities in Viet Nam must have their geodesic and cartographic projects approved by competent State bodies and be granted permits for geodesic and cartographic activities. After completing the geodesic and cartographic projects, the project investors must submit one copy of the results to the State management agency in charge of geodesy and cartography.

Sector: Recreational, cultural and sporting services

Sub-Sector: Amusement parks

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Administrative measure

Description: Investment

Foreign investment of less than USD 1 billion in building and managing theme parks or amusement parks shall not be accepted unless the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Viet Nam. This determination is made in accordance with the following factors: (a) the compatibility of the investment with the regional master plan for socio-economic development; (b) the ability to meet people's demand for cultural consumption; (c) the compatibility with the local and regional cultural characteristics; and (d) the effect of the investment on local state budget, employment, on the use of parts, components and services produced in Viet Nam and on competition with the services provided by the local cultural houses. Investments greater than USD 1 billion are not subject to this determination.

Sector: Financial services provided by non-financial institutions, excluding the provision and transfer of financial information and advisory financial services

Sub-Sector:

Obligations concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: All existing non-conforming measures

Description: Investment

All existing non-conforming measures at the central level of government.

Sector: Manufacture of tobacco products, including cigars and cigarettes

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 67/2013/ND-CP dated June 26, 2013

Description: Investment

Foreign investment in manufacturing of tobacco products, including cigars and cigarettes, is not allowed, except through a joint venture or the purchase of shares in a Vietnamese enterprise with foreign equity not exceeding 49 per cent.

Sector: Services incidental to energy distribution (CPC 887)

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Level of Government: Central

Measures: Administrative measures

Description: Investment and Cross-Border Trade in Services

Foreign services suppliers are not allowed to supply services incidental to energy distribution. Foreign investment in these services is not permitted.

Sector: Mining

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Administrative measures

Description: Investment

Foreign investment in exploitation of minerals shall not be accepted unless the Vietnamese competent authorities advise the applicant that the investment is likely to be of net benefit to Viet Nam. In making this determination, the competent authority may consider the following factors: (6) (a) the effect of the investment on the level and nature of economic activity in Viet Nam, including the effect on employment, on the use of parts, components and services produced in Viet Nam and on exports from Viet Nam; (b) the degree and significance of participation by Vietnamese in the investment; (c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Viet Nam; (d) the effect of the investment on competition within an industry or industries in Viet Nam; (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and (f) the contribution of the investment to Viet Nam's ability to compete in world markets.

(6) Foreign investors do not have to comply with all the criteria to obtain the mining licence.

Sector: Oil and Gas

Sub-Sector: Oil and gas exploration, prospecting and exploitation

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10)

Level of Government: Central

Measures: The Petroleum Law 1993 The 2000 Law No.19/2000/QH10 Amending and Supplementing a Number of Articles of the Petroleum Law 1993 The 2008 Law No.10/2008/QH12 Amending and Supplementing a Number of Articles of the Petroleum Law 1993, which was amended and supplemented under Law 19/2000/QH10 Amending and Supplementing a Number of Articles of the Petroleum Law

Description: Investment

Viet Nam Oil and Gas Group (PETROVIETNAM) is the sole authorised company with respect to oil and gas exploration, prospecting and exploitation. A contract with PETROVIETNAM is required for oil and gas activities in Viet Nam. Sub-contracts may be awarded to foreign contractors, but priority may be given to Vietnamese organisations and individuals. The execution of oil and gas contracts and their transfer to another entity must be approved by the Prime Minister. In special cases (7), the following matters are also subject to the Prime Minister's approval: (i) the extension of the prospecting period or the term of an oil and gas contract; and (ii) the suspension time limit, not to exceed three years, in cases where the parties to an oil and gas contract negotiate to suspend the execution of a number of rights and obligations under an oil and gas contract when circumstances do not allow for prompt execution of the contract. PETROVIETNAM has the preemptive right to buy part or all of an oil and gas contract to be transferred. Foreign investors may only supply flight operation services for oil and gas activities through joint venture contracts with Vietnamese companies.

(7) For special cases, the Government shall prescribe conditions for suspending the execution of a number of rights and obligations under an oil and gas contract, and conditions and procedures for extending exploration and prospecting period or the term of an oil and gas contract.

Sector: Business Services

Sub-Sector: Asset appraisal

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 89/2013/NĐ-CP dated August 6, 2013 promulgating the implementation of some articles of the Law on Price on price appraisal

Description: Investment

Foreign organisations may not supply asset appraisal services except: (a) when they are organisations legally established and supplying asset appraisal services in their home country; and (b) in partnership with a Vietnamese asset appraisal enterprise through a limited liability company with two or more members, or a joint stock company. Foreign individuals are not permitted to supply asset appraisal services.

Sector: Real Estate

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Law No. 66/2014/QH13 dated November 25, 2014 on Real Estate Business

Description: Investment

With respect to the construction, lease, purchase, lease-purchase and transfer of real estate properties, the Law on Real Estate Business provides more limited rights to foreign entities than Vietnamese entities. Foreign invested enterprises may only: (a) with respect to residential real estate: (i) construct residential real estate for sale, lease or lease-purchase on land allocated by the State; (ii) construct residential real estate for lease on land leased by the State; (iii) purchase, lease-purchase or rent commercial residential real estate in housing development investment projects; (iv) rent residential real-estate for sub-lease; and (v) obtain the transfer of residential real estate projects, partly or as a whole, to construct residential buildings for sale or for lease; (b) with respect to commercial real estate: (i) construct commercial buildings for sale, lease or lease-purchase on land leased by the State; (ii) construct commercial buildings on land which is leased out in industrial parks, industrial complexes, export-processing zones, hi-tech zones or economic zones for trading for their proper land use; (iii) purchase or lease-purchase commercial real estate for use according to their proper utility; (iv) rent commercial real estate for use or sub-lease; and (v) obtain the transfer of commercial real estate projects, partly or as a whole, to construct

commercial buildings for sale or for lease. For greater certainty, foreign invested enterprises may also supply real estate brokerage services, real estate exchange floors, real estate consulting services and real estate management services, with respect to both residential and commercial real estate. For greater certainty, foreign invested enterprises, foreign individuals and organisations are only allowed to carry out the activities enumerated above.

Sector: Security Systems Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No. 52/2008/ND-CP dated 22 April, 2008 on management of security service business

Description: Investment

Foreign investment is not permitted except through a joint venture with foreign equity not exceeding 49 per cent. Foreign enterprises may not supply security system services unless they are enterprises with expertise in the security system service business, have capital amounts and total asset value of USD 500,000 or more, have operated for five consecutive years or more, and have not violated the laws of the home or relevant countries. Foreign individuals are not permitted to supply security system services. Foreigners may not be employed as security personnel.

Sector: Air Transportation, including domestic and international air transportation services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Measures: Decree No. 30/2013/ND-CP dated 8 April 2013

Description: Investment

Aggregate foreign capital contribution or equity is restricted to no more than 30 per cent of chartered capital or shares of a Vietnamese airline. A Vietnamese individual or legal person who is not a foreign invested enterprise must hold the largest percentage of chartered capital or shares in the airline. At least two-thirds of the total members of the executive board of a foreign invested airline established in Viet Nam must be Vietnamese. The Director General (or Director) and the legal representative of a foreign invested airline established in Viet Nam must be Vietnamese.

Sector: Education Services

Sub-Sector: Primary education services, Secondary education services

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Measures: Decree No.73/2012/ND-CP dated 26 September 2012

Description: Investment

Foreign investment in the above-mentioned services is not permitted except through: (a) preschool education institutions using foreign educational programmes for foreign children; and (b) compulsory education institutions using foreign educational programmes, issuing foreign qualifications, for foreign students and some Vietnamese students. The compulsory education institutions may enrol Vietnamese students, but the number of Vietnamese students in primary schools and middle schools shall not exceed 10 per cent of the total number of students, and that in high schools shall not exceed 20 per cent of the total number of students.

ANNEX II. EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 9.12 (NonConforming Measures) and Article 10.7 (Non-Conforming Measures), the specific sectors, subsectors or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 9.4 (National Treatment) or Article 10.3 (National Treatment);

(b) Article 9.5 (Most-Favoured-Nation Treatment) or Article 10.4 (MostFavoured-Nation Treatment);

(c) Article 9.10 (Performance Requirements);

(d) Article 9.11 (Senior Management and Boards of Directors);

(e) Article 10.5 (Market Access); or

(f) Article 10.6 (Local Presence).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 9.12.2 (Non-Conforming Measures) and Article 10.7.2 (Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;

(e) Description sets out the scope or nature of the sectors, subsectors or activities covered by the entry to which the reservation applies; and

(f) Existing Measures, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 9.12.2 (Non-Conforming Measures) and Article 10.7.2 (Non-Conforming Measures), the articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. With respect to Annex II entries on Most-Favoured-Nation Treatment relating to bilateral or multilateral international agreements, the absence of language regarding the scope of the reservation for differential treatment resulting from an amendment of those bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement is without prejudice to each Party's respective interpretation of the scope of that reservation.

SCHEDULE OF AUSTRALIA

INTRODUCTORY NOTES

1. For the avoidance of doubt, in relation to education services, nothing in Chapter 9 (Investment) or Chapter 10 (Cross-Border Trade in Services) shall interfere with:

(a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;

(b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programmes, including the standards that must be met;

(c) government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits, provided to education and training institutions; or

(d) the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

2. For greater certainty, where Australia has more than one entry in its Schedule to Annex II that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

Sector: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 12 (Temporary Entry for Business Persons), that is not inconsistent with Australia's obligations under Article XVI of GATS.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.

Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation.

For the purpose of this entry, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

Existing Measures: Legislation and ministerial statements at all levels of government including Australia's foreign investment policy, and the Native Title Act (Cth).

Sector: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's obligations under Article XVI of GATS. For the purposes of this entry, Australia's Schedule of Specific Commitments is modified as set out in Appendix A. For the purposes of this entry, the reference to Australia's commitments under Article XVI of GATS includes commitments made under that Article after the date of entry into force of this Agreement.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to proposals by foreign persons (1) and foreign government investors to invest in Australian urban land (2) (including interests that arise via leases, financing and profit sharing arrangements, and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.

Existing Measures: Australia's foreign investment policy, which consists of the Foreign Acquisitions and Takeovers Act 1975 (FATA) (Cth), Financial Sector (Shareholdings) Act 1998 (Cth), Foreign Acquisitions and Takeovers Regulations 1989 (Cth), and Ministerial Statements.

(1) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth).

(2) The term "Australian urban land" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth).

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Australia reserves the right to adopt or maintain any measure to allow the screening of proposals, by foreign persons (3), to invest 15 million (4) Australian dollars or more in Australian agricultural land and 53 million (5) Australian dollars or more in Australian agribusinesses.

Existing Measures: Australia's foreign investment policy, which consists of the Foreign Acquisitions and Takeovers Act 1975 (FATA) (Cth), Financial Sector (Shareholdings) Act 1998 (Cth), Foreign Acquisitions and Takeovers Regulations 1989 (Cth), and Ministerial Statements.

(3) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth).

(4) For greater certainty, this refers to the total, cumulative value of agricultural land in Australia in which a foreign person has invested or intends to invest.

(5) For greater certainty, this refers to the total, cumulative value of agribusinesses in Australia in which a foreign person has invested or intends to invest.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

At the central level of government, Australia reserves the right to limit the initial transfer or disposal of government owned entities or assets, or a portion or percentage of the initial transfer, to Australian persons. For greater certainty, if Australia transfers or disposes of a government owned entity or asset in multiple phases, this right shall apply separately to each phase. At the remaining levels of government, Australia reserves the right to adopt or maintain any measure with respect to: (a) the devolution to the private sector of services provided in the exercise of governmental authority at the date of entry into force of this Agreement; and (b) the privatisation of government owned entities or assets. For the purposes of this entry, any measure adopted after the date of entry into force of this Agreement in relation to subparagraph (a) or (b) shall be deemed an existing non-conforming measure subject to paragraphs 1, 5, 6 and 7 of Article 9.12 (Non-Conforming Measures) and paragraph 1 of Article 10.7 (Non-Conforming Measures).

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure (6) with respect to the provision of law enforcement and correctional services, and the following services (7) to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health (8), child care, public utilities9, public transport and public housing.

(6) For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

(7) This includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

(8) For greater certainty, the subsidies programmes under Australia's Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programmes, are not subject to Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), and Article 9.11 (Senior Management and Boards of Directors), in accordance with Article 9.12(6)(b) (Non-Conforming Measures). 9 With respect to the central level of government, applies only with respect to Article 10.5 (Market Access).

Sector: Broadcasting and Audio-visual Services Advertising Services Live Performance (10)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) (11) Performance Requirements (Article 9.10) Market Access (Article 10.5) Local Presence (Article 10.6) (12)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure (13) with respect to: (a) Transmission quotas for local content on free-to-air commercial television broadcasting services. (b) Non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services. (c) Transmission quotas for local content on free-to-air radio broadcasting services. (d) Other audio-visual services transmitted electronically, in order to make Australian audio-visual content reasonably available to Australian consumers.(14) (e) Spectrum management and licensing of broadcasting services. (15) (f) Subsidies or grants for investment in Australian cultural activity. This entry does not apply to foreign investment restrictions in the broadcasting and audio-visual services sector. Existing Measures: Broadcasting Services Act 1992 (Cth) Radiocommunications Act 1992 (Cth) Income Tax Assessment Act 1936 (Cth) Income Tax Assessment Act 1997 (Cth) Screen Australia Act 2008 (Cth) Broadcasting Services (Australian Content) Standard 2005 Children's Television Standards 2009 Television Program Standard 23 – Australian Content in Advertising Commercial Radio Codes of Practice and Guidelines Community Broadcasting Codes of Practice.

(10) Applies only in respect of subparagraph (f).

(11) Applies only to the treatment as local content of New Zealand programmes or productions.

(12) Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).

(13) For greater certainty, this includes the right to adopt or maintain measures under subparagraphs (a) through (f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.

(14) Any such measure will be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS.

(15) In respect of subparagraph (e), Australia's reservation applies only in respect of Article 10.5 (Market Access) and Article 10.6 (Local Presence).

Sector: Broadcasting and Audio-visual Services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures: International Co-production Program

Sector: Recreational, Cultural and Sporting Services (other than audio-visual services)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the creative arts (16),(17) Indigenous traditional cultural expressions and other cultural heritage. (18)

(16) For the purposes of this entry, “creative arts” means: the performing arts (including live theatre, dance and music); visual arts and craft; literature (other than literary works transmitted electronically); and hybrid art works, including those which use new technologies to transcend discrete art form divisions. For live performances of the “creative arts”, as defined, this entry does not extend beyond subsidies and grants for investment in Australian cultural activity.

(17) Notwithstanding this, such measures shall be implemented in a manner that is consistent with Australia’s commitments under Article XVI and Article XVII of GATS, as applicable.

(18) For the purposes of this entry, “cultural heritage” means: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

Sector: Distribution Services

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages or firearms.

Sector: Education Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to primary education.

Sector: Gambling and Betting

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Existing Measures: Legislation and ministerial statements including the Interactive Gambling Act 2001 (Cth).

Sector: Maritime Transport

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. (19)

Existing Measures: Customs Act 1901 (Cth) Fair Work Act 2009 (Cth) Seafarers’ Compensation and Rehabilitation Act 1992 (Cth) Occupational Health and Safety (Maritime Industry) Act 1993 (Cth) Income Tax Assessment Act 1936 (Cth) Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth) Shipping Reform (Tax Incentives) Act 2012 (Cth)

(19) For the purposes of this entry, “cabotage” is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. “Offshore transport” refers to shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea

and the subsoil of that seabed.

Sector: Transport Services

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures: Airports Act 1996 (Cth) Airports (Ownership-Interests in Shares) Regulations 1996 (Cth) Airports Regulations 1997 (Cth)

Sector: Services related to Air Transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure relating to the provision of ground handling services as defined in Article 10.1 (Definitions) in relation to each Party that: (a) maintains, in its Schedule to Annex II, an entry with respect to ground handling services; and (b) lists against Article 10.3 (National Treatment), but only in relation to the obligations listed by that Party. Australia reserves the right to adopt or maintain any measure relating to the provision of airport operation services as defined in Article 10.1 (Definitions) in relation to each Party that: (a) maintains, in its Schedule to Annex II, an entry with respect to airport operation services; and (b) lists against two of the following obligations: Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment) and Article 10.6 (Local Presence), but only in relation to the obligations listed by that Party.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor taken as part of a process of economic integration or trade liberalisation between the Parties to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) done at Canberra on March 28, 1983.20 Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor of a Pacific Island Forum member state under any international agreement in force or signed after the date of entry into force of this Agreement. Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; or (c) maritime matters, including salvage. 20 For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to that agreement.

APPENDIX A. Australia

For the following sectors, Australia's commitments under Article XVI of GATS as set out in Australia's Schedule of Specific Commitments under the GATS (GATS/SC/6, GATS/SC/6/Suppl.1, GATS/SC/6/Suppl.1/Rev.1, GATS/SC/6/Suppl.2, GATS/SC/6/Suppl.3 and GATS/SC/6/Suppl.4) are improved as described below.

Sector/subsector	Market Access Improvement
BUSINESS SERVICES	
Professional Services	

Legal services (21)	
Legal advisory and representational services in domestic law (host-country law)	Replace existing commitments with no limitations for modes 1-3. Mode 4 is unbound except as indicated in the horizontal section.
Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services.	Replace existing commitments with no limitations for modes 1 and 2, mode 3 is limited as follows: In South Australia, natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. Mode 4 is unbound except as indicated in the horizontal section.
Research and Development Services	
Research and Development (R&D) services on natural sciences and engineering (CPC 851)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Interdisciplinary research and development (R&D) services (CPC 853)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Other Business Services	
Landscape architectural services (CPC 86742)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Technical testing and analysis services (CPC 8676)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Site preparation work for mining (CPC 5115)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Services incidental to manufacturing (CPC 884 and 885, except for 88442).	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Related scientific and technical consulting services (CPC 8675)	

- Geological, geophysical and other scientific prospecting services (CPC 86751)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Subsurface surveying services (CPC 86752)	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section, for the whole sector.
- Map-making services (CPC 86754)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 and 8861-8866).	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Packaging services (CPC 8760)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Specialty design services (CPC 87907)	Replace existing commitments on Interior Design with no limitations for modes 1-3, mode 4 is unbound as indicated in the horizontal section.
COMMUNICATION SERVICES. This covers the following sub-sectors from the Services Sectoral Classification List (W/120) and related CPC numbers 7521,7522,7523, 7529** (a) Voice telephone services (b) Packet-switched data transmission services (c) Circuit-switched data transmission services (d) Telex services (e) Telegraph services (f) Facsimile services (g) Private leased circuit services (o) Other: Digital cellular services Paging services Personal communications services Trunked radio system services Mobile data services Services covered by the Broadcasting Services Act 1992 (Cth) are excluded from the basic telecommunications sector.	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
CONSTRUCTION AND RELATED ENGINEERING SERVICES	
Other	
Other general construction work for civil engineering (CPC 511, 515 and 518)	Insert new commitments with no limitations for modes 2 and 3, mode 1 unbound*, mode 4 is unbound except as indicated in the horizontal section.
DISTRIBUTION SERVICES	
Commission agents' services (CPC 62111, 62112**, 62113-	

62118) Includes services by commission agents, commodity brokers, auctioneers and other wholesalers who trade on behalf of others, of food products, and non-alcoholic beverages. Excludes tobacco, alcoholic beverages, and firearms.	
Wholesale trade services (CPC 6221**, 6222**, 6223 - 6228**) Wholesale trade services of agricultural raw materials and live animals. Excludes wholesale trade services of unmanufactured tobacco, tobacco products, alcoholic beverages and firearms.	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Retailing services (CPC 631**, 63211**, 63212, 6322, 6323, 6324, 6325, 6329**, 61112, 6113, 6121) Australia's commitments in relation to these services extend to cover the following services not listed in relevant CPC classifications: inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services for retailing. Does not cover dispensing of pharmaceuticals, retailing services of alcoholic beverages, tobacco products and firearms.	Replace existing commitments with no limitations for modes 2 and 3, mode 1 unbound except for mail order, mode 4 is unbound except as indicated in the horizontal section.
ENVIRONMENTAL SERVICES (22), (23)	
Wastewater management (CPC 9401) This covers removal, treatment and disposal of household, commercial and industrial sewage and other waste waters including tank emptying and cleaning, monitoring, removal and treatment of solid wastes.	Replace existing commitments on "Sewage services" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Waste management (CPC 9402, 9403) This covers hazardous and non-hazardous waste collection, treatment and disposal (including incineration, composting and landfill); sweeping and snow removal, and other sanitation services	Replace existing commitments on "Refuse disposal services" and "Sanitation and similar services" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Protection of ambient air and climate (CPC 9404) This covers services at power stations or industrial complexes to remove air pollutants; monitoring of mobile emissions and implementation of control systems or reduction programmes.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Remediation and clean-up of soil and water (CPC 9406**) (24) This covers cleaning-up systems in situ or mobile, emergency response, clean-up and longer term abatement of spills and natural disasters; and rehabilitation programmes (e.g. recovery of mining sits) including monitoring.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Noise and vibration abatement (CPC 9405) This covers monitoring programmes, and installation of noise reduction systems and screens.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Protection of biodiversity and landscape (CPC 9406**) (25) This covers ecology and habitat protection and promotion of forests and promoting sustainable forestry.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.

Other environmental and ancillary services (CPC 9409) This covers other environment protection services, including services related to environmental impact assessment.	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
TOURISM AND TRAVEL RELATED SERVICES	
Travel agencies and tour operators services (CPC 7471)	Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
TRANSPORT SERVICES	
Air Transport services	
Airport operation services, as defined in Article 10.1 (Definitions)	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Ground handling services, as defined in Article 10.1 (Definitions)	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance (CPC 8868**) This covers establishments mainly engaged in periodic maintenance and repair (routine and emergency) of airframes (including wings, doors, control surfaces) avionics, engines and engine components, hydraulics, pressurisation and electrical systems and landing gear. Includes painting, other fuselage surface treatments and repair of flight-deck (and other) transparencies. Further includes rotary and glider aircraft.	Replace existing commitment on “Maintenance and repair of aircraft” with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Selling and marketing of air transport services, as defined in Article 10.1 (Definitions) This commitment confirms, without extending, the application to air transport services of the following: (a) Travel agencies and tour operator services (CPC 7471), (b) Market research and public opinion polling services (CPC 864), (c) Advertising services (CPC 87110, 87120**, 87190), Covers services by advertising agencies in creating and placing advertising in periodicals, newspapers, radio and television for clients; outdoor advertising, media representation i.e. sale of time and space for various media; distribution and delivery of advertising material or samples. Does not include production or broadcast/screening of advertisements for radio, television or cinema. (d) Distribution: Commission agents’ services (CPC 62113-62118); Wholesale trade services (CPC 6223-6228); Retailing services (as described in this Appendix); and Franchising (CPC 8929). Excludes unmanufactured tobacco, tobacco products, alcoholic beverages and firearms.	Insert new commitments with no limitations on mode 1 except that Retailing services (CPC 631**, 63211**, 63212, 61112, 6113, 6121, 6322, 6323, 6324, 6325, 6329**) are unbound except for mail order, no limitations on modes 2 and 3. Mode 4 is unbound except as indicated in the horizontal section.

Rail Transportation services	
Freight transportation (CPC 7112); Pushing and towing services (CPC 7113); and Supporting services for rail transport services (CPC 743).	Insert new commitments with no limitations for modes 1 and 2. Mode 3 is limited as follows: (a) Below track: Most rail-track networks in Australia are government owned although much is leased to private operators. There are no restrictions on the right to establish new networks but access to public land may not be guaranteed. (b) Above track (rail transport services (such as trains) that operate over the rail-track infrastructure): none except that access to rail infrastructure is allocated under pro-competitive principles for safety, efficiency and the long term interests of users. Mode 4 is unbound except as indicated in the horizontal section.
Road transportation services. Freight transportation (CPC 7123)	
- Transportation of frozen or refrigerated goods (CPC 71231)	Insert new commitments with no limitations for mode 1.
- Transportation of bulk liquids or gases (CPC 71232)	Insert new commitments with no limitations for mode 1.
- Transportation of containerized freight (CPC 71233)	Insert new commitments with no limitations for mode 1.
- Transportation of furniture (CPC 71234)	Insert new commitments with no limitations for mode 1.
- Mail transportation (CPC 71235)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Freight transportation by man- or animal-drawn vehicles (CPC 71236)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
- Transportation of other freight (CPC 71239)	Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Rental of commercial vehicles with operator (CPC 7124)	Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section

Services auxiliary to all modes of transport	
Storage and warehouse services (CPC 742 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 742: distribution centre services and materials handling and equipment services such as container station and depot services (excluding maritime).	Replace existing commitments with no limitations for modes 2 and 3, mode 1 is unbound*, mode 4 is unbound except as indicated in the horizontal section.
Freight transport agency services (CPC 748 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 748: customs agency services and load scheduling services (excluding maritime).	Replace existing commitments on "freight forwarding" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.
Other supporting and auxiliary transport services (CPC 749 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed under CPC 749: container leasing and rental services (excluding maritime).	Replace existing commitments on "pre-shipment inspections" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section.

(21) For the purposes of this entry: "legal advisory services" – includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys. "legal representational services" – includes preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of the specified body of law. (Note: The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.) Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys. "legal arbitration, conciliation and mediation services" – preparation of documents to be submitted to, preparation for and appearance before, an arbitrator, conciliator or mediator in any dispute involving the application and interpretation of law. Does not include arbitration, conciliation and mediation services in disputes for which the law has no bearing which fall under services incidental to management consulting. As a sub-category, international legal arbitration, conciliation and mediation services refer to the same services when the dispute involves parties from two or more countries. "domestic law (host country law)" – the law of Australia. "foreign law" – the law of the territories of WTO Members and other countries other than the law of Australia. "international law" – includes law established by international treaties and conventions, as well as customary law. For the purposes of these definitions: "arbitration" is taken to mean a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. "mediation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. "conciliation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

(22) Australia's commitments on environmental services exclude the provision of water for human use, including water collection, purification and distribution through mains.

(23) The classification scheme adopted on environmental services is largely based upon the scheme proposed by the European Communities (EC) in 2000 (see pages 6-7 of the EC paper "GATS 2000: Environmental Services", S/CSS/W/38), but see especially footnote 22 above.

(24) This commitment and Australia's commitment on protection of biodiversity and landscape combine to cover the entirety of CPC 9406 services.

(25) This commitment and Australia's commitment on remediation and clean-up of soil and water combine to cover the entirety of CPC 9406 services.

* Unbound due to lack of technical feasibility.

** Indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

SCHEDULE OF BRUNEI DARUSSALAM

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the privatisation, corporatisation, commercialisation or divestment of Government assets, entities or agencies including:

(a) limitations on ownership of assets;

(b) transfer or disposal of equity interests or their assets;

(c) the right of foreign investors or their investments to control their assets; and

(d) nationality of the senior management or members of the board of directors.

2. This entry pertains only to the initial transfer or disposal of interest in Government assets, entities or agencies. Brunei Darussalam does not reserve this right with respect to subsequent transfers or disposals of Government interest in such assets, entities or agencies.

3. For greater certainty:

(a) where Brunei Darussalam transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal of the interest for purposes of this entry; and

(b) where Brunei Darussalam transfers or disposes of an interest in an existing state enterprise in multiple phases, subparagraph (a) shall apply separately to each such phase.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) (1)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to all land transactions other than strata title, which shall be subject to approval and consent by His Majesty-in-Council, including but not limited to: (a) ownership and lease of land; (b) conditions on which such land shall be held; and (c) reciprocal arrangements on ownership or lease of diplomatic properties.

(1) Applies only in respect of subparagraph (c).

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure that accords differential treatment: (a) to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement; (b) to ASEAN Member States under any ASEAN agreement open to participation by any ASEAN Member State, in force or signed after the date of entry into force of this Agreement; and (c) to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving: (i) air services; and (ii) maritime and port matters.

Sector: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, including on the total number of foreign natural persons that may be employed in any sector, subject to the provisions of Chapter 12 (Temporary Entry for Business Persons), and in a manner that is not inconsistent with Brunei Darussalam's obligations under Article XVI of GATS.

Sector: Fisheries and Services Incidental to Fisheries

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to any fisheries and services related to fisheries activity in its territory, including its exclusive economic zone, including but not limited to: (a) any differential treatment to foreign nationals due to the application of reciprocity of commitments relating to artisanal fishery activity; and (b) ensuring the availability and sustainability of fisheries resources.

Sector: Logging

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to logging activities.

Sector: Silica Sand

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure with respect to the commercialisation of activities relating to silica sand deposits, including mining, quarrying, manufacture and export of such deposits.

Sector: Petroleum

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5)

Description: Investment

1. Brunei Darussalam has no existing statutes, regulations or other similar measures that mandate preferential treatment to be accorded to investors of another Party or their investments as compared to investors of any other Party, or of any non-Party, or their investments.

2. With respect to the making of or entry into petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements (2), (3) Brunei Darussalam reserves the right to continue to exercise discretion (4) to accord investors of another Party or their investments less favourable treatment than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or

their investments, except that: (a) Brunei Darussalam shall not adopt any statute, regulation or other similar measure (5) that mandates according investors of another Party or their investments treatment less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments; and (b) Brunei Darussalam shall accord investors of another Party or their investments treatment no less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, under any bilateral or multilateral international agreement that enters into force or is signed after the date of entry into force of this Agreement.

3. The terms “petroleum mining agreement”, “collateral agreement” and “petroleum” used herein shall have the meanings ascribed to them under the Act.

Existing Measures: Petroleum Mining Act (Chapter 44) (the Act) Brunei National Petroleum Company Sendirian Berhad Order, 2002 Petroleum (Pipe-Lines) Act (Chapter 45) Administrative Measures and Guidelines

(2) For greater certainty, the expression “making of or entry into petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements” includes: (a) the negotiation, determination and amendment of any terms and conditions in petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum, and collateral agreements, or the renewal or extension of the term of such agreements; and (b) any decision by Brunei Darussalam to conduct a bid or tender or other process in relation to any proposed petroleum mining agreement, for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements, and, if any such bid or tender or other process is conducted, the terms and conditions on which any such bid or tender or other process is conducted.

(3) For greater certainty, the expression “collateral agreements” shall include shareholders’ participation agreements and agreements providing fiscal incentives with respect to petroleum mining agreements.

(4) For greater certainty, the discretion under this paragraph may be exercised pursuant to any measure that Brunei Darussalam may adopt or maintain.

(5) For greater certainty, the expression “other similar measure(s)” used in paragraphs 1 and 2(a) of this entry excludes any decisions or guidance by any member of the Cabinet with respect to the making of or entry into, or amendment of, an individual petroleum mining agreement or collateral agreements. For greater certainty, any such decision or guidance, shall not be subject to the dispute settlement provisions of this Agreement with respect to Article 9.5 (Most-Favoured-Nation Treatment).

Sector: Coal

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) (6) Most-Favoured-Nation Treatment (Article 9.5) (7) Performance Requirements (Article 9.10) (8) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

1. Subject to paragraph 2, Brunei Darussalam reserves the right to adopt or maintain any measure relating to the exploration, exploitation, development and production of coal reserves in Brunei Darussalam.

2. In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, this entry will not apply in relation to the Senior Management and Boards of Directors obligation. However, in respect of the remaining Obligations Concerned, Brunei Darussalam reserves the right to adopt and maintain any measure:

(a) relating to the making of or entry into of contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam. (9) In this regard, Brunei Darussalam may:

(i) exercise discretion (10) to accord investors of another Party, or their investments, less favourable treatment than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, except that: Brunei Darussalam shall not adopt any statute or regulation that mandates according investors of another Party, or their investments, treatment less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, and; Brunei Darussalam shall accord investors of another Party, or their investments, treatment no less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, under any bilateral or multilateral international agreement that enters into force or is signed after the

date of entry into force of this Agreement; and

(ii) require an investor of another Party, or its investment, engaged in the exploration, exploitation, development and production of coal reserves to form a joint venture or a similar arrangement with a Bruneian enterprise. However, such an investor of another Party, or its investment, shall, upon request, be permitted to hold the majority share in the joint venture or similar arrangement. (11) Brunei Darussalam may require as a contractual term that, during the exploration or development period, all relevant costs with respect to the maximum participating interest of the Bruneian enterprise be borne by the partner that is an investor of another Party. Consequently, on the expiration of the carry interest period, the Bruneian enterprise will bear the costs of future operations in proportion to its participating interests in the contract; and may require as a contractual term that a Bruneian enterprise may acquire a participating interest, or increase its participating interest, in the joint venture or similar arrangement upon the occurrence of a stipulated event; and

(b) requiring foreign enterprises acting as operators in the exploration, exploitation, development and production of coal to:

(i) provide a portion of coal or its derivatives in Brunei Darussalam for domestic use ("domestic supply obligations") as outlined in a contract, provided that such measure is not more restrictive than the requirements stipulated in Annex I – Brunei Darussalam – 35; and

(ii) unless as may otherwise be authorised by Brunei Darussalam, purchase the services listed in Appendix I – A to Annex I – Brunei Darussalam – 36 either from Brunei nationals or Bruneian enterprises, or foreign nationals or enterprises under a contract, provided that they engage Brunei nationals or Bruneian enterprises to provide other services.

3. Any non-conforming measure adopted or maintained in relation to paragraph 2(a)(ii) and paragraph 2(b) above shall be deemed to be an existing non-conforming measure and subject to paragraphs 1, 5, 6 and 7 of Article 9.12 (Non-Conforming Measures).

(6) In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.4 (National Treatment) applies only with respect to subparagraph 2(a)(ii) and subparagraph 2(b) of this entry, and Article 10.3 (National Treatment) applies only with respect to subparagraph 2(b)(ii) of this entry.

(7) In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.5 (Most-Favoured-Nation Treatment) applies only with respect to subparagraph 2(a)(i) of this entry.

(8) In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.10 (Performance Requirements) applies only with respect to subparagraph 2(b)(i) of this entry.

(9) For greater certainty, the expression "making of or entry into of contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam" includes: (a) the negotiation, determination and amendment of any terms and conditions in contracts for the exploration, exploitation, development and production rights of coal, or the renewal or extension of the term of such contracts; and (b) any decision by Brunei Darussalam to conduct a bid or tender or other process in relation to any proposed contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam, and, if any such bid or tender or other process is conducted, the terms and conditions on which any such bid or tender or other process is conducted.

(10) For greater certainty, the discretion under this paragraph may be exercised pursuant to any measure that Brunei Darussalam may adopt or maintain.

(11) For greater certainty, this does not preclude a Bruneian enterprise from holding a majority share in a joint venture or other similar arrangement as a result of commercial negotiations between such an investor of another Party, or its investment, and that Bruneian enterprise.

Sector: Private Health Services

Sub-Sector: Pharmacists, nurses, midwives and allied health services, Private laboratory services, Private radiology services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the private practice of pharmacists, nurses, midwives and allied health services.

2. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the establishment of private laboratory services and private radiology services.

Sector: Private Health Services

Sub-Sector: Private health centres or clinics

Obligations Concerned: Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the establishment of private health centres or clinics, including but not limited to: (a) requiring that such private health centres or clinics be established in the form of a joint venture with a Brunei national; (b) limiting the number of private health centres or clinics that can be established in Brunei Darussalam; (c) requiring such private health centre or clinic to carry out research and development within the territory of Brunei Darussalam, or transfer of technology; and (d) requiring a majority of the senior managers in the private health centres or clinics to be of Bruneian nationality.

Sector: Broadcasting Services

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to any licensable free-to-air or subscription broadcasting services offered on a scheduled programming basis. These measures include, but are not limited to ownership, control and funding of an enterprise providing the aforementioned services.

Sector: Business Services

Sub-Sector: Professional services Legal services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of legal services in Brunei Darussalam, in relation to the laws of Brunei Darussalam.

2. This entry does not apply to the supply of legal services in Brunei Darussalam in relation to international law or home country law, which is set out in Annex I – Brunei Darussalam – 29.

Sector: Printing, publishing and reproduction of newspapers including matters relating to the collection and publication of news and the distribution of newspapers

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the printing, publishing and reproduction of newspapers including matters relating to the collection and publication of news and the distribution of newspapers.

Sector: Transport Services

Sub-Sector: Air transport services

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to air transport services including, but not limited to: (a) the ownership, operation and management of airports and heliports in Brunei Darussalam; (b) the supply of ground handling operations; and (c) specialty air services, except in relation to flight training as provided for in Annex I – Brunei Darussalam – 27.

Sector: Private Educational Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of private pre-primary, primary and secondary education services, other than private educational services supplied by international schools for Brunei Darussalam citizens, including the following: (a) equity shareholding by foreign nationals or companies in the ownership of schools and higher learning institutions; (b) the total number of schools and higher learning institutions that may be established in Brunei Darussalam; (c) the total number of employees, including teachers; or (d) the nationality of senior management or boards of directors.

Sector: Electricity Services

Obligations Concerned: Performance Requirements (Article 9.10) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the generation, supply, transmission and distribution of electrical energy.

Sector: Transport Services

Sub-Sector: Land transport services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of land transport services including, but not limited to, passenger transportation, freight transportation, and commercial vehicle with operator, pushing and towing services, maintenance and repair of road transport equipment, and supporting services for road transport services.

Sector: Trade Services

Sub-Sector: Supply of potable water for human consumption

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of potable water, including, but not limited to: (a) the supply of water as a public utility; (b) the extraction of ground water; and (c) the export of water.

2. For greater certainty, this entry is limited to the supply of potable water that may be used or required for any purpose or activity, and does not include additional restrictions on any activities utilising potable water including the manufacturing of bottled water which is an activity addressed in Annex I – Brunei Darussalam – 3.

Sector: Business Services

Sub-Sector: Valuers (appraisers) and estate agents

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of valuers (appraisers) and estate agent services.

Sector: Business Services

Sub-Sector: Taxation Obligations

Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the representation of taxpayers (either by individuals or enterprises) in tax matters, including, but not limited to, preparing and furnishing of income tax returns, filing responses to notices issued by tax authority and filing notices of objection and handling payment in relation to tax.

Sector: Trade Services

Sub-Sector: Wholesale trade services and retail trade services of tobacco

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of wholesale and retail trade services of tobacco products.

SCHEDULE OF CANADA

INTRODUCTORY NOTES

In the interpretation of an entry, all elements of the entry shall be considered. The Description element shall prevail over all other elements.

Sector: Aboriginal Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure denying investors of and their investments, or service suppliers of a Party, any rights or preferences provided to aboriginal peoples.

Existing Measures: Constitution Act, 1982, being Schedule B of the Canada Act 1982 (U.K.), 1982, c. 11

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Canada reserves the right to adopt or maintain a measure relating to residency requirements for the ownership by investors of a Party, or their investments, of oceanfront land.

Sector: Fisheries

Sub-Sector: Fishing and services incidental to fishing

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure with respect to licensing fishing or fishing related activities including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports and use of services therein.

Existing Measures: Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33 Fisheries Act, R.S.C 1985, c. F-14 Coastal Fisheries Protection Regulations, C.R.C. 1978, c. 413 Commercial Fisheries Licensing Policy Policy on Foreign Investment in the Canadian Fisheries Sector, 1985

Sector: Government Finance

Sub-Sector: Securities

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Canada reserves the right to adopt or maintain a measure relating to the acquisition, sale or other disposition by nationals of a Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada or a Canadian regional government.

Existing Measures: Financial Administration Act, R.S.C. 1985, c. F-11

Sector: Minority Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure conferring rights or privileges to a socially or economically disadvantaged minority.

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure for supplying public law enforcement and correctional services, as well as the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

Sector: Transportation

Sub-Sector: Air transportation

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.4)

Description: Cross-Border Trade in Services

Canada reserves the right to selectively negotiate agreements or arrangements with other States, organisations of States, aeronautical authorities or service suppliers to recognise their accreditation of repair, overhaul and maintenance facilities and certification by such facilities of work performed on Canadian-registered aircraft and other related aeronautical products.

Sector: Transportation

Sub-Sector: Air transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure relating to the selling and marketing of air transportation services.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. Canada reserves the right to adopt or maintain a measure relating to the investment in or supply of marine cabotage services, including: (a) the transportation of either goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, either directly or by way of a place outside Canada; but with respect to waters above the continental shelf of Canada, the transportation of either goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; and (b) the engaging by ship in any other marine activity of a commercial nature in the territory of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf.

2. This entry relates to, among other things, local presence requirements for service suppliers entitled to participate in these activities, criteria for the issuance of a temporary cabotage licence to foreign ships and limits on the number of cabotage licences issued to foreign ships.

3. For greater certainty, this entry applies, inter alia, to ANNEX II – CANADA – 11 feeder services.

Existing Measures: Coasting Trade Act, S.C. 1992, c. 31 Canada Shipping Act, 2001, S.C. 2001, c. 26 Customs Act, R.S.C. 1985, c. 1 (2nd Supp.) Customs and Excise Offshore Application Act, R.S.C. 1985, c. C-53

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.4)

Description: Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure relating to the implementation of agreements, arrangements and other formal or informal undertakings with other countries with respect to maritime activities in waters of mutual interest in such areas as pollution control (including double hull requirements for oil tankers), safe navigation, barge inspection standards, water quality, pilotage, salvage, drug abuse control and maritime communications.

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

1. Canada reserves the right to adopt or maintain a measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

2. Canada reserves the right to adopt or maintain a measure that accords differential treatment to countries under any bilateral or multilateral agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation; (b) fisheries; or (c) maritime matters, including salvage.

Sector: Transportation

Sub-Sector: Water transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. Canada reserves the right to adopt or maintain a measure denying service suppliers or investors of the United States, or their investments, the benefits accorded to service suppliers or investors of any other country, or their investments, in sectors or activities equivalent to those subject to the entry at Annex II – United States – 5.

2. Canada reserves the right to adopt or maintain a measure relating to maritime transport, including maritime auxiliary services and access to and use of port services, in respect of any other Party only when Canadian maritime interests have been prejudiced by that Party.

3. Paragraph 2 does not apply to the following Parties: Australia, Brunei Darussalam, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam.

Sector: Water Transportation

Sub-Sector: Technical testing and analysis services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure relating to the recognition of a person, classification society or organisation authorised to carry out statutory inspections and certification of ships on behalf of Canada. For greater certainty, only a person, classification society or other organisation authorised by Canada, and having a local presence in Canada, may carry out statutory inspections and issue Canadian Maritime Documents to Canadian registered ships and their equipment on behalf of Canada.

Sector: Cultural Industries

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure that affects cultural industries and that has the objective of supporting, directly or indirectly, the creation, development or accessibility of Canadian artistic expression or content, except: (a) discriminatory requirements on service suppliers or investors to make financial contributions for Canadian content development; and (b) measures restricting the access to on-line foreign audio-visual content. For the purpose of this entry, “cultural industries” means persons engaged in any of the following activities: (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing; (b) the production, distribution, sale or exhibition of film or video recordings; (c) the production, distribution, sale or exhibition of audio or video music recordings; (d) the publication, distribution or sale of music in print or machine readable form; or (e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Canada reserves the right to adopt or maintain a measure that is not inconsistent with: (a) Canada’s obligations under

Article XVI of GATS (1); and (b) Canada's Schedule of Specific Commitments under the GATS (GATS/SC/16, GATS/SC/16/Suppl.1, GATS/SC/16/Suppl.1/Rev.1, GATS/SC/16/Suppl.2, GATS/SC/16/Suppl.2/Rev.1, GATS/SC/16/ Suppl.3, GATS/SC/16/Suppl.4 and GATS/SC/16/Suppl.4/Rev.1). For greater certainty, this entry applies to measures adopted or maintained that affect the supply of a service by a covered investment pursuant to Article 10.5 (Market Access). For purposes of this entry only, Canada's Schedule of Specific Commitments is modified as indicated in Appendix II.

(1) For greater certainty, this includes obligations resulting from future amendments to Canada's Schedule to Article XVI of GATS.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

1. Canada or a province or territory, when selling or disposing of its equity interests in, or the assets of, an existing government enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets and on the ability of owners of such interests or assets to control a resulting enterprise by investors of a Party or of a non-Party or their investments. With respect to such a sale or other disposition, Canada or a province or territory may adopt or maintain a measure relating to the nationality of senior management or members of the board of directors.

2. For purposes of this entry: (a) a measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes a nationality requirement described in this entry is an existing measure subject to paragraphs 1, 4, 5 and 6 of Article 9.12 (Non-Conforming Measures) and paragraph 1 of Article 10.7 (Non-Conforming Measures); and (b) "government enterprise" means an enterprise owned or controlled through ownership interests by Canada or a province or territory, and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing State enterprise or governmental entity (2).

(2) For transparency purposes, entities that fall within the scope of this entry include, among others, Crown corporations at the central level of government listed under Schedule III of the Financial Administration Act

Sector: Air Services

Sub-Sector: Ground handling

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Investment: Canada reserves the right to adopt or maintain a measure relating to ground handling by airlines (including self-handling or third-party handling) or by investors of another Party.

Cross-Border Trade in Services: Canada reserves the right to adopt or maintain a measure relating to the supply of ground handling services, as defined in Article 10.1 (Definitions), for the purpose of Chapter 10 (Cross-Border Trade in Services). For greater certainty, this entry does not affect Canada's rights and obligations under any bilateral air transportation agreement between Canada and any of the other Parties. (R.S.C. 1985, c. F-11).

Sector: Transportation

Sub-Sector: Air services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Investment: Canada reserves the right to adopt or maintain a measure with respect to investment in or operation of airports.

Cross-Border Trade in Services: Canada reserves the right to adopt or maintain a measure relating to the supply of airport operation services, as defined in Article 10.1 (Definitions), for the purpose of Chapter 10 (Cross-Border Trade in Services).

APPENDIX II. Canada

For the following Sectors, Canada's obligations under Article XVI of GATS are improved as described.

Sector/Sub-sector	Market Access Improvements
Accounting, Auditing and Book-keeping services	Under Mode 1 remove: Auditing - Commercial presence requirement: Nova Scotia. - Citizenship requirement for accreditation: Manitoba and Quebec. - Permanent residence requirement for accreditation: Ontario. Under Mode 2 remove: Auditing - Commercial presence requirement: Nova Scotia. - Citizenship requirement for accreditation: Manitoba and Quebec. - Permanent residence requirement for accreditation: Ontario.
Architectural services	Under Mode 1 remove: Architects - Citizenship requirement for accreditation: Quebec.
Engineering services	Under Mode 1 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec.
Integrated engineering services	Under Mode 1 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Consulting Engineers - Commercial presence requirement for accreditation: Manitoba. Engineers - Permanent residence requirement for accreditation: Newfoundland and Labrador, Nova Scotia. - Citizenship requirement for accreditation: Quebec.
Urban planning and landscape architectural services	Under Mode 1 remove: Community/ Urban Planning - Citizenship requirement for use of title: Quebec.
Real estate services	Under Mode 1 remove: Chartered Appraisers - Citizenship requirement for use of title: Quebec.
Management consulting services	Under Mode 1 remove: Agrologists - Citizenship requirement for accreditation: Quebec. Professional Administrators and Certified Management Consultants - Citizenship requirement for use of title: Quebec Professional Corporation of Administrators. Industrial Relations Counsellors - Citizenship requirement for use of title: Quebec. Under Mode 2 remove: Agrologists - Citizenship requirement for accreditation: Quebec.
Investigation and security services	Under Mode 3 remove: Business and Personnel Information Investigations - Foreign ownership restriction to 25 per cent in total and 10 per cent by any individual holding shares: Ontario.

Related scientific and technical consulting services	Under Mode 1 remove: Land Surveyors - Citizenship requirement for accreditation: Nova Scotia and Quebec. Subsurface Surveying Services - Citizenship requirement for accreditation: Quebec. Professional Technologist - Citizenship requirement for accreditation: Quebec. Chemists - Citizenship requirement for accreditation: Quebec. Under Mode 2 remove: Land Surveyors - Citizenship requirement for accreditation: Nova Scotia and Quebec. Subsurface Surveying Services - Citizenship requirement for accreditation: Quebec.
Other business services	Under Mode 1 remove: Certified Translators and Interpreters - Citizenship requirement for use of title: Quebec. Under Mode 2 remove: Certified Translators and Interpreters - Citizenship requirement for use of title: Quebec. Under Mode 3 remove: Collection Agencies - Foreign Ownership restriction to 25 per cent in total and 10 per cent by any individual: Ontario.
Courier services	Under Mode 3 remove: - Economic needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): Nova Scotia and Manitoba.
General construction work for civil engineering	Under Mode 3 remove: Construction - An applicant and holder of a water power site development permit must be incorporated in Ontario
Wholesale trade services	Under Mode 1, remove: Marketing of Fish Products (Nova Scotia): Nova Scotia residents require ministerial approval to enter into agreements with non-residents.
Railway passenger and freight transport	Under Mode 1, remove: - cabotage limitation
Road Passenger Transportation	Under Mode 3 remove: Interurban bus transport and scheduled services: - Public convenience and needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): Prince Edward Island.
Road Freight transportation	Under Mode 3 remove: Highway freight transportation - Public convenience and needs test (Criteria related to approval include: examination of the adequacy of current levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to supply proper service.): British Columbia, Manitoba, Ontario, Prince Edward Island, Nova Scotia.
Telecommunications	Under Mode 3 remove: Nova Scotia: no person may vote more than 1,000 shares of Maritime Telegraph and Telephone Ltd.

SCHEDULE OF CHILE

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Description: Investment

Chile reserves the right to adopt or maintain any measure relating to the ownership or control of land within five kilometres of the coastline that is used for agricultural activities. Such measure could include a requirement that the majority of each class of stock of a Chilean juridical person that seeks to own or control such land be held by Chilean persons or by persons residing in Chile for 183 days or more per year.

Existing Measures: Decree Law 1.939, Official Gazette, November 10, 1977, Rules for acquisition, administration and disposal of State owned assets, Title I (Decreto Ley 1.939, Diario Oficial, noviembre 10, 1977, Normas sobre adquisición, administración y disposición de bienes del Estado, Título I)

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Senior Management and Boards of Directors (Article 9.11)

Description: Investment

In the transfer or disposal of any interest in stock or asset held in an existing state enterprise or governmental entity, Chile reserves the right to prohibit or impose limitations on the ownership of said interest or asset and on the right of foreign investors or their investments to control any State company created thereby or investments made by the same. In connection with any such transfer or disposal, Chile may adopt or maintain any measure related to the nationality of senior management and members of the board of directors.

A “State company” (1) shall mean any company owned or controlled by Chile by means of an interest share in the ownership thereof, and it shall include any company created after the entry into force of this Agreement for the sole purpose of selling or disposing of its interest share in the capital or assets of an existing state enterprise or governmental entity.

Existing Measures:

(1) A list of existing state enterprises in Chile can be found on the following website: http://www.dipres.gob.cl.

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force on, or signed prior to, the date of entry into force of this Agreement.

Chile reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures:

Sector: Communications

Sub-Sector: One way satellite broadcasting of digital telecommunication services, whether these involve direct home television broadcasting, direct broadcasting of television services and direct audio broadcasting; supplementary telecommunication services; and limited telecommunication services

Obligations Concerned: National Treatment (Article 10.3)

Most-Favoured-Nation Treatment (Article 10.4)

Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure related to cross-border trade in one way satellite broadcasting of digital telecommunication services, whether these involve direct home television broadcasting, direct broadcasting of television services and direct audio broadcasting; supplementary telecommunication services; and limited telecommunication services.

Existing Measures: Law 18.168, Official Gazette, October 2, 1982, General Telecommunications Law, Titles I, II, III, V and VI (Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones, Títulos I, II, III, V y VI)

Sector: Communications

Sub-Sector: One way satellite broadcasting of digital telecommunication services, whether these involve direct home television broadcasting, direct broadcasting of television services and direct audio broadcasting; supplementary telecommunication services; and limited telecommunication services

Obligations Concerned: National Treatment (Article 9.4)

Most-Favoured-Nation Treatment (Article 9.5)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Chile reserves the right to adopt or maintain any measure related to the investors of another Party or to their investments in one way satellite broadcasting of digital telecommunication services, whether these involve direct home television broadcasting, direct broadcasting of television services and direct audio broadcasting; supplementary telecommunication services; and limited telecommunication services.

Existing Measures: Law 18.168, Official Gazette, October 2, 1982, General Telecommunications Law, Titles I, II, III, V and VI (Ley 18.168, Diario Oficial, octubre 2, 1982, Ley General de Telecomunicaciones, Títulos I, II, III, V y VI)

Sector: Issues Involving Minorities

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities.

Existing Measures:

Sector: Issues Involving Indigenous Peoples

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure according rights or preferences to indigenous peoples.

Existing Measures:

Sector: Education

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure relating to:

(a) investors and an investment of an investor of another Party in education; and

(b) natural persons who supply educational services in Chile.

Subparagraph (b) includes teachers and auxiliary personnel supplying educational services in pre-school, kindergarten, special education, elementary, secondary or higher education, professional, technical or university education, and all other persons that supply services related to education, including sponsors of educational institutions of any kind, schools, lyceums, academies, training centres, professional and technical institutes or universities.

This reservation does not apply to investors and an investment of an investor of another Party in kindergarten, pre-school, elementary or secondary private education institutions, that do not receive public resources, or to the supply of services related to second-language training, corporate, business, and industrial training and skill upgrading, which include consulting services relating to technical support, advice, curriculum, and programme development in education.

Existing Measures:

Sector: Government Finances

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Chile reserves the right to adopt or maintain any measure related to the acquisition, sale or disposal by another Party's nationals of bonds, treasury securities or any other type of debt instruments issued by the Central Bank of Chile (Banco Central de Chile) or the Government of Chile. This entry is not intended to affect the rights of another Party's financial institutions (banks) established in Chile to acquire, sell or dispose of such instruments when required for the purposes of regulatory capital.

Existing Measures:

Sector: Fisheries

Sub-Sector: Fishing related activities

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to control the activities of foreign fishing, including fish landing, first landing of fish processed at sea and access to Chilean ports (port privileges).

Chile reserves the right to control the use of beaches, land adjacent to beaches (terrenos de playas), water-columns (porciones de agua) and sea-bed lots (fondos marinos) for the issuance of maritime concessions. For greater certainty, “maritime concessions” do not cover aquaculture.

Existing Measures: Decree Law 2.222, Official Gazette, May 31, 1978, Navigation Law, Titles I, II, III, IV and V (Decreto Ley 2.222, Diario Oficial, mayo 31, 1978, Ley de Navegación Títulos I, II, III, IV y V)

D.F.L. 340, Official Gazette, April 6, 1960, about Maritime Concessions (D.F.L. 340, Diario Oficial, abril 6, 1960, sobre Concesiones Marítimas)

Supreme Decree 660, Official Gazette, November 28, 1988, Maritime Concession Act (Decreto Supremo 660, Diario Oficial, noviembre 28, 1988, Reglamento de Concesiones Marítimas)

Supreme Decree 123 of the Ministry of Economic Affairs, Development and Reconstruction, Vice-Ministry of Fishing, Official Gazette, August 23, 2004, On Use of Ports (Decreto Supremo 123 del Ministerio de Economía, Fomento y Reconstrucción, Subsecretaría de Pesca, Diario Oficial, agosto 23, 2004, Sobre Uso de Puertos)

Sector: Arts and Cultural Industries

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure that accords differential treatment to countries under any existing or future bilateral or multilateral international agreement, with respect to arts and cultural industries, such as audio-visual cooperation agreements.

For greater certainty, government supported subsidy programmes for the promotion of cultural activities are not subject to the limitations or obligations of this Agreement.

For the purposes of this entry, “arts and cultural industries” includes:

(a) books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

(b) recordings of movies or videos;

(c) music recordings in audio or video format;

(d) printed music scores or scores readable by machines;

(e) visual arts, artistic photography and new media;

(f) performing arts, including theatre, dance and circus arts; and

(g) media services or multimedia.

Existing Measures:

Sector: Entertainment, Audio-visual and Broadcasting Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure relating to:

(a) the organisation and presentation in Chile of concerts and musical performances;

(b) the distribution or display of movies or videos; and

(c) radio broadcasts aimed at the public in general, as well as all radio, television and cable television-related activities, satellite programming services and broadcasting networks.

Notwithstanding the above, Chile shall extend to the persons and investors of another Party, and their investments, treatment no less favourable than that Party accords persons and investors of Chile, and their investments.

Existing Measures:

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure with respect to the supply of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for reasons of public interest: income security or insurance, social security or insurance, social welfare, public education, public training, health care and child care.

Existing Measures:

Sector: Environmental Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3)

Most-Favoured-Nation Treatment (Article 10.4)

Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure imposing the requirement that the production and distribution of drinking water, the collection and disposal of waste water and sanitation services, such as sewage systems, waste disposal and waste water treatment may only be supplied by juridical persons incorporated under Chilean law or created in accordance with the requirements established by Chilean law.

This entry shall not apply to consultancy services retained by the said juridical persons.

Existing Measures:

Sector: Construction Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3)

Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure with respect to the supply of construction services by foreign juridical persons or legal entities.

These measures may include requirements such as residency, registration or any other form of local presence, or the obligation of giving financial security for work as a condition for the supply of construction services.

Existing Measures:

Sector: Transportation

Sub-Sector: International road transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Chile reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Chile:

(a) the service supplier must be a Chilean natural or juridical person;

(b) the service supplier must have a real and effective domicile in Chile; and

(c) in the case of juridical persons, the service supplier must be legally constituted in Chile and more than 50 per cent of its capital stock must be owned by Chilean nationals and its effective control must be by Chilean nationals.

Existing Measures:

Sector: Transportation Services

Sub-Sector: Road transportation services

Obligations Concerned: National Treatment (Article 10.3)

Description: Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure that authorises only Chilean natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Chile (cabotage). For this, the enterprises shall use vehicles registered in Chile.

Existing Measures:

Sector: All

Obligations Concerned:

Market Access (Article 10.5)

Description:

Investment and Cross-Border Trade in Services

Chile reserves the right to adopt or maintain any measure relating to Article 10.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below: (2)

Legal services:

(1) and (3) None, except in the case of receivers in bankruptcy (síndicos de quiebra) who must be duly authorised by the Ministry of Justice (Ministerio de Justicia), and they can only work in the place where they reside.

(2) None.

(4) No commitments, except as indicated in Labour Code restriction.

Accounting, auditing, and bookkeeping services:

(1) and (3) None, except the external auditors of financial institutions must be inscribed in the Register of External Auditors of the Superintendence of Banks and Financial Institutions (Superintendencia de Bancos e Instituciones Financieras) and in the Superintendence of Securities and Insurance (Superintendencia de Valores y Seguros). Only firms legally incorporated in Chile as partnerships (sociedades de personas) or associations (asociaciones), and whose main line of business is auditing services, may be inscribed in the Register.

(2) None.

(4) No commitments, except as indicated in Labour Code restriction.

Taxation Services:

(1), (2), and (3): None.

(4) No commitments, except as indicated in Labour Code restriction.

Architectural services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Engineering services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Integrated engineering services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Urban planning and landscape architectural services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Veterinary services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Services provided by midwives, nurses, physiotherapists and paramedical personnel:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Computer and related services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Interdisciplinary research and development services, research and development services on natural sciences, and related scientific and technical consulting services:

(1) and (3) None, except: any exploration of a scientific or technical nature, or related to mountain climbing (andinismo), that legal or natural persons domiciled abroad intend to carry out in border areas need to be authorised and supervised by the Directorate of Borders and Frontiers (Dirección de Fronteras y Límites del Estado). The Directorate of Borders and Frontiers may stipulate that an expedition include one or more representatives of relevant Chilean activities. These representatives would participate in and learn about the studies and their scope.

(2) None.

(4) No commitments, except as indicated in Labour Code restriction.

Research and development services on social sciences and humanities:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Real Estate services: involving owned or leased property or on a fee or contract basis:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Advertising services, market research and public opinion polling services, management consulting services, services related to management consulting, technical testing and analysis services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Services related to agriculture, hunting and forestry:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Services related to mining, placement and supply services of personnel, investigation and security services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Maintenance and repair of equipment (not including vessels, aircraft, or other transport equipment), building-cleaning services, photographic services, packing services, and convention services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Printing and publishing services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Courier services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

International long-distance telecommunications services: (1), (2), (3) and (4) Chile reserves the right to adopt or maintain any measure that is not inconsistent with Chile’s obligations under Article XVI of GATS.

Local basic telecommunication services and networks, intermediate telecommunications services, supplementary telecommunications services, and limited telecommunications services:

(1), (2) and (3) A concession granted by means of a Supreme Decree (Decreto Supremo) issued by the Ministry of Transport and Telecommunications (Ministerio de Transportes y Telecomunicaciones) shall be required for the installation, operation, and exploitation of public and intermediary telecommunications services in Chilean territory. Only juridical persons organised under the Chilean law shall be eligible for such concessions.

An official decision issued by the Undersecretariat of Telecommunications (Subsecretaría de Telecomunicaciones) shall be required to render Supplementary Telecommunications Services, consisting of additional services provided by hooking up equipment to public networks. Said decision refers to compliance with the technical standards established by the Undersecretariat of Telecommunications (Subsecretaría de Telecomunicaciones) and non-alteration of the essential technical features of networks or of the permissible technological or basic service modalities provided through them.

A permit issued by the Undersecretariat of Telecommunications (Subsecretaría de Telecomunicaciones) shall be required for the installation, operation and development of limited telecommunications services.

International traffic shall be routed through the installations of a company holding a concession granted by the Ministry of Transport and Telecommunications (Ministerio de Transporte y Telecomunicaciones).

(4) No commitments, except as indicated in Labour Code restriction.

Commission agents services, wholesale trade services, retailing services, franchising and other distribution:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Environmental Services:

(1) and (3) None, solely for consultancy services.

(2) None.

(4) No commitments, except as indicated in Labour Code restriction.

Hotels and restaurants (including catering), travel agencies and tour operators services and tourist guide services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Sporting and other recreational services, excluding gambling and betting services:

(1), (2) and (3) None, except that a specific type of legal entity may be required for sporting organisations that develop professional activities. In addition, (a) it is not permitted to participate with more than one team in the same category of a sport competition; (b) specific regulations may be established on equity ownership in sporting companies; and (c) minimal capital requirements may be imposed.

(4) No commitments, except as indicated in Labour Code restriction.

Sports facility operation services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Road Transport: freight transportation, rental of commercial vehicles with operator; maintenance and repair of road transport equipment; supporting services for road transport services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Services auxiliary to all transport: cargo handling services, storage and warehouse services, freight transport agency services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Pipeline transport: transportation of fuels and other goods:

(1), (2) and (3) None, except that the service has to be supplied by juridical persons established under Chilean law and the supply of the service may be subject to a concession on a national treatment basis.

(4) No commitments, except as indicated in Labour Code restriction.

Aircraft repair and maintenance services:

(1) No commitments.

(2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Selling and marketing of air transport services, computer reservation systems (CRS) services, specialty air services: (1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

Airport operation services; ground handling services:

(1), (2) and (3) None.

(4) No commitments, except as indicated in Labour Code restriction.

For the purposes of this entry:

(1) refers to the supply of a service from the territory of one Party into the territory of another Party;

(2) refers to the supply of a service in the territory of one Party to a person of another Party;

(3) refers to the supply of a service in the territory of a Party by an investor of another Party or by a covered investment; and

(4) refers to the supply of a service by a national of a Party in the territory of another Party.

(2) For greater certainty, nothing in this entry shall be construed to prevent the adoption or maintenance of any measure regarding the supply of a financial service by a covered investment that is not a covered investment in a financial institution.

SCHEDULE OF JAPAN

INTRODUCTORY NOTES

1. In the interpretation of an entry, all elements of the entry shall be considered. The Description element shall prevail over all other elements.

2. For the purposes of this Annex, the term JSIC means Japan Standard Industrial Classification set out by the Ministry of Internal Affairs and Communications, and revised in October, 2013.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

1. When transferring or disposing of its equity interests in, or the assets of, a state enterprise or a governmental entity, Japan reserves the right to: (a) prohibit or impose limitations on the ownership of such interests or assets by investors of

another Party or their investments; (b) impose limitations on the ability of investors of another Party or their investments as owners of such interests or assets to control any resulting enterprise; or (c) adopt or maintain any measure relating to the nationality of executives, managers or members of the board of directors of any resulting enterprise.

2. Notwithstanding paragraph 1, the central level of the Government of Japan shall not adopt any prohibition, limitation or measure referred to in paragraph 1 by new laws or regulations following the initial transfer from the central level of government of Japan to an investor of the interests or assets referred to in paragraph 1. For greater certainty, the central level of government of Japan can maintain such prohibition, limitation or measure that is adopted or maintained at the initial transfer.

Existing Measures:

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments in or the supply of telegraph services, betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes, minting and sale of coinage, and postal services in Japan. (1), (2)

Existing Measures: Telecommunications Business Law (Law No. 86 of 1984) Supplementary Provisions, Article 5 Postal Law (Law No. 165 of 1947), Article 2 Law Concerning Correspondence Delivery Provided by Private Operators (Law No. 99 of 2002) Horse Racing Law (Law No. 158 of 1948), Article 1 Law relating to Motorboat Racing (Law No. 242 of 1951), Article 2 Bicycle Racing Law (Law No. 209 of 1948), Article 1 Auto Racing Law (Law No. 208 of 1950), Article 3 Lottery Law (Law No. 144 of 1948), Article 4 The Law relating to Unit of Currency and Issue of Coin (Law No. 42 of 1987), Article 10, Sports Promotion Lottery Law (Law No. 63 of 1998), Article 3

(1) At the date of entry into force of this Agreement, telegraph services, betting and gambling services, manufacture of tobacco products, manufacture of Bank of Japan notes, and minting and sale of coinage in Japan are restricted to designated enterprises or governmental entities.

(2) For the purposes of this entry, “postal services” means delivery of other persons’ correspondence (tanin-no-shinsho-no-sotatsu) specified in paragraph 2 of Article 4 of Postal Law (Law No. 165 of 1947) and correspondence delivery service (shinshobin-no-ekimu) within the meaning of the Law Concerning Correspondence Delivery Provided by Private Operators (Law No. 99 of 2002), but does not include special correspondence delivery services (tokutei-shinshobin-ekimu) within the meaning of the latter Law. Services not included in this definition include delivery of parcels, packages, goods, direct mail and periodicals.

Sector: All (Unrecognised or Technically Unfeasible Services)

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to services other than those recognised or other than those that should have been recognised by the Government of Japan owing to the circumstances at the date of entry into force of this Agreement. Any services classified positively and explicitly in JSIC or CPC, at the date of entry into force of this Agreement should have been recognised by the Government of Japan at that time. Japan reserves the right to adopt or maintain any measure relating to the supply of services in any mode of supply in which those services were not technically feasible at the date of entry into force of this Agreement.

Existing Measures:

Sector: Aerospace Industry

Sub-Sector: Space industry

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to the investments in space industry. Japan reserves the right to adopt or maintain any measure relating to the supply of services in space industry, including: (a) services based on technological inducement contracts for importing technology for development, production or use; (b) production services on fee or contract basis; (c) repair and maintenance services; and (d) space transportation services.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 and Article 30

Sector: Arms and Explosives Industry

Sub-Sector: Arms industry, Explosives manufacturing industry

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to the investment in the arms industry and explosives manufacturing industry. Japan reserves the right to adopt or maintain any measure relating to the supply of services in the arms industry and explosives manufacturing industry, including: (a) services based on technological inducement contracts for importing technology for development, production or use; (b) production services on fee or contract basis; and (c) repair and maintenance services.

Existing Measures: Ordnance Manufacturing Law (Law No. 145 of 1953), Article 5 Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 and Article 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 and Article 5

Sector: Information and Communications

Sub-Sector: Broadcasting industry

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in broadcasting industry. For the purposes of this entry, “broadcasting” means the transmission of telecommunications with the aim of direct reception by the public (paragraph 1 of Article 2 of the Broadcast Law (Law No. 132 of 1950) and does not include on-demand services including such services supplied over the internet.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Radio Law (Law No. 131 of 1950), Chapter 2 Broadcast Law, Chapter 2, Chapter 5, Chapter 6, Chapter 7 and Chapter 8

Sector: Education, Learning Support

Sub-Sector: Primary and secondary educational services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of primary and secondary educational services.

Existing Measures: Fundamental Law of Education (Law No. 120 of 2006), Article 6 School Education Law (Law No. 26 of 1947), Article 2 Private School Law (Law No. 270 of 1949), Article 3 Law Concerning Advancement of Comprehensive Service Related to Education, Child Care, etc. of Preschool Children (Law No.77 of 2005)

Sector: Energy

Sub-Sector: Electricity utility industry, Gas utility industry, Nuclear energy industry

Industry Classification (3): JSIC 0519*1 Miscellaneous metal mining JSIC 2391 Nuclear fuel JSIC 281*2 Electronic devices JSIC 282*2 Electronic parts JSIC 289*2 Miscellaneous electronic parts, devices and electronic circuits JSIC 291*2 Electrical generating, transmission, and distribution apparatus JSIC 292*2 Industrial electrical apparatus JSIC 2952*2 Primary batteries (dry and wet) JSIC 296*2 Electronic equipment JSIC 297*2 Electric measuring instruments JSIC 299*2 Miscellaneous electrical machinery equipment and supplies JSIC 30*2 Manufacture of information and communication electronics equipment JSIC 313*2 Shipbuilding and repairing, and marine engines JSIC 3159*2 Miscellaneous industrial trucks and parts and accessories JSIC 3199*2 Transportation equipment, n.e.c JSIC 33 Production, transmission and distribution of electricity JSIC 34 Production and distribution of gas JSIC 8899*2 Waste disposal business, n.e.c. JSIC 9011*2 General machine repair shops, except construction and mining machinery JSIC 902*2 Electrical machinery, apparatus, appliances and supplies repair shop.

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) (4) Senior Management and Boards of Directors (Article 9.11) Most-Favoured-Nation Treatment (Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in the energy industry listed in the “sub-sector” element.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 and Article 30 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 and Article 5 Electricity Business Law (Law No.170 of 1964), Article 5 Gas Business Law (Law No.51 of 1954), Article 5 Specified Radioactive Waste Final Disposal Law (Law No. 117 of 2000), Chapter 5

(3) An asterisk (*1) on the JSIC number indicates that the activities covered by this entry under such number are limited to nuclear materials. An asterisk (*2) on the JSIC number indicates that the activities covered by this entry under such number are limited to the activities related to the nuclear energy industry.

(4) With respect to the obligation under Article 9.10 (Performance Requirements), this entry applies only to measures which are not inconsistent with the obligations under the Agreement on Trade-Related Investment Measures.

Sector: Fisheries and Services incidental to Fisheries

Sub-Sector: Fisheries within the territorial sea, internal waters, exclusive economic zone and continental shelf

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in fisheries in the territorial sea, internal waters, exclusive economic zone, and continental shelf of Japan. For the purposes of this entry, the term “fisheries” means the work of taking and cultivation of aquatic resources, including the following fisheries related services: (a) investigation of aquatic resources without taking such resources; (b) luring of aquatic resources; (c) preservation and processing of fish catches; (d) transportation of fish catches and fish products; and (e) provision of supplies to other vessels used for fisheries.

Existing Measures: Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949), Article 27 Cabinet Order on Foreign Direct Investment (Cabinet Order No. 261 of 1980), Article 3 Law for Regulation of Fishing Operation by Foreign Nationals (Law No. 60 of 1967), Article 3, Article 4 and Article 6 Law Concerning the Exercise of Sovereign Rights concerning Fisheries in the Exclusive Economic Zones (Law No. 76 of 1996), Article 4, Article 5, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12 and 14

Sector: Land Transaction

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

With respect to the acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Order on foreign nationals or legal persons, where Japanese nationals or legal persons are placed under identical or similar prohibitions or restrictions in the foreign country.

Existing Measures: Alien Land Law (Law No. 42 of 1925), Article 1

Sector: Public Law Enforcement and Correctional Services and Social Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to investments or the supply of services in public law enforcement and correctional services, and in social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public training, health, child care and public housing.

Existing Measures:

Sector: Security Guard Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Japan reserves the right to adopt or maintain any measure relating to the supply of security guard services.

Existing Measures: Security Business Law (Law No. 117 of 1972), Article 4 and Article 5

Sector: Transport

Sub-Sector: Air transport

Industry Classification:

Obligations Concerned: National Treatment (Articles 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Japan reserves the right to adopt or maintain any measure with respect to investment in airports or airport operation services as defined in Article 10.1 (Definitions).

Existing Measures:

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

1. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement in force on, or signed prior to, the date of entry into force of this Agreement.

2. Japan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement, other than the agreement referred to in paragraph 1, involving: (a) aviation; (b) fisheries; or (c) maritime matters, including salvage.

Existing Measures:

SCHEDULE OF MALAYSIA

Sector: Land and Real Estate

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Acquisitions or dealings of land by non-citizens and enterprises owned by foreign nationals must be approved by the relevant State Authority, subject to such conditions and restrictions as may be imposed by that Authority.

Existing Measures: Land Acquisition Act, 1960 [Act 486] Land Conservation Act 1960 [Act 385] National Land Code 1965 [Act 625] National Land Code (Penang and Malacca Titles) Act 1963 [Act 518] Strata Titles Act 1985 [Act 318] Building and Common Property (Maintenance and Management) Act 2007 [Act 663] Strata Management Act 2013 [Act 757] Federal Lands Commissioner Act 1957(Revised 1988) [Act 349] Land (Group Settlement Areas) Act 1960 [Act 530] Malay Reservations Enactment 1933 [F.M.S Cap 142] Kedah Enactment No 63 (Malay Reservations) Kelantan Malay Reservations Enactment, 1930 Kelantan Land Settlement Act 1955 (Revised 1991) [Act 460] Perlis Malay Reservations Enactment 1935 Perlis Land Settlement Enactment 1966 Johore Malay Reservation Enactment 1936 Terengganu Malay Reservation Enactment 1941 Terengganu Settlement Enactment 1856 Sabah Land Ordinance [Sabah Cap 68] Sabah Land Acquisition Ordinance [Sabah Cap 69] Sarawak Land Code 1958 [Sarawak Cap 81] Local Government Act 1976 [Act 171] Town and Country Planning Act 1976 [Act 172] Federal Territory (Planning) Act 1982 [Act 267] Federal Capital Act 1960 [Act 190] Street, Drainage and Building Act 1974 [Act 133]

Sector: Oil and Gas

Obligations Concerned: National Treatment (Article 9.4 and 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Petroliam Nasional Berhad (PETRONAS) and its successor are vested with the entire ownership in, and the exclusive rights, powers, liberties and privileges, which shall be irrevocable, in exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia. PETRONAS in its role as the exclusive owner of the petroleum resources, decides on the form and conditions of contractual arrangements available for foreign participation and selection of the contract parties.

Existing Measures: Petroleum Development Act 1974 [Act 144]

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and 10.3) Most-Favoured-Nation Treatment (Article 9.5 and 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures affecting the: (a) full or partial devolvement to the private sector of services provided in the exercise of governmental authority; (b) divestment of its equity interests in, or the assets of, an enterprise that is wholly or partially owned by the Malaysian government; and (c) privatisation of government owned entities or assets. The description above pertains only to the initial transfer or disposal of such interest, and for subsequent transfers or disposals that are for strategic sectors announced through the Malaysia Plan. For greater certainty, where Malaysia transfers any interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer. Where the transfer or disposal of an interest in an existing state enterprise is undertaken either partially or sequentially, the right shall apply separately to each phase.

Existing Measures: Minister of Finance (Incorporation) Act 1957 [Act 375] Privatisation Master Plan Guidelines on Privatisation

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measure that provides assistance to Bumiputera for the purpose of supporting Bumiputera participation in the Malaysian market through the creation of new and additional licences or permits for Bumiputera eligible to receive such assistance, provided that such measures shall not affect the rights of existing licence and permit holders or future applicants for licences and permits in sectors where foreign participation is permitted.

Existing Measures: Policies and Ministerial statements Federal Constitution Aboriginal Peoples Act 1954 [Act 134] Interpretation (Definition of Native) Ordinance 1952 [Cap. 64] Treasury Circular Year 2014

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Malaysia reserves the right to adopt or maintain any measure relating to National and State unit trusts.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and 10.4)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. Malaysia reserves the right to adopt or maintain any measure that accords differential treatment to ASEAN member states under any ASEAN agreement open to participation by any ASEAN member state, in force or signed after the date of entry into force of this Agreement. With regard to the sectors listed below, Malaysia reserves the right to adopt or maintain any measure that accords rights, preferences and differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving: (a) aviation matters; (b) maritime and port; (c) broadcasting; (d) space transportation (1); and (e) fisheries.

(1) Any such measure shall be implemented in a manner consistent with Malaysia's commitments under Article II of GATS. For greater certainty, subparagraph (d) does not apply with respect to Malaysia's obligations under Article 11.4 (Most-Favoured Nation Treatment), to the sectors or sub-sectors for which Malaysia has made specific commitments under any bilateral or multilateral international agreement in force or signed prior to the date or entry into force of this Agreement, nor to the sectors for which the following entries are made in the Schedule of Malaysia to Annex I: Annex I – Malaysia – 7, Annex I – Malaysia – 8, Annex I – Malaysia – 11, Annex I – Malaysia – 12, and Annex I – Malaysia – 23.

Sector: Manufacture, assembly, marketing and distribution of explosives, weapons, ammunitions, as well as military-related equipment / devices, and similar products

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Malaysia reserves the right to adopt or maintain any measures affecting the arms and explosives sector.

Existing Measures: Section 4, Industrial Co-Ordination Act 1975 [Act 156] Explosives Act 1957 [Act 207] Arms Act 1960 [Act 206]

Sector: Gaming, Betting and Gambling including supply and suppliers of betting and gambling equipment, wholesale and retail of gambling equipment

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to the provision of gaming, betting and gambling including supply and suppliers of betting and gambling equipment, wholesale and retail.

Existing Measures: Lotteries Act 1952 [Act 288] Common Gaming Houses Act 1953 [Act 289] Pool Betting Act 1967 [Act 384] Betting Act 1953 [Act 495] Racing (Totalisator Board) Act 1961 [Act 494] Racing Club (Public Sweepstakes) Act 1965 [Act 404] Customs (Prohibition of Imports) Order 2008 (P.U. (A) 86/2008)

Sector: Non-medical utilisation/application of atomic energy for: (a) electric power plants based on fossil fuel/materials; (b) nuclear power generation including nuclear fuel cycle; and (c) electric power generation.

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to non-medical utilisation or application of atomic energy for: (a) electric power plants based on fossil fuel or materials; (b) nuclear power generation including nuclear fuel cycle; and (c) electric power generation.

Existing Measures: Atomic Energy Licensing Act 1984 [Act 304]

Sector: Cultural Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to review the following products following their importation and distribution in the Malaysian market to ensure their consistency with Malaysia's decency standards: books, magazines, periodicals or newspapers, works of art and films imported into Malaysia, programming licensed for broadcast on television, cable and satellite stations. In addition, prior approval is required for any arts, filming and performances by foreign artist and such activities shall comply with the Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines. Such review and pre-approval shall be administered in an objective, transparent and impartial manner, and consistent, where applicable, with Article 2.3 (National Treatment) and the Communications and Multimedia Act 1998 [Act 588].

Existing Measures: Printing Presses and Publications Act 1984 [Act 301] Akta Perbadanan Kemajuan Filem Nasional Malaysia 1981 [Act 244] Akta Perbadanan Kemajuan Kraftangan Malaysia 1979 [Act 222] Dasar Industri Kreatif Negara (DIKN) 2010 Central Agency Committee for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines

Sector: Wholesale and Distribution Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to wholesale and distribution services for rice, sugar (other than refined sugar for food and beverage manufacturers), flour, liquor and alcoholic beverages, tobacco and cigarettes products.

Sector: Sewage and Refuse Disposal Sanitation and other Environmental Protection Services

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Malaysia reserves the right to adopt or maintain any measures relating to the collection, treatment and disposal of hazardous waste (excluding carbon gases).

Existing Measures: Environmental Quality Act 1974 [Act 127]

Sector: Air Transport Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Malaysia reserves the right to adopt and maintain any measure affecting: (a) airport operation services; (b) aircraft repair and maintenance services; (c) ground handling services; and (d) specialty air services; and Investment (e) air transport services covering passenger and freight transportation frequencies and routing by air.

Sector: Passenger Road Transportation Services covering taxi services and scheduled passenger road transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to passenger and scheduled passenger road transportation services covering urban and sub-urban regular transportation, railway, taxi services; and bus, taxi and rail station services.

Sector: Legal Services covering mediation and Shari'a law

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to mediation and Shari'a law.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures related to the non-internationalisation of ringgit which includes: (a) the requirement for international settlement to be made in foreign currency; (b) limitation on the access to ringgit financing by non-residents for use outside Malaysia; and (c) limitation on the use of ringgit in Malaysia by non-residents.

Existing Measures: Central Bank of Malaysia Act 2009 [Act 701] Financial Services Act 2013 [Act 758] Islamic Financial Services Act 2013 [Act 759] Notices on Foreign Exchange Administration Rules

Sector: Social Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to the supply of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public

purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

SCHEDULE OF MEXICO

INTRODUCTORY NOTES

For the purposes of this Annex:

The term “CMAP” means Mexican Classification of Activities and Products (Clasificación Mexicana de Actividades y Productos) numbers as set out in National Institute for Statistics and Geography (Instituto Nacional de Estadística y Geografía), Mexican Classification of Activities and Products (Clasificación Mexicana de Actividades y Productos), 1994.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3)

Level of Government: Central

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure restricting the acquisition, sale or other disposition of bonds, treasury bills or any other kind of debt security issued by the federal, state or local governments.

Existing Measures:

Sector: Energy

Sub-Sector: Oil and other hydrocarbons, Electricity

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4)

Level of Government: Central

Description: Investment

Mexico allows private investment exclusively through contractual arrangements with respect to the exploration and production of oil and other hydrocarbons, and the public service of transmission and distribution of electricity.

If Mexican law is amended to allow private investment in a different modality from that set out in the first paragraph, or to allow the sale of assets or ownership interest in an enterprise engaged in the activities set out in the first paragraph, Mexico reserves the right to impose restrictions on such investment. Any such restrictions shall be deemed existing Annex I non-conforming measures and shall be subject to paragraphs 1, 3 and 7 of Article 9.12 (Non-Conforming Measures).

For greater certainty, Mexico affirms the principle reflected in Articles 25, 27 and 28 of the Constitution that the exploration and production of oil and other hydrocarbons, the planning and control of the National Electric System and the public service of transmission and distribution of electricity are reserved to the State.

Existing Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Articles 25, 27 and 28

Federal Electricity Commission Law (Ley de la Comisión Federal de Electricidad)

Foreign Investment Law (Ley de Inversión Extranjera)

Hydrocarbons Law (Ley de Hidrocarburos)

Petroleos Méxicanos Law (Ley de Petróleos Mexicanos)

The Electric Industry Law (Ley de la Industria Eléctrica)

Sector: Entertainment Services

Sub-Sector: Recreational and leisure services

Industry Classification: CMAP 949104 Other Private Recreational and Leisure Services (limited to gambling and betting services)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Description: Investment and Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure relating to investment in, or the supply of, gambling and betting services.

Existing Measures:

Sector: Minority Affairs

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Local Presence (Article 10.6)

Level of Government: Central

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged groups.

Existing Measures: United Mexican States Political Constitution, Article 4 (Constitución Política de los Estados Unidos Mexicanos)

Sector: Social Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Level of Government: Central

Description: Investment and Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure with respect to the supply of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

Existing Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Articles 4, 17, 18, 25, 26, 28 and 123

Sector: Transportation

Sub-Sector: Specialised personnel

Industry Classification: CMAP 951023 Other Professional, Technical and Specialised Services (limited to ship captains; aircraft pilots; ship masters; ship machinists; ship mechanics; airport administrators (comandantes de aeródromos); harbour masters; harbour pilots; crew on Mexican flagged vessels or aircrafts)

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence

(Article 10.6)

Level of Government: Central

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure with respect to specialised personnel. Only Mexican nationals by birth may serve as:

(a) captains, pilots, ship masters, machinists, mechanics and crew members manning vessels or aircraft under the Mexican flag; and

(b) harbour pilots, harbour masters and airport administrators.

Existing Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos), Article 32

Sector: All

Sub-Sector: Telegraph, radiotelegraph and postal services

Issuance of bills (currency) and minting of coinage

Control, inspection and surveillance of maritime and inland ports

Control, inspection and surveillance of airports and heliports

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Level of Government: Central

Description: Investment

The activities set out in this list are reserved to the Mexican State, and private equity investment is prohibited under Mexican Law. Where Mexico allows private investment to participate in such activities through service contracts, concessions, lending arrangements or any other type of contractual arrangement, such participation shall not be construed to affect the State's reservation of those activities.

If Mexican law is amended to allow private equity investment in an activity set out in this list, Mexico may impose restrictions on foreign investment participation and those restrictions shall be deemed existing Annex I non-conforming measures and shall be subject to paragraphs 1, 3 and 7 of Article 9.12 (Non-Conforming Measures). Mexico may also impose restrictions on foreign equity investment participation when selling an asset or ownership interest in an enterprise engaged in activities set out in this list, and those restrictions shall be deemed existing Annex I non-conforming measures and shall be subject to paragraphs 1, 3 and 7 of Article 9.12 (Non-Conforming Measures).

(a) Telegraph, radiotelegraph and postal services;

(b) Issuance of bills (currency) and minting of coinage;

(c) Control, inspection and surveillance of maritime and inland ports;

(d) Control, inspection and surveillance of airports and heliports; and

(e) Nuclear power.

Existing Measures: United Mexican States Political Constitution (Constitución Política de los Estados Unidos Mexicanos) Articles 25 and 28.

Law of the Mexican Bank (Ley del Banco de México)

Law of the House of Currency of Mexico (Ley de la Casa de Moneda de México)

United Mexican States Monetary Law (Ley Monetaria de los Estados Unidos Mexicanos).

Commercial and Navigation Maritimes Law (Ley de Navegación y Comercio Marítimos)

Ports Law (Ley de Puertos)

Airports Law (Ley de Aeropuertos)

Federal Telecommunication and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión)

Decree that establish the decentralized agency of Navigation Services in the Mexican Airspace, SENEAM (by its acronym in Spanish) (Decreto que Crea el Organismo Desconcentrado de Servicios a la Navegación en el Espacio Aéreo Mexicano, SENEAM)

General Means of Communication Law (Ley de Vías Generales de Comunicación)

The Mexican Postal Service Law (Ley del Servicio Postal Mexicano), Title I, Chapter III

Foreign Investment Law (Ley de Inversión Extranjera)

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5)

Level of Government: Central

Description: Investment

Mexico reserves the right to adopt or maintain any measure granting different treatment to countries accorded under all bilateral or multilateral international agreements in force prior to the date of the entry into force of this Agreement.

Mexico reserves the right to adopt or maintain any measure granting different treatment to countries accorded under all international agreements in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 10.5)

Level of Government: Central and Regional

Description: Cross-Border Trade in Services

Mexico reserves the right to adopt or maintain any measure related to Article 10.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below.

For the purpose of this entry:

(a) “1)” refers to the supply of a service from the territory of one Party into the territory of any other Party;

(b) “2)” refers to the supply of a service in the territory of one Party by a person of that Party to a person of the other Party;

(c) “3)” refers to the supply of a service in the territory of one Party by an investor of the other Party or a covered investment; and

(d) “4)” refers to the supply of a service by a national of one Party, in the territory of any other Party.

This entry:

(a) applies to central level;

(b) applies to regional level in accordance with specific commitments of Mexico under the Article XVI of GATS which exist at the date of entry into force of this Agreement; and

(c) does not apply to municipal or local level.

This entry does not apply to entries listed in Annex I with respect to Article 10.5 (Market Access). Mexico's limitations on market access in this entry are only those limitations which are not discriminatory.

Sector or subsector	Limitations on market access
1.BUSINESS SERVICES	
1. A. Professional services (1)	
a) Legal services (CPC 861)	1), 2) and 3) None 4) Unbound except as indicated in the Temporary Entry for Business Persons Chapter.
b) Accounting, auditing and bookkeeping services (CPC 862)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
d) Consultancy and technical studies for architecture (CPC 8671)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
e) Consultancy and technical services for engineering (CPC 8672)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
f) Integrated engineering services (CPC 8673)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
g) Urban planning and landscape architectural services (CPC 8674)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
h) Related scientific and technical consulting services (CPC 8675)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
i) Medical and dental services (CPC 9312)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
k) Other services - Religious services (CPC 95910)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.

(1) In order to practise a profession in Mexico, it is necessary to have a degree that has been recognised or confirmed by the Ministry of Public Education (Secretaría de Educación Pública) and also to obtain a professional licence. There are special requirements to be met by engineers, architects and doctors.

Sector or subsector	Limitations on market access
1. B. Computer and Related Services	
a) Consultancy services related to the installation of computer hardware (CPC 841)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.

b) Software implementation services (CPC 842)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
c) Data processing services (CPC 843)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
d) Data base services (CPC 844)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
e) Other (CPC 845+849)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
1. C. Research and Development Services (CPC 85) (other than research and technological development centres)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Research and experimental development services on engineering and technology (CPC 85103)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Research and development services on social sciences and humanities (CPC 852)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
1. D. Real estate services	
a) Real estate services involving own or leased property (CPC 821) Other than: Real estate services involving own property	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
b) Real estate services on a fee or contract basis (CPC 822)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
1. E. Rental/Leasing Services without Operators	
a) Leasing or rental services concerning vessels without operator (CPC 83103)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
b) Leasing or rental services concerning aircraft without operator (CPC 83104)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
c) Leasing or rental services concerning other means of transport without operator (limited to private cars	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.

without operator CPC 83101)	
-Leasing or rental services concerning means of maritime transport without operator	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
d) Leasing or rental services concerning other machinery and equipment without operator:	1) Unbound 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Rental services concerning agricultural and fishery machinery and equipment (CPC 83106)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Rental services concerning machinery and equipment for industry (CPC 83109)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
e) Other - Rental services concerning electronic equipment for data processing (CPC 83108)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Leasing or rental services concerning other personal or household goods (CPC 83209)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter
- Rental services concerning office equipment and furniture (CPC 83108)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Rental services concerning televisions, sound equipment, video-cassette recorders and musical instruments (CPC 83201)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Rental services concerning professional photographic equipment and projectors (CPC 83209)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Rental services concerning other machinery, equipment and furniture not mentioned above (CPC 83109)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
1. F. Other Business Services	
a) Advertising and related activities (excluding	

broadcasting as well as restricted radio and television services) (CPC 871)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
b) Market research services (CPC 8640)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
c) Management consulting services (CPC 8650)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
d) Administrative formalities and collection services (CPC 8660)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
e) Technical testing and analysis services (CPC 8676)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
f) Services incidental to agriculture, hunting and forestry -Services incidental to agriculture (CPC 8811 limited to professional services incidental to agriculture)	1) and 2) None 3) None except as indicated in 1.A 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
-Services incidental to animal husbandry (CPC 8812 limited to professional services incidental to animal husbandry)	1) and 2) None 3) None except as indicated in 1.A 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Services incidental to forestry and logging (CPC 88104)	1) and 2) None 3) None except as indicated in 1.A 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
g) Services incidental to fishing (CPC 882)	1), 2) and 3) None 4) Unbound except as indicated in Temporary Entry for Business Persons Chapter.
k) Placement and supply of services of personnel (CPC 8720)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
l) Protection and guard services (CPC 8730)	1) Unbound 2) None 3) None, except that the requirements laid down for each specific means of transport must be fulfilled. 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
n) Maintenance and repair of equipment except maritime vessels, aircraft and other transport equipment:	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Repair and maintenance of industrial machinery and	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.

equipment (CPC 8862)	
- Repair and maintenance of professional technical equipment and instruments (CPC 8866)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Repair services incidental to metal products, machinery and equipment. (CPC886)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Repair and maintenance of machinery and equipment for general use, not assignable to any specific activity (CPC 886)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
o) Building-cleaning services (CPC 8740)	1) None 2) Unbound* 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
p) Photographic services - Photography and motion-picture processing services (CPC 87505 and 87506)	1) None 2) Unbound* 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
r) Printing, publishing (CPC 88442) Only includes: - Publishing of books and similars - Printing and binding (except newsprint for circulation exclusively in the Mexican territory) - Auxiliary and related industries with editing and printing (excludes manufacturing for printing types which are classified into 3811 branch, “casting and moulding of ferrous and nonferrous metal parts”).	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
s) Convention services (CPC 87909***)	1) Unbound* 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
t) Other - Credit reporting services (CPC 87901)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Speciality design services (CPC 87907)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Industrial design services (CPC 86725)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Photocopying and similar services (CPC 87904)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.

- Translation and interpretation services (CPC 87905)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Laundry collection services (CPC 97011)	1) Unbound* 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
2.COMMUNICATION SERVICES	
B. Courier services - Courier services (CPC 7512)	1) Unbound 2) None 3) None, except that the requirements laid down for each specific means of transport must be fulfilled. 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
C. Telecommunication Services. Telecommunications services supplied by facilities based public telecommunications network (wire-based and radioelectric) through any technological medium, included in subparagraphs (a), (b), (c), (f), (g) and (o)	1) The international traffic only may be routed through international ports of a natural person or juridical person with a concession granted by the regulatory agency to install, operate or use a public telecommunication network in the Mexican territory authorised to provide long distance service. 2) None 3) The Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) shall reserve for community indigenous FM radio stations ten per cent of broadcasting band of FM that goes from 88 to 108 MHz. Such percentage shall be granted as concession for the upper part of the referred band. The Institute shall directly assign 90 MHz of the 700 MHz band for the operation and exploitation of a wholesale shared network through a concession for commercial use. Resellers of telecommunications of long distance and international long distance may contract telecommunications services (exclusively) with authorised concessionaires. The economic agent who has been declared preponderant in the telecommunications sector or the concessionaires that are part of the economic group to which the declared preponderant agent belongs to may not participate directly or indirectly in any reseller. 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
a) Telephony services (CPC 75211, 75212)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
b) Packet-switched data transmission services (CPC 7523**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
c) Circuit-switched data transmission services (CPC 7523**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
f) Facsimile services (CPC 7521**+7529**)	1), 2) and 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
g) Private leased circuit services (CPC 7522**+7523**)	1) As indicated in 2.C.1). In Mexico it is not allowed allow the resale of private leased circuits to private networks. 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
o) Others - Paging services	1) As indicated in 2.C.1). 2) None 3) As indicated in 2.C.3). 4) Unbound,

(CPC 75291)	except as indicated in Temporary Entry for Business Persons Chapter.
- Cellular telephony (75213**)	1) As indicated in 2.C.1). 2) None 3) None 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
- Resellers (2)	1) As indicated in 2.C.1). 2) None 3) None, except that the establishment and operation of resellers is invariably subject to the relevant regulations. The Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) will not issue permits for the establishment of a reseller until the corresponding regulations are issued. 4) Unbound, except as indicated in Temporary Entry for Business Persons Chapter.
-Other telecommunication services. Value-added services (Services that use public telecommunication network and have effect on the format, content, code, protocol, storage or similar aspects of the information transmitted by a user and which market users with additional information, different and restructured, or involve interaction user with information stored). (3)	1) Registration before the Federal Telecommunications Institute (Instituto Federal de Telecomunicaciones, IFT) is required to provide Value Added Services. The Value Added Services originated overseas destined to the Mexican territory may only be taken and delivered in Mexico through infrastructure or facilities of a public telecommunications network concessioner. 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
2.D. Audiovisual services	
a) Private production of cinematographic films (CPC 96112)	1), 2) and 3) None, except that film screening requires a permit issued by the Ministry of the Interior (Secretaría de Gobernación). 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
b) Private film-screening services (CPC 96121)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
c) Radio and Television Services (CPC9613) - broadcasting (radio and free to air television)	1) None 2) None 3) The Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones, IFT) shall grant upon request authorisations to access the multiprogramming. In the case of concessionaires belonging to an agent declared preponderant the IFT will not authorise the transmission of a number of channels greater than 50 per cent of the total amount of broadcasted television channels, including the multiprogramming ones, authorised for other concessionaires that are broadcasting in the region covered. Concessionaires of commercial, public and social use providing broadcasting service shall have daily free transmission in each station and for each programming cannel, of duration up to 30 minutes whether continuous or discontinuous, dedicated to disseminate educational, cultural and social interest topics. In addition to the time set for the State, All concessionaires of commercial, public and social use providing broadcasting services shall be required to broadcast simultaneously in radio stations and television channels in the country when it comes to transmitting information of concern to the nation, according to the Ministry of Interior (Secretaría de Gobernación). 4)

	Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Restricted radio and television services	1) None 2) None 3) Concessionaires providing restricted or audio services shall reserve at no charge channels for the distribution of federal public institutions' television signals as indicated by the executive through the Federal Executive branch as follows: I. A channel with the service consists of 31 to 37 channels; II. Two channels, when the service consists of 38 to 45 channels, and III. Three channels, when the service consists of 46 to 64 channels. Beyond this last number, a channel shall be added for every 32 transmission channels. When the service consists of up to 30 channels, The Ministry may require, that a specific cannel dedicates up to six hours daily for transmission of programming as indicated by the Ministry of the Interior (Secretaría de Gobernación). Concessionaires providing broadcasting or restricted television and audio services, as well as programmers and signals operators shall maintain a balance between advertising and programming transmitted daily, and the following rules shall apply: I. concessionaires of commercial use broadcasting: a) in television stations, the time spent on commercial advertising shall not exceed 18 per cent of the total transmission time per programming channel, and b) in radio stations, the time spent on commercial advertising shall not exceed 40 per cent of the total transmission time per programming channel. The length of commercial advertising does not include transmissions of the station own advertising, nor does it include State time and other Executive Branch provisions or programmes offering products or services; II. concessionaires of restricted television, and audio may transmit, daily and per channel, up to six minutes of advertising for every hour of transmission. For purposes of corresponding calculation, advertising in the broadcast signals that are retransmitted and programming channels own advertising shall not be considered, and the channels exclusively dedicated to programmes of product offerings, shall be exempted from the limit stated in the previous paragraph. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.

(2) Companies which, without owning transmission means, provide third parties with telecommunications services by using capacity leased from a public network concessionaire.

(3) Value Added Services are not those services for which its establishment, operation or exploitation make use of transmission infrastructure owned by the service provider, unless the service provider has the appropriate license or permit to establish, operate or exploit a public telecommunications network. It does not include those value-added services, the provision requiring the obtaining of licenses and permits including, without limitation, the following services: voice telephony, regardless of the technology used (VoIP) in its modalities of local service; long distance telephony; simple resale of leased private circuits, mobile telephony, mobile or fixed radio telephony, cable television, paid television using microwaves and satellite; paging services, trucking services; private or maritime radio-communication: restricted radio; data transmission; videoconferencing and vehicle radiolocation.

Sector or subsector	Limitations on market access
3.CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A. General construction work for buildings - Residential or housing building (CPC 5121 and 5122)	1) Unbound 2) Unbound* 3) None 4) Unbound

- Non-residential buildings (CPC 5124, 5127 and 5128)	1) Unbound 2) Unbound* 3) None 4) Unbound
B. General construction work for civil engineering - Construction of urban development works (CPC 5131 and 5135)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Construction of industrial buildings (excluding electric power stations and plants for the piping of oil and oil products (CPC 52121)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Other construction (excluding construction of maritime and river works, highway and transport works and track construction) (CPC 52269)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
D. Building completion and finishing work - Electrical, plumbing and drainage installations in buildings (excluding telecommunication installations and other special installations) (CPC 5161-5164)	1) Unbound 2) Unbound* 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
E. Other - Special work, including earth moving, foundations, underground excavation, under-water work, signalling and protection installations, demolition, construction of drinking water or water treatment plants (excluding sinking of oil, gas and water wells) (CPC 511 and 515)	1) Unbound 2) Unbound* 3) None, except that services relating to visual and electronic aids for runways are subject to authorisation by the Ministry of Communication and Transports (Secretaría de Comunicaciones y Transportes, SCT). 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
4. DISTRIBUTION SERVICES	
4. A Trade intermediary services (CPC 621) (includes sales agents who are not considered within the paid staff of any establishment in particular).	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
4. B. Wholesale trade services -Wholesale trade of non-food products, including animal feed (excluding petroleum-based fuels, coal, firearms, cartridges and ammunition) (CPC 622)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Commission agents´ services (CPC 62113 – 621118)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Wholesale trade of food, beverages and tobacco (CPC 6222)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Wholesale trade services (CPC 622)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
4. C. Retail trade services: -Retail sales of food, beverages and tobacco in specialized	1), 2) and 3) None 4) Unbound, except as indicated in

establishments (CPC 6310)	the Temporary Entry for Business Persons Chapter.
- Retail sales of food products in supermarkets, self-service stores and shops (CPC 6310)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Retail sales of non-food products in department stores and shops (CPC 632)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Retail sales of motor vehicles, including tyres and spare parts (CPC 61112)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Retail sales of non-food products in specialised establishments (excluding retail sales of liquefied fuel gas, charcoal, coal and other non-petroleum-based fuels, paraffin, fuel, and tractor vaporising oil (TVO), gasoline and diesel, firearms, cartridges and ammunition) (CPC 6329)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
4.D. Franchise services	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
5.PRIVATE EDUCATION SERVICES	
5. A. Primary education services (CPC 921)	1) and 2) None 3) None except that prior authorisation is required from the Ministry of Public Education (Secretaría de Educación Pública, SEP) or the State authority. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
5. B. Secondary education services (CPC 922)	1) and 2) None 3) None except that prior authorisation is required from the Ministry of Public Education (Secretaría de Educación Pública, SEP) or the State authority. 4) Unbound, except as indicated in the ANNEX II – MEXICO – 29
5. C. Higher education services (CPC 923)	1) and 2) None 3) None except that prior authorisation is required from the Ministry of Public Education (Secretaría de Educación Pública, SEP) or the State authority. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
5. E. Other education services: - Language education, special education and commercial training (CPC 9290)	1) and 2) None 3) None, except that prior authorisation is required from the Ministry of Public Education (Secretaría de Educación Pública, SEP) or the State authority. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
6. ENVIRONMENTAL SERVICES (4)	
6. A. Sewage services (CPC 9401)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.

6. B. Additional environmental services	
- Refuse disposal services (CPC 9402)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Protection of ambient air and climate (CPC 9404)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Noise abatement services (CPC 9405)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Nature and landscape protection services (CPC 9406)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Limited to environmental impact assessments and Consultancy services for environmental protection services (CPC 9409)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
6. C. Sanitation services (CPC 94030)	1) Unbound 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.

(4) The level of disaggregation of each of this sector's subsectors is interpreted in accordance with Mexico's domestic legislative framework and may not correspond exactly to the stated CPC classification.

Sector or subsector	Limitations on market access
8. HEALTH RELATED AND SOCIAL SERVICES	
8. A. Private hospital services (CPC 9311)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
8. B. Other human health services. - Private services of clinical laboratories auxiliary to medical diagnosis (CPC 93199)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Other private services auxiliary to medical treatment (CPC 93191)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Dental prosthesis laboratory services (CPC 93123)	1) Unbound 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
9.TOURISM AND TRAVEL RELATED SERVICES	

9. A. Hotel and restaurant services-Hotel services (CPC 6411)	1), 2) and 3) None, except for the requirement of holding a permit to engage in the activity from the competent authority (Central, Regional or Local). 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Motel services (CPC 6412)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Board and lodging in guest houses and furnished accommodation (CPC 64192 and 64193)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Youth hostels and temporary camping facilities (CPC 64194)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Camping facilities for mobile homes (trailer parks) (CPC 64195)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Restaurant services (CPC 642)	1), 2) and 3) None, except for the requirement of holding a permit to engage in the activity from the competent authority (Central, Regional or Local). 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Cabarets and night clubs (CPC 6432)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Canteens, bars and taverns (CPC 6431)	1) Unbound* 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
B. Travel agencies and tour operators (CPC 7471)	1) None 2) None 3) None, except a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
	1) Unbound* 2) None 3) None, except a permit from the

C. Tourist guide services (CPC 7472)	competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
9. D. Others - Spa services (CPC 97029) Only includes: Private services in social centres, recreational and sports. Also, sports clubs services, gyms, spas, swimming pools, sports fields, billiards, bowling, horses and bicycles. Excludes boats rental.	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
Catering services, providing meals to outside (CPC 6423) (other than service on aircraft and in airports)	1) Unbound* 2) None 3) None except that a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
Bar services with entertainment (only in hotels and other lodging places)	1) Unbound* 2) None 3) None, except that a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
Public house services without entertainment (CPC 6431) (except in hotels, other lodging places and other means of transport)	1) Unbound* 2) None 3) None, except that a permit from the competent authority (Central, Regional or Local) is required to engage in the activity. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
10.RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)	
10. A. Entertainment services (including theatre, live bands and circus) (CPC 9619)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
10. B. News agency services (CPC 962)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
10. C. Libraries, archives, museums and other cultural services (CPC 963)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
10. D. Sporting and other recreational services (CPC 964)	
- Sports event organisation services (CPC 96412)	1) Unbound * 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Sports facility operation services (CPC 96413)	1) Unbound * 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.

- Other sporting services (only services provided by sport and game schools) (CPC 96419)	1) Unbound * 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Promotion of sports services (CPC 96411)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11.TRANSPORT SERVICES	
A.Maritime transport services International Transport (freight and passengers) (CPC 7211 and 7212, other than cabotage transport)	1) Scheduled, bulk, tramp and other international maritime transport, including passenger transport. Specific international deep-sea transport may be reserved wholly or partly for shipping companies which are Mexican, or recognised as such, when the principles of free competition are not observed and the national economy is affected. 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Supporting services for water transport (CPC 745) (includes operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling, operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharves; waterfront terminal operations)	1) None 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Supporting services for water transport (CPC 745) (limited to Maritime Port Administration, Lake and Rivers)	1) None 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Maritime cargo handling services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Storage and warehousing services, except general bonded warehouses (CPC 742)	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Container station and depot services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Maritime agency services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Maritime freight forwarding services	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Vessel maintenance and repair	1) Unbound* 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons

	Chapter.
11. C. Air transport services	
e) Supporting services for air transport - Airport and heliport administration services	1) Unbound 2) None 3) None, except that a concession from the Ministry of Communications and Transport (Secretaría de Comunicaciones y Transportes, SCT) is required to operate an airport. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11. E. Rail transport services c. Pushing or towing services (CPC 7113)	1) Unbound * 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
e. Supporting services for railway transport (CPC 743)	1) Unbound * 2) None 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11. F. Road transport services d) Maintenance and repair of road transport equipment -Motor vehicle maintenance and repair services (CPC 6112 and 8867)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
Other supporting services for road transport (CPC 74490) (limited to main bus and truck terminals and bus and truck stations)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
e) Supporting services for road transport services Supporting services for road transport (CPC 744) limited to Management Services of Roads, Bridges and Auxiliary Services.	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11. G. Pipeline transport. b) Transportation of other goods (CPC 7139) limited to Non-energy Pipelines)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11. H. Services auxiliary to all modes of transport	
- Weighbridge services for transport purposes (CPC 7490)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Supporting services for air transport	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
11. I. Other transport services	
- Tramway transport (CPC 71211)	1) Unbound 2) None 3) None 4) Unbound except as indicated in the Temporary Entry for Business Persons Chapter.

- Subway transport (CPC 71211)	1) Unbound except as indicated in the horizontal section 2) None 3) None 4) Unbound except as indicated in the Temporary Entry for Business Persons Chapter.
- Rental of commercial vehicles with operator (CPC 7124)	1) Unbound except as indicated in the horizontal section 2) and 3) None 4) Unbound except as indicated in the Temporary Entry for Business Person Chapter.
12. OTHER SERVICES	
-Repair of footwear and other articles of leather and skins -Footwear and leather goods repair services (CPC 63301)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Repair of electronic appliances mainly for household use (CPC 63302) - Repair services of electrical household appliances (CPC 63302)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Repair of clocks, watches and jewellery (CPC 63303) - Watch, clock and jewellery repair services (CPC 63303)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Repair and cleaning of headgear (CPC 63304)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
-Repair of bicycles (CPC 63309) - Bicycle repair (CPC 63309)	1), 2) and 3) None 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.
- Locksmiths' trade (CPC 63309)	1) and 2) None 3) None, except that regional and local authorities are responsible for authorising these services. 4) Unbound, except as indicated in the Temporary Entry for Business Persons Chapter.

* Unbound due to technical unfeasibility.

** The specified service constitutes only a part of the total number of activities covered by the corresponding CPC code.

*** The specified service is an element of a bigger CPC code added in another place in the list.

SCHEDULE OF NEW ZEALAND

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) the provision of public law enforcement and correctional services; and

(b) the following, to the extent that they are social services established for a public purpose:

(i) childcare;

(ii) health;

(iii) income security and insurance;

(iv) public education;

(v) public housing;

(vi) public training;

(vii) public transport;

(viii) public utilities; (1)

(xi) social security and insurance; and

(x) social welfare.

(1) Only with respect to utility services for which exclusive rights or government support are accorded by the central government for the purpose of ensuring the affordability, availability or accessibility of such services. This footnote does not apply to measures adopted or maintained by a local government.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to water, including the allocation, collection, treatment and distribution of drinking water.

This reservation does not apply to the wholesale trade and retail of bottled mineral, aerated and natural water.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt and maintain any measure solely as part of the act of devolving a service that is provided in the exercise of governmental authority at the date of entry into force of the Agreement. Such measures may include:

(a) restricting the number of service suppliers;

(b) allowing an enterprise, wholly or majority owned by the Government of New Zealand, to be the sole service supplier or one amongst a limited number of service suppliers;

(c) imposing restrictions on the composition of senior management and boards of directors;

(d) requiring local presence; and

(e) specifying the juridical form of the service supplier.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

Where the New Zealand Government wholly owns or has effective control over an enterprise, then New Zealand reserves the right to adopt or maintain any measure regarding the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.

Entities within the scope of this reservation include state-owned enterprises at the central level of government. For transparency purposes, such enterprises include:

(a) Airways Corporation of New Zealand Limited;

(b) Animal Control Products Limited;

(c) AsureQuality Limited;

(d) Electricity Corporation of New Zealand Limited;

(e) KiwiRail Holdings Limited;

(f) Kordia Group Limited;

(g) Landcorp Farming Limited;

(h) Learning Media Limited;

(i) Meteorological Service of New Zealand Limited;

(j) New Zealand Post Limited;

(k) New Zealand Railways Corporation;

(l) Quotable Value Limited;

(m) Solid Energy New Zealand Limited;

(n) Terralink NZ Limited; and

(o) Transpower New Zealand Limited.

Sector: All

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of overseas investment that require approval under New Zealand's overseas investment regime.

For transparency purposes those categories, as set out in Annex I – New Zealand – 12 and 13, are:

(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares (2) or voting power (3) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$200 million;

(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$200 million;

(c) acquisition or control by government sources of 25 per cent or more of any class of shares (4) or voting power (5) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million;

(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million;

(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and

(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.

Existing Measures: Overseas Investment Act 2005

Fisheries Act 1996

Overseas Investment Regulations 2005

(2) For greater certainty, the term “shares” includes shares and other types of securities.

(3) For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

(4) For greater certainty, the term “shares” includes shares and other types of securities.

(5) For greater certainty, “voting power” includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or a non-Party under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or a non-Party under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; and

(c) maritime matters.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure taken as part of a wider process of economic integration or trade liberalisation between the parties to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) or the Pacific Agreement on Closer Economic Relations (PACER) that accords differential treatment to a Party or a non-Party. (6)

(6) For the avoidance of doubt, this includes any measure adopted or maintained under any existing or future protocol to the agreements.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure regarding the control, management or use of:

(a) protected areas, being areas established under and subject to the control of legislation, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation and scenery preservation; or

(b) species owned under enactments by the Crown or that are protected by or under an enactment.

Existing Measures: Conservation Act 1987 and the enactments listed in Schedule 1 of the Conservation Act 1987

Resource Management Act 1991

Local Government Act 1974

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any nationality or residency measures in relation to:

(a) animal welfare; and

(b) the preservation of plant, animal and human life and health, including in particular:

(i) food safety of domestic and exported foods;

(ii) animal feeds;

(iii) food standards;

(iv) biosecurity;

(v) biodiversity; and

(vi) certification of the plant or animal health status of goods.

Nothing in this reservation shall be construed to derogate from the obligations of Chapter 7 (Sanitary and Phytosanitary Measures) or the obligations of the SPS Agreement.

Nothing in this reservation shall be construed to derogate from the obligations of Chapter 8 (Technical Barriers to Trade) or the obligations of the TBT Agreement.

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to maintain or adopt any measure made by or under an enactment in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone and the continental shelf, including for the issuance of maritime concessions in the continental shelf.

Existing Measures: Resource Management Act 1991

Marine and Coastal Area (Takutai Moana) Act 2011

Continental Shelf Act 1964

Crown Minerals Act 1991

EEZ and Continental Shelf (Environmental Effects) Act 2012

Sectors: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure that is not inconsistent with New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (GATS/SC/62,

GATS/SC/62 Suppl. 1, GATS/SC/62/Suppl. 2).

For the purposes of this entry only, New Zealand's Schedule of Specific Commitments is modified as set out in Appendix A.

Sector: Business Services, Fire Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the provision of fire-fighting services, excluding aerial fire-fighting services.

Existing Measures: Fire Service Act 1975

Forest and Rural Fires Act 1977

Sector: Business Services, Research and Development

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) research and development services carried out by State- funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; and

(b) research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences, i.e. CPC 8510.

Sector: Business Services, Technical Testing and Analysis Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure in respect of:

(a) composition and purity testing and analysis services (CPC 86761);

(b) technical inspection services (CPC 86764);

(c) other technical testing and analysis services (CPC 86769);

(d) geological, geophysical and other scientific prospecting services (CPC 86751); and

(e) drug testing services.

Sector: Business Services, Fisheries and Aquaculture, Services related to fisheries and aquaculture

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges), consistent with the provisions of the United

Nations Convention on the Law of the Sea.

Existing Measures: Fisheries Act 1996

Aquaculture Reform Act 2004

Sector: Business Services, Energy, Manufacturing, Wholesale Trade, Retail

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and

Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt any measure in order to prohibit, regulate, manage or control the production, use, distribution or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.

Sector: Communication Services, Audio-visual and other Services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures:

For greater transparency, section 18 of the New Zealand Film Commission Act 1978 limits Commission funding to films with a “significant New Zealand content”. This criterion is deemed to be satisfied if made pursuant to a co-production agreement or arrangement with the partner country in question.

Sector: Communication Services, Audio-visual and other Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) the holding of shares in the co-operative dairy company arising from the amalgamation authorised under the Dairy Industry Restructuring Act 2001 (DIRA) (or any successor body); and

(b) the disposition of assets of that company or its successor bodies.

Existing Measures: Dairy Industry Restructuring Act 2001

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the export marketing of fresh kiwifruit to all markets other than Australia.

Existing Measures: Kiwifruit Industry Restructuring Act 1999 and Regulations

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) specifying the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS categories covered by the WTO Agreement on Agriculture to markets where tariff quotas, country-specific preferences or other measures of similar effect are in force; and

(b) the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.

This entry is not intended to have the effect of prohibiting investment in the provision of wholesale trade and distribution services relating to goods in the HS chapters covered by the WTO Agreement on Agriculture. The entry applies in respect of investment to the extent that wholesale trade and distribution services are provided with respect to agricultural products that are subject to tariff quotas, country-specific preferences or other measures of similar effect.

Sector: Agriculture, including services incidental to agriculture

Obligations Concerned: Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to maintain or adopt any measure necessary to give effect to the establishment or implementation of mandatory marketing plans (also referred to as “export marketing strategies”) for the export marketing of products derived from:

(a) agriculture;

(b) beekeeping;

(c) horticulture;

(d) arboriculture;

(e) arable farming; and

(f) the farming of animals,

where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.

For the avoidance of doubt, mandatory marketing plans, in the context of this entry, exclude measures limiting the number of market participants or limiting the volume of exports.

Existing Measures: New Zealand Horticulture Export Authority Act 1987

Sector: Health and Social Services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to all services suppliers and investors for the supply of adoption services.

Existing Measures: Adoption Act 1955

Adoption (Inter-country) Act 1997

Sector: Recreation, Cultural and Sporting

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to gambling, betting and prostitution services.

Existing Measures: Gambling Act 2003 and Regulations

Prostitution Reform Act 2003

Racing Act 2003

Racing (Harm Prevention and Minimisation) Regulations 2004

Racing (New Zealand Greyhound Racing Association Incorporated) Order 2009

Sector: Recreation, Cultural and Sporting, Library, Archive, Museum and other Cultural Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure in respect of:

(a) cultural heritage of national value, including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage; as well as collections that are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions;

(b) public archives;

(c) library and museum services; and

(d) services for the preservation of historical or sacred sites or historical buildings.

Sector: Transport, Maritime Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) the carriage by sea of passengers or cargo between a port located in New Zealand and another port located in New Zealand and traffic originating and terminating in the same port in New Zealand (maritime cabotage);

(b) the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag; and

(c) the registration of vessels in New Zealand.

Sector: Distribution Services

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure for public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages.

Sector: Financial Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the supply of:

(a) compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury; and

(b) disaster insurance for residential property for replacement cover up to a defined statutory maximum.

Sector: All Sectors

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Description: Investment

New Zealand reserves the right to adopt or maintain any taxation measure with respect to the sale, purchase or transfer of residential property (including interests that arise via leases, financing and profit sharing arrangements, and acquisition of interests in enterprises that own residential property).

For greater certainty, residential property does not include non-residential commercial real estate.

APPENDIX A. New Zealand

For the purposes of entry Annex II – New Zealand – 14, New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (GATS/SC/62, GATS/SC/62 Suppl. 1, GATS/SC/62/Suppl. 2) are improved in the following sectors as described below.

Sector/subsector	Market Access Improvement
BUSINESS SERVICES	
Professional Services	
Practice of foreign law, Business tax planning and consulting services, Integrated engineering services, Consultancy related to Urban Planning and Landscape Architecture (CPC 8674**)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Computer And Related Services	
Maintenance and repair of office machinery and equipment including computers, Other Computer Services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other Business Services, Management Consulting Services, Services related to management consulting, Services incidental to animal husbandry, Placement and supply services of personnel, Photographic services, Convention services (CPC 87909**), Other credit reporting services, Collection agency services, Interior Design Services (CPC 87907**), Telephone Answering Services, Duplicating Services, Mailing list compilation and mailing services, Other Business Services – services generally provided to business not elsewhere classified in the CPC and not including convention services. These include: business brokerage services, appraisal services (other than for real estate), secretarial services, demonstration and exhibition services, etc.	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
COMMUNICATION SERVICES	
Postal And Courier Services	
Services relating to the handling (7) of postal items (8) whether for domestic or foreign destinations: A. Handling of addressed written	Insert new commitment with modes 1 and 3 limited as follows: "None, other than

communications on any kind of physical medium (9), including: - Hybrid mail services - Direct mail B. Handling of addressed parcels and packages (10) C. Handling of addressed press products (11) D. Handling of items referred to in A. to C. above as registered or insured mail. E. Express delivery services (12) for items referred to in A. to C. above F. Handling of non-addressed items G. Document exchange H. Other services not elsewhere specified, including post office counter services, other than the issue of stamps bearing the words: “New Zealand” (13)	Additional conditions for operation in the market or de-registration may be imposed on postal operators where these engage in anti-competitive behaviour”, no limitations on mode 2 and mode 4 “Unbound, except as indicated in the horizontal section.”

(7) The term “handling” should be taken to include clearance, sorting, transport and delivery.

(8) “Postal item” refers to items handled by any type of commercial operator, whether public or private.

(9) For example, letter, postcards.

(10) Books, catalogues are included hereunder.

(11) Journals, newspapers, periodicals.

(12) Express delivery services may include, in addition to greater speed and reliability, value added elements such as collection from point of origin, personal delivery to addressee, tracing and tracking, possibility of changing the destination and addressee in transit, confirmation of receipt.

(13) The issue of stamps bearing the said words is restricted to Universal Postal Union designated operators except where the said words form part of the name of the operator issuing the stamps.

Sector/subsector	Market Access Improvement
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, Other, Site preparation: new construction	Replace existing restriction under mode 1 with “None for consultancy services”.

(other than pipelines), Maintenance and repair of fixed structures	
Other, Renting Services related to Equipment for Construction or Demolition of Buildings or Civil Engineering, with Operator	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
DISTRIBUTION SERVICES	
Commission Agents’ Services	Replace existing commitments with: CPC 62113-62115, 62117-62118: no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.” CPC 62111** only in respect of 02961- 02963** (ovine wool); CPC 62112** only in respect of CPC 21111, 21112, 21115, 21116 and 21119** (edible offals of bovine and ovine origin) and 02961-02963** (ovine wool); and CPC 62116** only in respect of 2613-2615**,(ovine wool): Insert new commitments with no limitations for modes 1 and 2, mode 3 “None, except in terms of export distribution: (i) the allocation of distribution rights related to exports of these products to export markets where tariff quotas, country specific preferences and other measures of similar effect are found may place limitations on the numbers of services suppliers, total value of services transactions or numbers of services operations; (ii) mandatory export marketing strategies may apply where there is support within the relevant industry. These export marketing strategies do not include measures limiting the number of market participants or limiting the volume of exports.” and mode 4 “Unbound, except as indicated in the horizontal section.”
Wholesale trade services	Replace existing commitments with: CPC 6223 – 6226, CPC 6228: no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.” CPC 6221**only in respect of 02961-02963** (ovine wool); CPC 6222** only in respect of CPC 21111, 21112, 21115, 21116 and 21119** (edible offals of bovine and ovine origin); and CPC 62277** only in respect of 2613-2615**, (ovine wool): Insert new commitments with no limitations for modes 1 and 2, mode 3 “None, except in terms of export distribution: (i) the allocation of distribution rights related to exports of these products to export markets where tariff quotas, country specific preferences and other measures of similar effect are found may place limitations on the numbers of services suppliers, total value of services transactions or numbers of services operations; (ii) mandatory export marketing strategies may apply where there is support within the relevant industry. These export marketing strategies do not include measures limiting the number of market participants or limiting the volume of exports.” and mode 4 “Unbound, except as indicated in the horizontal section.”
EDUCATION SERVICES	
Other Education Services	

Other Education in respect of the following services only: - Language training provided in private specialist language institutions - Tuition in subjects taught at the primary and secondary levels, provided by private specialist institutions operating outside the New Zealand compulsory school system (14)	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”

(14) Examples of these services might include the provision of extension or remedial tuition in relation to Maths, Science or History.

Sector/subsector	Market Access Improvement
ENVIRONMENTAL SERVICES (15)	
Waste water management, Waste Management, Refuse disposal services, Sanitation and similar services, Protection of ambient air and climate, Remediation and clean-up of soil and water, Noise and vibration abatement, Protection of biodiversity and landscape, Other environmental and ancillary services	Insert new commitments for consultancy and these services contracted by private industry only with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”

(15) New Zealand’s commitments on environmental services exclude the collection, purification and distribution of water, including water for human use.

Sector/subsector	Market Access Improvement
TRANSPORT SERVICES	
Maritime Transport Services	Replace existing condition applicable to all maritime service sectors with the following: “General conditions applicable to all maritime service sectors: marketing and sales of maritime transport and related services for products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261; unbound, except for marketing and sales related to the following products in respect of which a commitment is made: CPC 21111, 21112, 21115, 21116 and CPC 21119** (edible offals of bovine and ovine origin only); CPC 2613-2615** (ovine wool only); and CPC 02961-02963** (ovine wool only).”
Maritime Auxiliary Services	

Maritime Cargo Handling Services (16)	Insert new commitment with mode 1 “Unbound except for no limitation on transhipment (board to board or via the quay) and/or use of on board cargo handling equipment.”, no limitations for modes 2 and 3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Customs Clearance Services (17) Container Station and Depot Services (18)	Insert new commitment with mode 1 unbound, no limitations for modes 2 and 3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Maritime Agency Services (19)	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
AIR TRANSPORT SERVICES	
Selling and marketing of air transport services (20)	Replace existing limitation for modes 1, 2 and 3 with “Unbound for products covered under CPC 01, 02, 211, 213-216, 22, 2399 and 261, except for marketing and sales related to CPC 21111, 21112, 21115, 21116 and CPC 21119** (edible offals of bovine and ovine origin), CPC 2613-2615** (ovine wool), and CPC 02961-02963** (ovine wool).”
Aircraft repair and maintenance Services (21)	Insert new commitment with mode 1 unbound, no limitations for modes 2 and 3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Airport Operation Services CPC74610**, excluding Navigation aids	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Other supporting services for air transport CPC 74690** excluding fire-fighting and fire-prevention services Cargo and baggage handling services (CPC 741**) Ramp handling services (CPC 741**)	Insert new commitment with mode 1 unbound, no limitations for modes 2 and 3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Airport management services	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
OTHER SERVICES NOT INCLUDED ELSEWHERE	
Other	
Washing, cleaning and dyeing services	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”

(16) Maritime Cargo Handling Services: activities exercised by stevedoring companies, including terminal operators, but not including the direct activities of dockers when this workforce is organised independently of the stevedoring or terminal operator companies. The activities include the organisation and supervision of: (a) the loading/discharging of cargo to/from a ship; (b) the lashing/unlashing of cargo; and (c) the reception/delivery and safekeeping of cargoes before shipment or after discharge.

(17) Customs Clearance Services: activities consisting of carrying out on behalf of another party customs formalities concerning the import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.

(18) Container Station and Depot Services: activities consisting of storing containers, whether in port or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.

(19) Maritime Agency Services: activities consisting of representing as an agent, the business interests of one or more shipping lines, for the following purposes:(a) Marketing and sales of maritime transport and related services, from quotation to invoicing, and issuing bills of lading on behalf of the companies; acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;(b) Acting on behalf of the companies organising the call of a ship or taking over cargoes when required.

(20) As defined in paragraph 6(b) of GATS Annex on Air Transport Services.

(21) As defined in paragraph 6(b) of GATS Annex on Air Transport Services.

SCHEDULE OF PERU

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Peru reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreements in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, (1) including salvage.

Existing Measures:

(1) For greater certainty, maritime matters include transport by lakes and rivers.

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Peru, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise (2) or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of a Party or of a non-Party or their investments. With respect to such a sale or other disposition, Peru may adopt or maintain any measure relating to the nationality of individuals appointed to senior management positions or members of the board of directors.

For the purposes of this entry:

(a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this entry shall be deemed to be an existing measure subject to Article 9.12.1, Article 9.12.4, Article 9.12.5 and Article 9.12.6 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures); and

(b) "state enterprise" means an enterprise owned or controlled through ownership interests by Peru and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Existing Measures:

(2) An illustrative list of existing state enterprises in Peru can be found in the following website: www.fonafe.gob.pe.

Sector: Indigenous Communities, Peasant, Native and Minority Affairs

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities and ethnic groups. For purposes of this entry, "ethnic groups" means indigenous, native, and peasant communities.

Existing Measures:

Sector: Fishing and Services related to Fishing

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to artisanal fishing.

Existing Measures:

Sector: Cultural Industries

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

For purposes of this entry, "cultural industries" means:

(a) publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

(b) production, distribution, sale, or display of recordings of movies or videos;

(c) production, distribution, sale, or display of music recordings in audio or video format;

(d) production and presentation of theatre arts (3);

(e) production and exhibition of visual arts;

(f) production, distribution, or sale of printed music scores or scores readable by machines;

(g) design, production, distribution and sale of handicrafts; or

(h) radiobroadcasts aimed at the public in general, as well as all radio, television, and cable television-related activities, satellite programming services, and broadcasting networks.

Peru reserves the right to adopt or maintain any measure giving preferential treatment to persons of other countries pursuant to any existing or future bilateral or multilateral international agreement regarding cultural industries, including audio-visual cooperation agreements.

For greater certainty, Article 9.4 (National Treatment) and Article 9.5 (Most-Favoured-Nation Treatment) and Chapter 10 (Cross-Border Trade in Services) shall not apply to government support for the promotion of cultural industries.

Existing Measures:

(3) The term “theatre arts” means live performances or presentations such as drama, dance or music.

Sector: Handicraft Industries

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the design, distribution, retailing or exhibition of handicrafts that are identified as Peruvian handicrafts.

Performance requirements shall in all cases be consistent with the WTO Agreement on Trade-Related Investment Measures (TRIMs Agreement).

Existing Measures:

Sector: Audio-Visual Industry

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 9.10) National Treatment (Article 10.3)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure whereby a specified percentage (up to 20 per cent) of the total cinematographic works shown on an annual basis in cinemas or exhibition rooms in Peru consist of Peruvian cinematographic works. In establishing such percentage, Peru shall take into account factors including the national cinematographic production, the existing exhibition infrastructure in the country and attendance.

Existing Measures:

Sector: Jewellery Design, Theatre Arts, Visual Arts, Music, Publishing

Sub-Sector:

Obligations Concerned: Performance Requirements (Article 9.10) National Treatment (Article 10.3)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure conditioning the receipt or continued receipt of government support for the development and production of jewellery design, theatre arts, visual arts, music and publishing on the recipient achieving a given level or percentage of domestic creative content.

Existing Measures:

Sector: Audio-Visual Industry, Publishing, Music

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Peru may adopt or maintain any measure that affords a person of another Party the treatment that is afforded by that Party to Peruvian persons in the audio-visual, publishing and music sectors.

Existing Measures:

Sector: Social Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security and insurance, social security, social welfare, public education, public training, health and childcare.

Existing Measures:

Sector: Public Supply of Potable Water

Sub-Sector:

Obligations Concerned: Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the public supply of potable water.

For greater certainty, nothing in this entry shall affect the ability of a foreign enterprise to supply bottled water.

Existing Measures:

Sector: Public Sewage Services

Sub-Sector:

Obligations Concerned: Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to public sewage services.

Existing Measures:

Sector: Telecommunications Services

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure in relation to the granting of a concession for the installation, operation and exploitation of public telecommunication services.

Existing Measures:

Sector: Education Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to natural persons who supply educational services, including teachers and auxiliary personnel rendering educational services in basic and superior education including technical and productive training (educación técnico productiva) as well as other people who supply services related to education including sponsors of educational institutions of any level or stage of the educational system.

Existing Measures:

Sector: Transportation Services

Sub-Sector: Road Transportation Services

Obligations Concerned: National Treatment (Article 10.3)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure that authorises only Peruvian natural or juridical persons to supply land transportation of persons or merchandise inside the territory of Peru (cabotage). For this, the enterprises shall use vehicles registered in Peru.

Existing Measures:

Sector: Transportation

Sub-Sector: International road transportation services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to the international land transportation of cargo or passengers in border areas.

Additionally, Peru reserves the right to adopt or maintain the following limitations for the supply of international land transportation from Peru:

(a) the service supplier must be a Peruvian natural or juridical person;

(b) the service supplier must have a real an effective domicile in Peru; and

(c) in the case of juridical persons, the service supplier must be legally constituted in Peru and more than 50 per cent of its capital stock must be owned by Peruvian nationals and its effective control must be by Peruvian nationals.

Existing Measures:

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to ground-handling services.

Existing Measures:

Sector: Transportation

Sub-Sector: Air transportation services

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to airport operation services.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Peru reserves the right to adopt or maintain any measure relating to Article 10.5 (Market Access), except for the following sectors and sub-sectors subject to the limitations and conditions listed below:

Legal services: For (a) and (c): None, except that the number of notary positions depends of the number of inhabitants of each city. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Accounting, auditing and bookkeeping services: For (a) and (c): None, except that auditing societies shall be constituted only and exclusively by public accountants licensed and resident in the country and duly qualified by the Association of Public Accountants of Lima (Colegio de Contadores Públicos de Lima). No partner may be a member of another auditing society in Peru. For (b): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Taxation services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Architectural services: For (a), (b) and (c): None, except that for temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Integrated engineering services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Urban planning and landscape architectural services: For (a), (b) and (c): None, except that to obtain temporary registration, non-resident foreign architects must have a contract of association with a Peruvian architect residing in Peru. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Veterinary Services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services provided by midwives, nurses, physiotherapists, and paramedical personnel: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Computer and Related Services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and Development services on natural sciences: For (a), (b) and (c): None, except that a permission of operation may be required and the competent authority may require the inclusion to the expedition of one or more representatives of the Peruvian pertinent activities, in order to participate and know the studies and its scope. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Research and Development services on social sciences and humanities: For (a), (b) and (c): None, subject to the respective

authorisations of the competent authority. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Interdisciplinary Research and Development services: For (a), (b) and (c): None, except that a permission of operation may be required. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Real Estate Services: Involving owned or leased property or on a fee or contract basis: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Rental/leasing services without crew/operators, related to vessels, aircraft, any other transport equipment, and other machinery and equipment:

For (a), (b) and (c): None, except that:

A “National Shipowner” or “National Ship Enterprise” is understood as a natural person of Peruvian nationality or juridical person constituted in Peru, with its principal domicile and real and effective headquarters in Peru, whose business is to provide water transportation services in national traffic or cabotage (4) or international traffic and who is the owner or lessee under a financial lease or a bareboat charter, with an obligatory purchase option, of at least one Peruvian flag merchant vessel and that has obtained the relevant Operation Permit from the General Aquatic Transport Directorate (Dirección General de Transporte Acuático).

Cabotage is exclusively reserved to Peruvian flagged merchant vessels owned by a National Shipowner or National Ship Enterprise or leased under a financial lease or a bareboat charter, with an obligatory purchase option, except that:

(i) up to 25 per cent of the transport of hydrocarbons in national waters is reserved for the ships of the Peruvian Navy; and

(ii) foreign-flagged vessels may be operated exclusively by National Shipowners or National Ship Enterprise for a period of no more than six months for water transportation exclusively between Peruvian ports or cabotage when such an entity does not own its own vessels or lease vessels under the modalities previously mentioned.

For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

(4) For greater certainty, water transportation includes transportation by lakes and rivers.

Advertising services: For (a), (b) and (c): None, except that: Commercial advertising produced in Peru, must use at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in commercial advertising. For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Market research and public opinion polling services, management consulting services, services related to management consulting, and technical testing and analysis services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to agriculture, hunting, and forestry: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services incidental to fishing: solely advisory and consulting services relating to fishing: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services related to mining, placement and supply services of personnel, and investigation and security services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Related scientific and technical consulting services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Maintenance and repair of equipment (not including vessels, aircraft, or other transport equipment), building-cleaning

services, photographic services, packing services and convention services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratacion de Trabajadores Extranjeros).

Printing and publishing services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Other (CPC 8790) except: credit rating services (CPC 87901); jewellery design services; design services of handicrafts that are identified as Peruvian handicrafts; and other business services non elsewhere classified (CPC 87909): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Express delivery services: For (a) and (b): No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Advisory services on telecommunications: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

National or international long-distance telecommunications services: For (a), (b), (c) and (d): Peru reserves the right to adopt or maintain any measure that is not inconsistent with Peru's obligations under Article XVI of GATS.

Carrier telecommunications services, private telecommunications services and value added services (5):

For (a), (b), (c): None, except for the obligation of obtaining a concession, authorisation, registry or any other title which Peru considers convenient to grant in order to habilitate the suppliers to provide these services. The juridical persons constituted under Peruvian law can be eligible for a concession.

Call-back, understood as being the offer of telephone services for the realisation of attempts to make calls originating in the country with the objective of obtaining a return call with an invitation to dial, coming from a basic telecommunications network located outside the national territory, is prohibited.

International traffic shall be routed through the installations of a company holding a concession or other permission for operation granted by the Ministry of Transport and Communications (Ministerio de Transportes y Comunicaciones).

Interconnection among private services is prohibited.

For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

(5) Value added services shall be defined in accordance with Peruvian legislation.

Commission agents services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Retailing services, except alcohol and tobacco: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Wholesale trade services (except hydrocarbons): For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Franchising: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Construction services: solely consulting services related to construction: For (a), (b) and (c): None. For (d): Nocommitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Higher Education Services (6): For (a): No commitments, except for subjects that are part of a program that mainly takes place outside Peru. For (b): None. For (c) and (d): No commitments.

(6) For greater certainty, these commitments do not affect any regulation or mandatory requirements related to the recognition of certificates or degrees and they shall not be construed to exempt any student from meeting any applicable requirement to practice a profession or otherwise engage in business activities.

Environmental services: solely consulting services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Hotels and restaurants (including catering), travel agencies and tour operators services, and tourist guide services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Entertainment services (including theatre, live bands, and circus services), news agencies services, libraries, archives, museums, and other cultural and sporting services: For (a), (b) and (c): None, except that:

(i) any domestic theatre (7) and visual arts production and any domestic artistic live performance must be comprised of at least 80 per cent national artists. National artists shall receive no less than 60 per cent of the total payroll for wages and salaries paid to artists. The same percentages established in the preceding paragraphs shall govern the work of technical personnel involved in artistic activities.

(ii) a foreign circus may stay in Peru with the original cast for a maximum of 90 days. This period may be extended for the same period of time. If it is extended, the foreign circus will include a minimum of 30 per cent Peruvian nationals as artists and 15 per cent Peruvian nationals as technicians. The same percentages shall apply to the payroll of salaries and wages.

For (d): No commitments, except as indicated in the Law of the Artist and Performer (Ley del Artista, Intérprete y Ejecutante) and Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

(7) The term "theatre arts" means live performances or presentations such as drama, dance or music.

Exploitation of facilities for competitive and recreational sports: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Recreational parks services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Road Transport: rental of commercial vehicles with operator, maintenance and repair of road transport equipment, and exploitation of roads, bridges and tunnels services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Services auxiliary to all transport: cargo handling services; storage and warehouse services; freight transport agency services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Aircraft repair and maintenance services: For (a): No commitments. For (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Selling and marketing of air transport services, and computer reservation system services: For (a), (b) and (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

Airport operation and ground handling services: For (a) and (b) No commitments. For (c): None. For (d): No commitments, except as indicated in the Law for Foreign Workers Recruitment (Ley para la Contratación de Trabajadores Extranjeros).

For greater certainty, nothing in this entry shall be inconsistent with Peru's commitments under Article XVI of GATS.

For purposes of this entry:

1. "(a)" refers to the supply of a service from the territory of one Party into the territory of Peru;

2. "(b)" refers to the supply of a service in the territory of a Party by one person of that Party to a person of Peru;

3. "(c)" refers to the supply of a service in the territory of Peru by an investor of another Party or by a covered investment; and

4. "(d)" refers to the supply of a service by a national of a Party in the territory of Peru.

5. "None" means no limitations or conditions on the application of Article 10.5 (Market Access).

Existing Measures:

SCHEDULE OF SINGAPORE

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons.

Existing Measures:

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure in relation to the divestment of the administrator and operator of airports.

Existing Measures:

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to maintain or adopt any measure affecting the supply of the following services:

(a) social services;

(b) social security;

(c) public training;

(d) ambulance services; and

(e) health services by government-owned or controlled healthcare institutions, such as hospitals and polyclinics, including investments in these institutions, hospitals and polyclinics.

Existing Measures:

Sector:

All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to maintain or adopt any measure affecting:

(a) the full or partial devolvement to the private sector of services provided in the exercise of governmental authority;

(b) the divestment of its equity interests in, and/or the assets of, an enterprise that is wholly owned by the Singapore government; and

(c) the divestment of its equity interests in, and/or the assets of, an enterprise that is partially owned by the Singapore government.

However, the right referred to in the preceding paragraph shall, in respect of measures affecting:

(i) subparagraph (a) (to the extent that the devolvement is accompanied by a divestment), and

(ii) subparagraphs (b) and (c),

pertain only to the initial divestment and Singapore does not reserve this right with respect to subsequent divestments of such divested equity interests and/or assets. (1)

Existing Measures:

(1) For greater certainty, any transfer of equity interests and/or assets to an enterprise that is wholly owned by the Singapore government, whether for consideration or not, shall not be considered to be a divestment.

Sector: Administration and Operation of National Electronic Systems

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure relating to or affecting the collection and administration of proprietary information by national electronic systems.

Existing Measures:

Sector: Arms and Explosives

Sub-Sector: Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the arms and explosives sector.

Existing Measures: Arms and Explosives Act, Cap. 13, 2003 Rev Ed

Sector: Broadcasting Services

Broadcasting is defined as the transmission of signs or signals via any technology for the reception and/or display of aural

and/or visual programme signals by all or part of the domestic public.

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Board of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting broadcasting services receivable by Singapore's domestic audience or originating from Singapore, including but not limited to:

(a) transmission quotas for content on television broadcasting services in Singapore;

(b) non-discriminatory expenditure requirements for Singapore production on television broadcasting services;

(c) transmission quotas for content on radio in Singapore;

(d) spectrum management and licensing of broadcasting services; or

(e) subsidies or grants for investment involving Singapore subjects, persons and services.

This entry does not apply to:

(i) a service supplier of another Party, an investor of another Party, or a covered investment of an investor of another Party, in respect of measures affecting the supply of non-scheduled broadcasting services, to the extent that Singapore is bound to accord national treatment to that service supplier, investor or covered investment for non-scheduled broadcasting services under an agreement between Singapore and that Party, that was notified to the WTO Council for Trade in Services under Article V:7 of GATS prior to entry into force of this Agreement;

(ii) the sole activity of transmitting licensed broadcasting services to a final consumer;

(iii) the production, distribution and public display of motion pictures, video recordings and sound recordings. Commitments in the production, distribution and public display of motion pictures, video recordings and sound recordings shall not include all the broadcasting and audio-visual services and materials that are broadcasting-related. Examples of services that are reserved include: free-to-air broadcasting, cable and pay television; and

(iv) value-added network (VAN) services such as electronic-mail, voice-mail, online information and data-base retrieval, electronic data interchange, and online information and/or data processing.

Existing Measures:

Sector: Business Services

Sub-Sector: Patent agent services

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3)

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the recognition of educational and professional qualifications for purposes such as admission, registration and qualification for patent agents.

Existing Measures: Patents Act, Cap. 221, 2005 Rev Ed

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market

Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting real estate. This includes, but is not limited to, measures affecting the ownership, sale, purchase, development and management of real estate.

This entry does not apply to real estate consultancy services, real estate agency services, real estate auction services, real estate valuation services, and renting or leasing services involving owned or leased non-residential property.

Existing Measures: Residential Property Act, Cap. 274, 2009 Rev Ed

State Lands Act, Cap. 314, 1996 Rev Ed

Housing and Development Act, Cap. 129, 2004 Rev Ed

Jurong Town Corporation Act, Cap. 150, 1998 Rev Ed

Executive Condominium Housing Scheme Act, Cap. 99A, 1997 Rev Ed

Planning Act, Cap 232

Sector: Business Services

Sub-Sector: Scientific and technical consulting services

Industry Classification: CPC 8675 Engineering related scientific and technical consulting services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Most-Favoured-Nation Treatment (Article 9.5 and Article10.4)

Performance Requirements (Article 9.10)

Senior Management and Boards of Directors (Article 9.11)

Market Access (Article 10.5)

Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of the following services:

(a) geological, geophysical and other scientific prospecting services (CPC 86751);

(b) subsurface surveying services (CPC 86752);

(c) surface surveying services (CPC 86753); and

(d) map making services (CPC 86754).

Existing Measures:

Sector: Business Services

Sub-Sector: Armed escort services and armoured car services, Armed guard services

Industry Classification: CPC 87305 Guard Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the provision of armed escort, armoured car and armed guard services.

Existing Measures: Part IX of the Police Force Act, Cap. 235, 2006 Rev Ed

Sector: Business Services

Sub-Sector: Betting and gambling services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of betting and gambling services.

Existing Measures: Betting Act, Cap. 21, 2011 Rev Ed

Common Gaming Houses Act, Cap. 49, 1985 Rev Ed

Private Lotteries Act, Cap. 250

Sector: Business Services

Sub-Sector:

Legal services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of legal services in the practice of Singapore law.

Existing Measures:

Legal Profession Act, Cap. 161

Sector: Community, Personal and Social Services

Sub-Sector: Services furnished by trade unions

Industry Classification: CPC 952 Services furnished by trade unions

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting services provided by trade unions.

Existing Measures: Trade Unions Act, Cap. 333, 2004 Rev Ed

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Singapore reserves the right to adopt or maintain any measure in relation to the retention of a controlling interest by the

Singapore Government in Singapore Technologies Engineering (the Company) or its successor body, including but not limited to controls over the appointment and termination of members of the Board of Directors, divestment of equity and dissolution of the Company.

Existing Measures:

Sector: Distribution, Publishing and Printing of Newspapers

“Newspaper” means any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments, in relation to such news, intelligence, reports of occurrences, or to any other matter of public interest, printed in any language and published for sale or free distribution at regular intervals or otherwise, but does not include any publication published by or for the Government.

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the distribution, publishing and printing of newspapers, including but not limited to, shareholding limits and management control.

Existing Measures: Newspaper and Printing Presses Act, Cap. 206, 2002 Rev Ed

Sector: Trade Services

Sub-Sector: Distribution services, Commission agents’ services, Wholesale trade services, Retailing services, Franchising

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of any products subject to import or export prohibition or non-automatic import or export licensing.

Singapore reserves the right to modify or increase the list of products stipulated in the laws, regulations and other measures governing Singapore’s import or export prohibition or non-automatic import or export licensing regime.

Existing Measures:

Sector: Educational Services

Sub-Sector: Primary education services, Secondary education services

Industry Classification: CPC 921 Primary Education Services CPC 92210 General Secondary Education Services CPC 92220 Higher Secondary Education Services (only applies to Junior colleges and pre-university centres under the Singapore educational system)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of primary, general secondary and higher secondary (only applies to junior colleges and pre-university centres under the Singapore educational system) education services for Singapore citizens, including Sports Education Services.

Existing Measures: Education Act, Cap. 87, 1985 Rev Ed

Administrative Guidelines

Private Education Act, Cap. 247A, 2011 Rev Ed

Sector: Health and Social Services

Sub-Sector: Medical services, Pharmacy services, Deliveries and related services, nursing services, physiotherapeutic and para-medical services, and allied health services, Optometrists and opticians

Industry Classification:

Obligations Concerned: National Treatment (Article 10.3) Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any limit on the number of service suppliers providing, including but not limited to, the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services, allied health services, and optometry and opticianry services.

Singapore reserves the right to adopt or maintain any measure with respect to the regulation of service suppliers providing, including but not limited to, the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services, allied health services, and optometry and opticianry services.

Existing Measures: Allied Health Professions Act 2011

Sector: Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

Sub-Sector: Waste water management, including but not limited to collection, disposal and treatment of solid waste and waste water

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting waste water management, including but not limited to the collection, treatment and disposal of waste water.

Existing Measures: Code of Practice on Sewerage and Sanitary Works

Sewerage and Drainage Act, Cap. 294, 2001 Rev Ed

Sector: Postal Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description:

Investment and Cross-Border Trade in Services: Singapore reserves the right to adopt or maintain any measure relating to a Public Postal Licensee.

Existing Measures:

Sector: Telecommunications Services

Sub-Sector: Telecommunications services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure that accords treatment to persons of another Party equivalent to any measure adopted or maintained by that other Party limiting ownership by persons of Singapore enterprises engaged in the provision of public mobile and wireless communications in the territory of that other Party, including:

(a) Public Radiocommunication Services (Public Radiocommunication Services refer to Maritime and Aeronautical radiocommunication services);

(b) Public Cellular Mobile Telephone Service (PCMTS);

(c) Public Radio Paging Services (PRPS);

(d) Public Trunked Radio Services (PTRS);

(e) Public Mobile Data Services (PMDS);

(f) Public Mobile Broadband Multimedia Services; and

(g) Public Fixed-Wireless Broadband Multimedia Services.

Existing Measures:

Sector: Trade Services

Sub-Sector: Supply of potable water for human consumption

Industry Classification: CPC 18000 Natural Water

The sectors listed above apply only insofar as they relate to the supply of potable water

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of potable water.

For greater certainty, this entry does not affect the supply of bottled water.

Existing Measures: Public Utilities Act, Cap. 261, 2002 Rev Ed

Sector: Transport Services

Sub-Sector: Air transport services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting cross-border supply of:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

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

(c) computer reservation system services;

(d) airport operation services; and

(e) ground handling services.

Singapore reserves the right to adopt or maintain any measure affecting investments in air transport related services.

Existing Measures: Civil Aviation Authority of Singapore Act 2009

Sector: Specialty Air Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of specialty air services.

Existing Measures:

Sector : Transport Services

Sub-Sector: Land transport services – Passenger transport services, including but not limited to passenger transportation services by railway, urban and suburban regular transportation services, taxi services; bus and rail station services and ticketing services related to passenger transport services

Passenger Transport Services are services which are used by and accessible to members of the public for the purposes of transporting themselves within Singapore.

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of passenger transport services.

Existing Measures: Rapid Transit Systems Act, Cap. 263A

Land Transport Authority of Singapore Act, Cap. 158A, 1996 Rev Ed

Public Transport Council Act, Cap. 259B, 2012 Rev Ed

Road Traffic Act, Cap. 276, 2004 Rev Ed

Sector: Transport Services

Sub-Sector: Land transport services – railway and road freight transportation, Supporting services for railway and road transport services

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of land transport services as set out above.

This entry does not apply to:

(a) maintenance and repair services of motor vehicles (CPC 61120);

(b) maintenance and repair services of parts of motor vehicles (CPC 88**) (2); and

(c) parking services (CPC 74430).

Existing Measures:

(2) In this Annex, "**" indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

Sector: Transport Services

Sub-Sector: Services auxiliary to all modes of transport

Industry Classification: CPC 742 Storage and warehousing services CPC 742** Container station and depot services CPC 748 Freight transport agency services CPC 7123** Inland trucking services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure that accords equivalent treatment to storage and warehousing, freight forwarding, inland trucking, container station and depot services of another Party.

Existing Measures:

Sector: Transport Services

Sub-Sector: Maritime transport services – Towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

Industry Classification: CPC 74510 Port and Waterway Operation Services CPC 74520 Pilotage and Berthing Services CPC 74530 Navigation Aid Services CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

For greater certainty, no measures shall be applied which deny international maritime transport operators reasonable and non-discriminatory access to the above port services.

This entry does not apply to:

(a) international transport (freight and passengers) excluding cabotage transport (CPC 7211**, 7212**);

(b) international towage (CPC 7214**);

(c) rental of vessels with crew (CPC 7213); and

(d) other supporting and auxiliary services (including catering) (CPC 749**).

Existing Measures: Maritime and Port of Singapore Act, Cap. 170A, Section 41 (Part VIII)

Sector: Transport Services

Sub-Sector: Transportation services via pipeline

Industry Classification: Transportation of goods via pipeline of goods such as chemical and petroleum products and petroleum, and other related products

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to provide transportation services via pipeline of goods such as chemical and petroleum products and petroleum, and other related products.

Singapore reserves the right and flexibility to modify or increase the list of the chemical and petroleum products, and other related products that are subject to this entry.

Existing Measures: Administrative

Sector: Trade Services

Sub-Sector: Wholesale trade services and retail trade services of alcoholic beverages and tobacco

Industry Classification:

Obligations Concerned: Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of wholesale and retail trade services of tobacco products and alcoholic beverages.

Existing Measures:

Sector: Energy

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross Border Trade in Services

Singapore reserves the right to adopt or maintain any measure in order to prohibit, manage or control the generation, use, distribution and retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.

Existing Measures:

Sector: All

Sub-Sector: Industry Classification:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to ASEAN member states under any ASEAN agreement open to participation by any ASEAN member state, in force or signed after the date of entry into force of this Agreement.

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation matters;

(b) maritime matters and services auxiliary to maritime matters;

(c) port matters;

(d) land transport matters; and

(e) telecommunication matters.

Existing Measures:

SCHEDULE OF THE UNITED STATES

Sector: Communications

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to:

(a) adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services; and

(b) prohibit a person of a Party from offering DTH or DBS television and digital audio services into the territory of the United States unless that person establishes that the Party of which it is a person:

(i) permits U.S. persons to obtain a licence for such service in that Party in similar circumstances; and

(ii) treats the supply of audio or video content originating in the Party no more favourably than the supply of audio or video content originating in a non-Party or any other Party.

Sector: Communications – Cable Television

Obligations Concerned: National Treatment (Article 9.4) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

The United States reserves the right to adopt or maintain any measure that prohibits a person of a Party from owning or operating a cable television system in the territory of the United States unless that person establishes that the Party:

(a) permits U.S. persons to own or operate such systems in the territory of the Party under similar circumstances; and

(b) treats the supply of video content originating in the Party no more favourably than the supply of content of any other Party or non-Party.

A measure may be deemed to treat content of a Party more favourably if it applies preferential treatment on the basis that the director, producer, publisher, actors or owner of such content is a person of that Party, or the production, editing or distribution of such content took place in the territory of that Party, or on any other basis that affords protection to local production.

Sector: Social Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

Sector: Minority Affairs

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or

economically disadvantaged minorities, including corporations organised under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act.

Existing Measures: Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

Sector: Transportation

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

1. The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

(a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

(b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;

(c) requirements for investment in, ownership or control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;

(d) requirements related to documenting a vessel under the U.S. flag;

(e) promotional programmes, including tax benefits, available for shipowners, operators, and vessels meeting certain requirements;

(f) certification, licensing and citizenship requirements for crew members on U.S.-flagged vessels;

(g) manning requirements for U.S.-flagged vessels;

(h) all matters under the jurisdiction of the Federal Maritime Commission;

(i) negotiation and implementation of bilateral and other international maritime agreements and understandings;

(j) limitations on longshore work performed by crew members;

(k) tonnage duties and light money assessments for entering U.S. waters; and

(l) certification, licensing and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

2. The following activities are not included in this entry. However, the treatment provided to a Party in (b) is conditional upon obtaining comparable market access in these sectors from that Party:

(a) vessel construction and repair; and

(b) landside aspects of port activities, including operation and maintenance of docks; loading and unloading of vessels directly to or from land; marine cargo handling; operation and maintenance of piers; ship cleaning; stevedoring; transfer of cargo between vessels and trucks, trains, pipelines and wharves; waterfront terminal operations; boat cleaning; canal operation; dismantling of vessels; operation of marine railways for drydocking; marine surveyors, except cargo; marine wrecking of vessels for scrap; and ship classification societies.

Existing Measures: Merchant Marine Act of 1920, §§ 19 and 27, 46 U.S.C. 12101, 12118, 12120, 12132, 12139, 12151, 42101-42109, 55102, 55105-55110, 55115-55119, 58108

Jones Act Waiver Statute, 46 U.S.C. 501

Shipping Act of 1916, 46 U.S.C. 50501, 56101, 57109, 50111

Merchant Marine Act of 1936, 46 U.S.C. 109, 114, 50111, 50501, 53101 note, 53301-53312, 53501-53517, 53701-53718, 53721-53725, 53731-53735, 55304-55305, 57101-57104, 57301-57308

Merchant Ship Sales Act of 1946, 50 U.S.C. App. 1738

46 U.S.C. 55109, 55111, 55118, 60301-60302, 60304-60306, 60312, 80104

46 U.S.C. 12101 et seq., 12112, 12121, and 31301 et seq.

46 U.S.C. 8904

Passenger Vessel Services Act, 46 U.S.C. 55103

42 U.S.C. 9601 et seq.; 33 U.S.C. 2701 et seq.; 33 U.S.C. 1251 et seq.

46 U.S.C. 3301 et seq., 3701 et seq., 8103, and 12107(b)

The Foreign Shipping Practices Act of 1988, 46 U.S.C. 306, 41108, 42101, 42301-42307

Merchant Marine Act, 1920, 46 U.S.C. 50101, 50302, 53101 note, 57108

Shipping Act of 1984, 46 U.S.C. 305-306, 40101 note, 40101-40104, 40301-40307, 40501-40503, 40701-40706, 40901-40904, 41101-41109, 41301-41309, 42101, 42301-42307

Exports of Alaskan North Slope Oil, 104 Pub. L. 58, Title II; 109 Stat. 557, 560-63; codified at 30 U.S.C. 185(s), 185 note

Limitations on performance of longshore work by alien crewmen, 8 U.S.C. 1288

Maritime Transportation Security Act of 2002, Pub. L. 107-295, § 404; 116 Stat. 2064, 2114-15, codified at 46 U.S.C. 55112

Nicholson Act, 46 U.S.C. 55114

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, Pub. L. 100-239; 101 Stat. 1778, codified in part at 46 U.S.C. 108, 2101, 2101 note, 12113

43 U.S.C. 1841

22 U.S.C. 1980

46 U.S.C. 9302, 46 U.S.C. 8502; Agreement Governing the Operation of Pilotage on the Great Lakes, Exchange of Notes at Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445

Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

19 U.S.C. 1466

North Pacific Anadromous Stocks Act of 1992, Pub. L. 102-567; Oceans Act of 1992, Pub. L. 102-587

Tuna Convention Act, 16 U.S.C. 951 et seq.

South Pacific Tuna Act of 1988, 16 U.S.C. 973 et seq.

Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 et seq.

Atlantic Tunas Convention Act, 16 U.S.C. 971 et seq.

Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 et seq.

Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 et seq.

American Fisheries Act, 46 U.S.C. 12113 and 46 U.S.C. 31322

Sector: Services Related to Air Transportation

Obligations Concerned: National Treatment (Article 10.3) Most-Favoured-Nation Treatment (Article 10.4) Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure relating to the cross-border supply of airport operation services, computer reservation system services, ground handling services, and selling and marketing of air transport services, as defined in Article 10.1 (Definitions).

Existing Measures: International Air Transportation Fair Competitive Practices Act of 1974, as amended

Sector: Betting and Gambling

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure relating to betting and gambling services.

Sector: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of GATS as set out in the U.S. Schedule of Specific Commitments under GATS (GATS/SC/90, GATS/SC/90/Suppl.1, GATS/SC/90/Suppl.2, and GATS/SC/90/Suppl.3).

For the purposes of this entry only, the U.S. Schedule of Specific Commitments is modified as indicated in Appendix II-A.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries;

(c) maritime matters, including salvage; or

(d) launch of satellites in the international commercial space launch market (1).

(1) The United States will implement subparagraph (d) consistent with its most-favoured-nation exemption for space transportation under GATS.

APPENDIX II-A. United States

For the following Sectors, U.S. obligations under Article XVI of GATS as set out in the U.S. Schedule of Specific Commitments under GATS (GATS/SC/90, GATS/SC/90/Suppl.1, GATS/SC/90/Suppl.2, and GATS/SC/90/Suppl.3) are improved as described.

Sector/Subsector	Market Access Improvements
Foreign Legal Consulting Services	Insert new commitments for the following states: Louisiana, New Mexico: No limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section." Arizona, Indiana, Massachusetts, North Carolina, Utah: No limitations modes 1-2; for mode 3 "in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, an in-state law office required." Missouri: No limitations modes 1-2; for mode 3

	"Association with in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, association with an in-state law office required."
Accounting, Auditing and Bookkeeping Services	Modify mode 3 limitation as shown in the following mark-up: "Sole proprietorships or partnerships are limited to persons licensed as accountants. Modify mode 4 limitation as shown in the following mark-up: "In addition, an in-state office must be maintained to receive a license to perform audits in:"
Engineering Services, Integrated Engineering Services	Replace existing description of Mode 4 with "Unbound, except as indicated in the horizontal section."
Research and development services: R&D services on natural sciences, social sciences and humanities, and interdisciplinary R&D services, excluding R&D financed in whole or in part by public funds	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Technical testing and analysis services, other than government-mandated services or services financed in whole or in part by public funds	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other business services: Other	Insert new commitments for "Other" under "Other business services" with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Express Delivery Services (as defined in Annex 10-B (Express Delivery Services))	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other Delivery Services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Multi-channel video services over provider-owned cable systems	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Information services (the offering of a capability for generating, acquiring, storing transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Higher Education Services (except flying instruction) (2)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Motion Picture & Video Tape Home Video Entertainment Production and Distribution, Promotion	

or advertising services, Motion picture or video tape (3) production services, Motion picture or video tape (3) distribution services, Other services in connection with motion pictures and video tape (3) production and distribution, Motion Picture Projection Services, Radio and Television Services, Radio and Television Distribution Services, Other services in connection with motion pictures and video tape (3) production and distribution (4)	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Environmental Services, Wastewater Management, excluding Water for Human Use (Wastewater services (contracted by private industry)),Solid/hazardous waste management (contracted by private industry), Refuse disposal services, Sanitation and Similar Services, Protection of ambient air and climate (Services to reduce exhaust gases and other emissions to improve air quality), Remediation and cleanup of soil and water (Treatment, remediation of contaminated/ polluted soil and water), Noise and vibration abatement (Noise abatement services), Protection of biodiversity and landscape (Nature and landscape protection services), Other environmental and ancillary services (Other services not classified elsewhere)	Insert commitments according to this revised classification with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Physical well-being services (5), (6)	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Road freight transport	Insert new commitments for domestic transportation with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”
Cargo-handling services, Storage and warehouse services, and Freight transport agency services, except maritime or air transport services	Insert new commitments with no limitations for modes 1-3 and mode 4 “Unbound, except as indicated in the horizontal section.”

(2) For transparency purposes, individual U.S. institutions maintain autonomy in admission policies, in setting tuition rates, and in the development of curricula or course content. Educational and training entities must comply with requirements of the jurisdiction in which the facility is established. In some jurisdictions, accreditation of institutions or programmes may be required. Institutions maintain autonomy in selecting the jurisdiction in which they will operate, and institutions and programmes maintain autonomy in choosing to meet standards set by accrediting organisations as well as to continue accredited status. Accrediting organisations maintain autonomy in setting accreditation standards. Tuition rates vary for in-state and out-of-state residents. Additionally, admissions policies include considerations of equal opportunity for students (regardless of race, ethnicity or gender), as permitted by domestic law, as well as recognition by regional, national or specialty organisations; and required standards must be met to obtain and maintain accreditation. To participate in the U.S. student loan program, foreign institutions established in the United States are subject to the same requirements as U.S. institutions.

(3) For purposes of clarity, this class refers to theatrical and non-theatrical motion pictures, whether provided on fixed media or electronically.

(4) For greater clarity, distribution services in this context may include the licensing of motion pictures or video tapes to other service providers for exhibition, broadcasting or other transmission, rental, sale or other use.

(5) For transparency purposes, this subsector includes physical well-being services such as delivered by, inter alia, fitness centres, spas, salons, massage (excluding therapeutic massage) and ayurvedics. This subsector does not include regulated medical services.

(6) For greater certainty, nothing in this commitment authorises the provision of unregulated substances or affects the ability of state authorities to regulate substances that may be affiliated with these services.

SCHEDULE OF VIET NAM

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure conferring rights or privileges to socially, economically and geographically disadvantaged minorities and ethnic groups.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to limit the transfer or disposal of any interest held in an existing state enterprise to nationals of Viet Nam. This entry pertains only to the initial transfer or disposal of such interest. Viet Nam does not reserve this right with respect to subsequent transfers or disposals of such interest to nationals of Parties on the date hereof, subject to any limitation found in Viet Nam's Annex I and Annex II.

Where Viet Nam transfers or disposes of an interest in an existing state enterprise in multiple phases, the preceding paragraph shall apply separately to each such phase.

Existing Measures: Law No. 59/2005/QH11 on Investment dated 29 November 2005

Law No. 60/2005/QH11 on Enterprise dated 29 November 2005

Decree No.108/2006/ND-CP dated 22 September 2006

Decree No. 139/2007/ND-CP dated 5 September 2007

Sector: All

Sub-Sector:

Obligations concerned: National Treatment (Article 9.4)

Description: Investment

The level of equity purchased on the Vietnamese stock exchange by foreign investors is subject to any equity limitations set forth in this Annex and Viet Nam's Annex I. (1)

Existing Measures:

(1) For greater certainty, while this entry is included in Annex II, equity limitations in Annex I are subject to the rules applicable to Annex I entries, including pursuant to Article 9.12.1 (Non-Conforming Measures).

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure relating to land ownership.

Existing Measures: Law No. 45/2013/QH13 on Land dated 29 November 2013 and its implementing regulations.

Sector: All

Sub-Sector:

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure that accords differential treatment:

(a) to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement; and

(b) to ASEAN Member States under any ASEAN agreement open to participation by any ASEAN Member State, in force or signed after the date of entry into force of this Agreement.

Viet Nam reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) maritime matters, including salvage;

(b) fisheries; and

(c) aviation.

Existing Measures:

Sector: Transport Services

Sub-Sector: Air-transport related services

Obligations Concerned: National Treatment (Article 9.4 and 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to:

(a) specialty air services (except for commercial flight training);

(b) ground handling; and

(c) airport operation services.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure regarding assistance to small and medium-sized enterprises

(2) in production site selection and related regulatory matters, human resource training, providing research assistance and information on technology and equipment, legal assistance, and providing marketing assistance and promotional information.

Existing Measures: Decree No. 56/2009/ND-CP dated 30 June 2009

(2) The term "small and medium-sized enterprise" is defined under Article 3 of the Decree No.56/2009/ND-CP, dated 30 June 2009 of the Government as follows: small and medium-sized enterprise is an enterprise established in accordance with Vietnamese law which has less than or equal to 300 employees or has total legal capital of less than or equal to VND 100 billion.

Sector: River Ports, Sea Ports and Airports Construction, operation and management

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to the construction, operation and management of river ports, sea ports and airports.

This entry shall not be invoked to nullify the commitments set out in Viet Nam's Annex I.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to the establishment and operation of co-operatives, union of co-operatives, household business and sole-proprietorship.

Existing Measures:

Sector: Agriculture

Sub-Sector: Cultivating, producing or processing rare or precious plants, breeding or husbandry of precious or rare wild animal and processing of those plants or animals (including both living animals and processed matter taken from animals) (3)

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure relating to investment in the above mentioned sector and sub-sectors.

Existing Measures:

(3) A list of rare or precious plants and animals can be found in the following website: www.kiemlam.org.vn.

Sector: Distribution Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)

Description: Investment and Cross-Border Trade in Services

1. Viet Nam reserves the right to adopt or maintain any measure in regard of cross-border trade in:

(a) commission agents' services (CPC 621, 61111, 6113, 6121);

(b) wholesale trade services (CPC 622, 61111, 6113, 6121); and

(c) retailing services (CPC 631 and 632, 61112, 6113, 6121) (4),

regarding the distribution of products other than products for personal use and legitimate computer software for personal and commercial use.

2. Notwithstanding the above, with respect to the distribution of the following products covered by CPC 621, 622 and 632, Viet Nam reserves the right to adopt or maintain any measure in regard of cross-border trade in services and investment regarding cigarettes and cigars, publications (5), precious metals and stones, pharmaceutical products and drugs (6), explosives, processed oil and crude oil.

Existing Measures: Law on Trade No. 36/2005/QH11 dated 14 June 2005

Decree No. 23/2007/ND-CP dated 12 February 2007

Revised Publishing Law No. 19/2012/QH13

Amendment and Supplement to Publishing Law No 12/2008/QH12 dated 3 June 2008

Decree No. 11/2009/ND-CP dated 10 February 2009

Decree No. 110/2010/ND-CP dated 6 November 2010

Circular N006F 02/2010/TT-BTTTT dated 11 January 2010

(4) For transparency purposes, these services include multi-level sales by properly trained and certified Vietnamese individual commission agents away from a fixed location for which remuneration is received both for the sales effort and for sales support services that result in additional sales by other contracted distributors.

(5) For greater clarity, publications means books, newspapers and magazines.

(6) For the purposes of this Schedule, "pharmaceuticals and drugs" do not include non-pharmaceutical nutritional supplements in tablet, capsule or powdered form.

Sector: Telecommunication services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to investment in, building of, operating and exploiting telecommunication networks and services serving ethnic minorities in rural and remote areas of Viet Nam.

Existing Measures:

Sector: Audio-visual Services

Sub-Sector: Sound recording

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to sound recording services except that it shall

permit foreign ownership of up to 51 per cent in enterprises engaged in sound recording.

Existing Measures:

Sector: Educational Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to investment in secondary education services.

This entry shall not be invoked to nullify the commitments set out in Viet Nam's Annex I.

Existing Measures:

Sector: Educational Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to investment in and the supply of primary education services.

This entry shall not be invoked to nullify the commitments set out in Viet Nam's Annex I.

Existing Measures:

Sector: Performing Arts and Fine Arts

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure to grant preferential treatment to Vietnamese artists and Vietnamese-owned companies in the performing arts, fine arts and other cultural activities (7).

Existing Measures:

(7) For greater certainty, other cultural activities mean photography, art exhibitions, fashion shows, beauty and model contests, karaoke and discotheque business, and festival organisation.

Sector: Cultural Heritage

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure to protect, maintain and renovate Viet Nam's tangible heritages as defined in the Law on Cultural Heritage (2001) and the revised Law on Cultural Heritage (2009) and intangible cultural heritages as covered by the revised Law on Cultural Heritage (2009).

Existing Measures: Law No.28/2001/QH10 on Cultural Heritage dated 29 June 2001 and Law No. 32/2009/QH12 amending and supplementing a number of articles of the Law on Cultural Heritage dated 19 June 2009

Sector: Mass Communication

Sub-Sector: Press and news-gathering agencies, publishing, radio and television broadcasting, in any form

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to the sub-sectors listed above, including regulating activities in these sub-sectors in accordance with Viet Nam's laws and regulations.

For greater certainty, the absence of a reservation against the cross-border services obligations does not preclude Viet Nam from ensuring that the cross-border supply of the listed sub-sectors complies with Viet Nam's laws and regulations, including applicable registration and licensing requirements.

Existing Measures:

Sector: Production and Distribution of Video Records

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description:

Investment

Viet Nam reserves the right to adopt or maintain any measure in respect of investment in the production and distribution of video records on whatever medium.

Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure in respect of the distribution of video records on whatever medium.

Existing Measures:

Sector: Audio-visual Services

Sub-Sector: Production, distribution, and projection of television programmes and cinematographic works

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain subsidies inconsistent with Article 9.10.2 (Performance Requirements) for audio-visual services and preferential treatment to television programmes and cinematographic works produced under co-production agreements.

Existing Measures:

Sector: Power Development

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to hydroelectricity and nuclear power.

Existing Measures:

Sector: Business Services

Sub-Sector: Printing (CPC 88442), Public opinion polling (CPC 864), Investigation and security, excluding security system services (part of CPC 873), Technical testing and analysis services (CPC 8676): conformity testing of means of transport and certification of transport vehicles, Arbitration and conciliation services (CPC 86602), excluding arbitration and conciliation services for commercial disputes between businesses, Placement and supply services of personnel (CPC 872), Services incidental to fishing (CPC 882), excluding specialised consultancy services related to marine or freshwater fisheries, fish hatchery services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to the above mentioned sub-sectors.

Existing Measures:

Sector: Tourism and Travel-related Services

Sub-Sector: Tourist guides services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to tourist guides services.

Existing Measures:

Sector: Health and Social Services

Sub-Sector: Residential health facilities services other than hospital services (CPC 93193)

Other human health services (CPC 93199) (8)

Social services (CPC 933)

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to the listed sub-sectors.

Existing Measures:

(8) Only with respect to the obligations of Chapter 10 (Cross-Border Trade in Services).

Sector: Recreational, Cultural and Sporting Services

Sub-Sector: Sporting and other recreational services, excluding electronic games business

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to martial art clubs and extreme sports.

Existing Measures:

Sector: Transport Services

Sub-Sector: Maritime cabotage services, Internal waterway transport: cabotage services, rental of vessels with crew (CPC 7223), Space transport, Pipeline transport, Rail transport (cabotage services, infrastructure business services), Road cabotage services, Pushing and towing services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to the above mentioned sub-sectors.

Existing Measures:

Sector: Manufacturing

Sub-Sector: Paper production, Manufacturing and assembling of buses and transport vehicles of more than 29 seats

Obligations Concerned: National Treatment (Article 9.4) Performance Requirements (Article 9.10)

Description: Investment

Viet Nam reserves the right to adopt or maintain measures inconsistent with Article 9.10.1(h) (Performance Requirements) for foreign-invested enterprises in the above sub-sectors.

Existing Measures: Decision No.17/2004/QD-BCN dated 8 March 2004

Decision No.22/2005/QD-BCN dated 26 April 2005

Decision No.36/2007/QD-BCN dated 6 August 2007

Decision No.07/2007/QD-BCN dated 30 January 2007

Decision No.177/2004/QD-TTg dated 5 October 2004

Decision No.147/QD-TTg dated 4 September 2007

Decision No.36/2007/QD-BCN dated 6 August 2007

Decision No.249/QD-TTg dated 10 October 2005

Decree No.80/2006/ND-CP dated 9 August 2006

Decree No.12/2006/ND-CP dated 23 January 2006

Sector: Fishery

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure in relation to fishery activities within Viet Nam's sovereignty, and jurisdictional waters as defined in accordance with the United Nations Convention on the Law of the Sea.

No investment licence shall be issued to foreign investors for:

(a) fresh-water fishing, marine fishing; and

(b) coral and natural pearl exploitation.

Existing Measures:

Law No. 59/2005/QH11 on Investment dated 29 November 2005

Law No. 17/2003/QH11 on Fishery dated 26 November 2003

Decree No.108/2006/ND-CP dated 22 September 2006

Decree No.49/1998/ ND-CP dated 13 July 1998

Decree No.86/2001/ND-CP dated 16 November 2001

Decree No.191/2004/ND-CP dated 18 November 2004

Decree No.59/2005/ND-CP dated 4 May 2005

Decision No.10/2007/QD-TTg dated 11 January 2006

Circular No.02/2005/TT-BTS dated 4 May 2005

Circular No.62/2008/TT-BNN dated 20 May 2008

Decree No.32/2010/ND-BNN dated 30 March 2010

Sector: Forestry and Hunting

Sub-Sector: Forestry and hunting (excluding CPC 881)

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure relating to investment in forestry and hunting activities.

Existing Measures: Resolution No.71/2006/QH11 dated 29 November 2006

Law No.29/2004/QH11 on Protection and Development of Forest dated 3 December 2004

Decree No.23/2006/QD-TTg dated 3 March 2006

Sector: Traditional Markets

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to traditional markets.

Existing Measures:

Sector: Commodity Exchange

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to the establishment and management of commodity exchanges.

Existing Measures:

Sector: Judicial Administration and related services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4) Most-Favoured-Nation Treatment (Article 9.5) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)

Description: Investment

Viet Nam reserves the right to adopt or maintain any measure with respect to:

(a) judicial expertise services;

(b) bailiff services;

(c) property auction services relating to property in accordance with the law on auction;

(d) notary and certification services; and

(e) proper managing and liquidating according to the regulations of the law on bankruptcy.

Existing Measures:

Sector: Lottery, Betting and Gambling Services

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure with respect to lottery, betting and gambling services.

Existing Measures:

Sector: Professional Services

Sub-Sector: Accounting and book-keeping services, Taxation services

Obligations Concerned: Local Presence (Article 10.6)

Description: Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure that is not consistent with Article 10.6 (Local Presence) in cross-border trade in services in accounting, book-keeping and taxation services.

Existing Measures:

Sector: All

Sub-Sector:

Obligations Concerned: Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure that is not inconsistent with Viet Nam’s obligations under Article XVI of GATS.

For the purposes of this entry, Viet Nam’s Schedule of Specific Commitments is modified as set out in Appendix II-A.

Existing Measures:

Sector: Services in the exercise of governmental authority

Sub-Sector:

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Viet Nam reserves the right to adopt or maintain any measure relating to services in the exercise of governmental authority when these services are opened to the private sector.

For the purposes of this entry, any non-conforming measure adopted after the opening of such services to the private sector shall be deemed to be an existing measure subject to Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures) five years after the adoption of the measure.

Existing Measures:

APPENDIX II-A. Viet Nam

For the purposes of entry at Annex II – Viet Nam – 36, Viet Nam's obligations under Article XVI of GATS as set out in Viet Nam's Schedule of Specific Commitments in Services under the GATS (WT/ACC/VNM/48/Add.2) are improved in the following sectors as described below.

Sector/Sub-Sector	Market Access Improvement
BUSINESS SERVICES	
Real estate services	
Involving own or leased property (CPC 821)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
On a fee or contract basis	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
Rental/Leasing Services without Operators	
Relating to other machinery and equipment (CPC 83109)	Replace existing restriction under mode 1 with "None".
Other Business Services	
Services incidental to fishing (only specialised consultancy services related to marine or freshwater fisheries, fish hatchery services) (CPC 882)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
Services incidental to mining (CPC 883)	Insert new commitments as follows: Mode 1: None.
Portrait Photography services (CPC 87504) Specialty Photography services except aerial photography (CPC 87504)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None, except only in the form of BBC or joint venture with Vietnamese supplier. There shall be no limitation on foreign equity distribution in the joint venture.
Services provided by midwives, nurses, physiotherapists and para-medical personnel (CPC 93191)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.

R&D services on social science and humanity (CPC 852)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
A. Interdisciplinary R&D services (CPC 853)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
Packaging services (CPC 876)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None, except joint venture with the foreign capital contribution not exceeding 49 per cent shall be permitted.
ENVIRONMENTAL SERVICES	
Sewage Services (CPC 9401)	Insert new commitments as follows: Mode 1: Unbound, except related consulting services Mode 2: None.
Sanitation and similar services (CPC 9403)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
Nature and landscape protection (CPC 9406)	Insert new commitments as follows: Mode 1: None. Mode 2: None. Mode 3: None.
Other services - Cleaning services of exhaust gases (CPC 94040) and noise abatement services (CPC 94050)	Insert new commitments as follows: Mode 1: Unbound, except related consulting services Mode 2: None.
RECREATIONAL, CULTURAL AND SPORTING SERVICES	
Services related to the hosting of a sporting event (including promotion, organisation and facilities management)	Insert new commitments as follows: Mode 2: None. Mode 3: None, in accordance with Viet Nam's laws and regulations and in a manner consistent with Viet Nam's commitments under this Agreement.