Sri Lanka Thailand Free Trade Agreement (SLTFTA)

PREAMBLE

THE KINGDOM OF THAILAND and THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, hereinafter referred to individually as a "Party" or collectively as the "Parties":

INSPIRED by their longstanding friendship and cooperation and growing economic, trade, and investment relationship;

DESIRING to enlarge the framework of relations between the Parties through promoting trade and investment liberalisation;

RECOGNISING that the strengthening of their economic partnership will bring economic and social benefits, create new opportunities for employment, and improve the living standards of their people;

CREATING an expanded and secure market for the goods and services as well as a stable and predictable environment for investment;

RESOLVED to promote bilateral trade through the establishment of clear and mutually advantageous trade rules and the avoidance of trade barriers;

REAFFIRMING their respective rights and obligations under the World Trade Organization, other multilateral, regional, and bilateral agreements to which both Parties are party; and

DESIRING to strengthen the cooperative framework for the conduct of economic relations to ensure its dynamism and to encourage broader and deeper economic

cooperation; HAVE AGREED AS FOLLOWS:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1. Objectives

The objectives of this Agreement are to:

(a) increase and enhance the economic cooperation for mutual benefit of the Parties;

(b) promote the expansion of trade through the harmonious development of the economic relations between the Parties;

(c) gradually eliminate difficulties and restrictions on trade between the Parties so as to improve the efficiency and competitiveness of their respective sectors;

(d) establish a framework of transparent and predictable rules to facilitate trade between the Parties; and

(e) create environment conducive to broadening and supplementing the scope of this Agreement to include trade in services and bilateral investment.

Article 1.2. 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.

Article 1.3. Relation to other Agreements

1. Each Party reaffirms its existing rights and obligations with respect to each other in relation to existing international agreements to which both Parties are party, including the WTO Agreement.

2. In the event of any inconsistency between this Agreement and any other agreement to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

Article 1.4. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

(a) Agreement means the Free Trade Agreement between the Kingdom of Thailand and the Democratic Socialist Republic of Sri Lanka;

(b) Commission means the Free Trade Commission established under Article 14.1 (Free Trade Commission);

(c) customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

(i) in the case of Thailand, the Customs Department;

(ii) in the case of Sri Lanka, Sri Lanka Customs;

(d) customs duties means any duties or charges, including any form of surtax or surcharge, imposed in connection with the importation of goods, except for:

(i) charges equivalent to an internal tax imposed in conformity with Article I of GATT 1994;

(ii) duties imposed in conformity with Section IV (Bilateral Safeguard Measures) of Chapter 7 (Trade Remedies), Article XIX of GATT 1994, the Agreement on Safeguards, and Article 5 of the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;

(iii) anti-dumping or countervailing duties imposed in conformity with Article VI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the SCM Agreement, contained in Annex 1A to the WTO Agreement; or

(iv) fees or other charges imposed in conformity with Article VII of GATT 1994;

(e) Customs Valuation Agreement means the Agreement on Implementation of Article VII of GATT 1994, contained in Annex 1A to the WTO Agreement;

(f) days means calendar days, including weekends and public holidays;

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

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

(i) goods means any merchandise, product, article or material;

(j) Harmonized System or HS means the Harmonized Commodity Description and Coding System governed by the International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as may be amended, adopted and implemented by the Parties in their respective tariff laws;

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

(l) Import Licensing Agreement means the Agreement on Import Licensing Procedures, contained in Annex 1A to the WTO Agreement;

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

(n) originating means qualifying under the rules of origin set out in Chapter 3 (Rules of Origin);

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

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

(q) SCM Agreement means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;

(r) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A

to the WTO Agreement;

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

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

(u) territory means:

(i) in the case of Thailand, its land territory, its internal waters, its territorial sea, and the air space above them, the exclusive economic zone, the continental shelf, and any maritime areas over which it exercises rights or jurisdiction in accordance with international law.

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

(v) Trade Facilitation Agreement means the Agreement on Trade Facilitation, contained in Annex 1A to the WTO Agreement;

(w) WTO means the World Trade Organization; and

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

Chapter 2. TRADE IN GOODS

Article 2.1. Scope

Except as otherwise provided in this Agreement, this Chapter applies to trade in goods between the Parties.

Article 2.2. National Treatment

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

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 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.

Article 2.3. Customs Value

The Parties shall determine the customs value of goods in accordance with the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement.

Article 2.4. Reduction or Elimination of Customs Duties

1. The provisions of this Chapter concerning the reduction or elimination of customs duties on imports shall apply to goods originating in the territory of the Parties.

2. Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on imported goods originating in the other Party in accordance with its Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka).

3. Reduction or elimination shall occur upon entry into force of the Agreement and thereafter on 1 January of each calendar year, as provided for in each Party's Schedule.

4. The base rate of customs duties on imports to which the successive reductions or eliminations are to be applied under paragraph 2 shall be that specified in the Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B (Schedule of Tariff Commitments - Sri Lanka).

5. At the time of importation, where the most-favoured-nation ("MFN") applied rate is lower than the rate of customs duty provided for in the Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B

(Schedule of Tariff Commitments - Sri Lanka), originating goods of the Parties shall be eligible for the MFN applied rate of customs duty for those goods. If an importer did not make a claim for the lower rate of customs duty at the time of importation, such importer may apply for a refund of the difference as per the provisions of domestic laws and regulations.

Article 2.5. Standstill Clause

1. Except as provided in the Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B (Schedule of Tariff Commitments - Sri Lanka) or in any other provisions of this Agreement, each Party shall not increase an existing customs duty or introduce a new customs duty on the importation of a good originating in the other Party. This shall not preclude either Party from raising a customs duty to the level established in its Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka) following a unilateral reduction of customs duties on originating goods of the other Party set out in its Schedule.

2. Paragraph 1 shall not apply to the goods of a Party, which are in the Exclusion List of that Party's Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka), unless otherwise provided in the same Schedule.

Article 2.6. Accelerated Tariff Elimination

1. Three years after the date of entry into force of this Agreement or on the request of either Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B (Schedule of Tariff Commitments - Sri Lanka).

2. If the Parties agree to accelerate the reduction or elimination of customs duties on originating goods, which shall supersede any rates of customs duties specified in their respective Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B (Schedule of Tariff Commitments - Sri Lanka) for such goods, such agreement shall be treated as an amendment to the Schedules of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) and Annex 2B (Schedule of Tariff Commitments - Sri Lanka), and shall enter into force in accordance with Article 14.9 (Amendments).

3. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule. A Party considering doing so shall inform the other Party as early as practicable.

Article 2.7. Classification of Goods

The classification of goods in trade between the Parties shall be set out in each Party's respective tariff nomenclature in conformity with the Harmonized System, as may be amended.

Article 2.8. HS Transposition of Schedules of Tariff Commitments

1. Each Party shall ensure that the HS transposition of its Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka), undertaken following the periodic amendments to the Harmonized System, is carried out without impairing existing tariff concessions granted under this Agreement.

2. Each Party shall provide its Schedule of Tariff Commitments as per the nomenclature of the revised HS and a two-way correlation table setting out national tariff line level in a timely manner after completion of the HS transposition.

3. In case the Parties agree that there is any HS transposition error in the Schedules of Tariff Commitments, such error shall be rectified by the relevant Party.

4. Each Party shall make publicly available its transposed Schedule of Tariff Commitments in the nomenclature of the revised HS in a timely manner.

Article 2.9. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with paragraph 1 of Article VII of GATT 1994, that all fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article II of GATT 1994) imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered

and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

2. Each Party shall ensure that the fees and charges are imposed in accordance with paragraphs 1 and 2 of Article 6 of the Trade Facilitation Agreement. The obligation set out in this paragraph shall be implemented pursuant to the transitional arrangements that each Party has provided for under the Trade Facilitation Agreement. Notwithstanding the above, each Party shall fully implement the obligation in this paragraph no later than 30 June 2024 or within the extended period as notified by that Party and approved by the WTO.

3. Each Party shall promptly publish in an officially designated medium details of the fees and charges that it imposes on or in connection with importation or exportation of goods and shall make such information available on the internet.

Article 2.10. Non-Tariff Measures

1. Each Party shall not introduce or maintain any non-tariff measures on the importation of any goods of the other Party or on the exportation or sale for export of any goods destined for the other Party, except in accordance with its WTO rights and obligations, including those set out in Article XI of GATT 1994, and other provisions of this Agreement. To this end, Article XI of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, mutatis mutandis.

2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 and shall ensure that any such measures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between Parties.

3. The Parties understand that the rights and obligations under GATT 1994, as incorporated into and made part of this Agreement, mutatis mutandis, pursuant to paragraph 1, prohibit a Party from adopting or maintaining:

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

(b) voluntary export restraints, inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and paragraph 1 of Article 8 of the Anti-Dumping Agreement.

4. The Parties recognise the treatments under the WTO of a net food- importing developing country for the purpose of food security under this Agreement. (1)

(1) A net food-importing country is any developing country Member of the WTO which was a net importer of basic foodstuffs in any three years of the most recent five-year period for which data are available and which notifies the Committee on Agriculture of the WTO of its decision to be listed as a Net Food-Importing Developing Country for the purposes of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

Article 2.11. Import Licensing Procedures

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

2. The Parties shall introduce and administer any import licensing procedures in accordance with:

(a) paragraphs 1 through 9 of Article 1 of the Import Licensing Agreement;

(b) Article 2 of the Import Licensing Agreement; and (c) Article 3 of the Import Licensing Agreement.

To this end, the provisions referred to in subparagraphs (a) through (c) are incorporated into and made part of this Agreement, mutatis mutandis.

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

4. Each Party shall respond within 30 days after the date of receipt of an enquiry from the other Party regarding:

(a) any licensing procedures which the Party has adopted or maintained; or

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

For greater clarity, the enquiry and response shall be made through the contact points designated pursuant to

subparagraph 3(f) of Article 2.15 (Committee on Trade in Goods).

Article 2.12. State Trading Enterprises

1. The Parties affirm their existing rights and obligations under Article XVII of GATT 1994, its Notes and Supplementary Provisions, which are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties shall be exempted from the obligations stated in subparagraph 4(c) of Article XVII of GATT 1994 with regard to food imported or purchased for non-commercial humanitarian purposes.

Article 2.13. Modification and Withdrawal of Concessions

1. A Party may, by mutual agreement with the other Party, modify or withdraw a concession contained in its Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka). Such mutual agreement shall include provisions for compensatory adjustment with respect to other goods. The Party modifying or withdrawing any concession provided in Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka) shall maintain a level of reciprocal and mutually advantageous concessions not less favorable to trade than that provided for in this Agreement prior to such agreement.

2. The modification or withdrawal of concessions shall be treated as an amendment to Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka) and shall enter into force in accordance with Article 14.9 (Amendments).

Article 2.14. Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavor to avoid the imposition of restrictive measures for balance of payments purposes.

2. Any measures taken for balance-of-payments purposes shall be in accordance with Article XII of GATT 1994, Section B of Article XVIII of GATT 1994, and the Understanding on the Balance-of-Payments Provisions, which are incorporated into and made part of this Agreement, mutatis mutandis.

3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party under the Articles of Agreement of the International Monetary Fund, as may be amended.

4. Any Party maintaining or having adopted measures to safeguard the balance of payments, or any changes thereto, shall promptly notify the other Party.

Article 2.15. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods, comprising representatives of the Parties.

2. The Committee shall meet at least once a year or on the request of either Party to consider any matter arising under this Chapter.

3. The functions of the Committee shall be to:

(a) review and monitor (2) the implementation and operation of this Chapter;

(b) establish any sub-committee or working group, as and when necessary;

(c) receive reports from, and review the work of all sub-committees and working groups related to trade in goods established pursuant to subparagraph (b);

(d) identify and recommend measures to promote and facilitate improved market access;

(e) address barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, refer such matters to the Commission for its consideration;

(f) designate one or more contact points of each Party to coordinate the implementation of this Chapter. Each Party shall notify the other Party of the contact details of such contact points and promptly notify the other Party of any changes thereto;

(g) report the findings and the outcome of discussions to the Commission; and

(h) carry out other functions as may be delegated by the Commission in accordance with Article 14.2 (Duties of the Commission) of Chapter 14 (Institutional and Final Provisions).

(2) For greater clarity, the monitoring of the implementation and operation of this Chapter includes the exchange of annual import data between the Parties on the basis of preferential market access and MEN market access of the respective Parties.

Chapter 3. RULES OF ORIGIN

Section I. GENERAL PROVISIONS

Article 3.1. Definitions

1. For the purposes of this Chapter:

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

(b) chapters, headings, and sub-headings mean the chapters, headings and sub-headings used in the nomenclature which makes up the HS with the changes pursuant to the Recommendation of 26 June 2004 of the Customs Co- operation Council;

(c) CIF means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994;

(d) classified refers to the classification of a good or material under a particular chapter, heading, or sub-heading of the HS;

(e) competent authority means the authority that, according to the legislation of each Party, is responsible for the issuance of the certificate of origin and may designate the issuance of the certificate of origin to other entities or bodies. In the case of Sri Lanka, the competent authority is the Department of Commerce or any other Authority acting on behalf of the Ministry of Trade. In the case of Thailand, the competent authority is the Ministry of Commerce or any other Authority acting on behalf of the Ministry;

(f) customs value means the value as determined in accordance with the Customs Valuation Agreement;

(g) exporter means a natural or juridical person located in the territory of a Party, where a good is exported from, by such a person;

(h) FOB means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on the Implementation of Article VII of GATT 1994;

(i) fungible materials means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished goods;

(j) 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;

(k) goods means both materials and products being manufactured, even if it is intended for later use in another manufacturing operation;

(l) indirect material/neutral elements means goods used in the production, testing or inspection of goods but not physically incorporated into the goods, or goods used in the maintenance of buildings or the operation of equipment associated with the production of goods as referred to in Article 3.6 (Indirect Material/Neutral Elements);

(m) material means a good or any matter or substance such as raw materials, ingredients, parts, components, sub-components or sub-assemblies that are used or consumed in the production of goods or transformation of another good or are subject to a process in the production of another good;

(n) originating goods or originating material means goods or material that qualifies as originating in accordance with the

provisions of this Chapter;

(o) product specific rules means rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a Qualifying Value Content (QVC) criterion or a combination of any of these criteria; and

(p) production means methods of obtaining goods including, but not limited to, growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

2. For the purposes of this Article, where the last working or processing has been subcontracted to a manufacturer, the term âmanufacturerâ may refer to the enterprise that has employed the subcontractor.

Article 3.2. Origin Criteria

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

(a) the good is wholly obtained or produced entirely in the Party, as provided in Article 3.3 (Wholly Obtained or Produced Goods);

(b) the good is produced entirely in the Party exclusively from originating materials of the Parties; or

(c) the good is produced from non-originating materials in the Party, provided that the good has satisfied the requirements set out in Article 3.4 (Goods not Wholly Produced or Obtained).

Additionally, the good shall meet all applicable requirements of this Chapter.

Article 3.3. Wholly Obtained or Produced Goods

The following goods shall be considered as wholly obtained or produced entirely in the territory of a Party:

(a) plants, plant goods, and vegetable goods grown and harvested there;

(b) live animals born and raised there;

(c) goods obtained from live animals referred to in subparagraph (b);

(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted there;

(e) goods from slaughtered animals born and raised there; (f) mineral products extracted from its soil or seabed;

(g) goods of sea-fishing and other marine life taken by vessels of that Party (1), and other goods taken by that Party or a person of that Party, from the waters, seabed, or subsoil beneath the seabed outside the territorial sea of the Parties and non-Parties, in accordance with international law, provided that, in case of goods of sea-fishing and other marine life taken from the exclusive economic zone of any Party or non-Party, that Party or person of that Party has the rights to exploit (2) such exclusive economic zone, and in case of other goods, that Party or person of that Party has rights to exploit such seabed and subsoil beneath the seabed, in accordance with international law;

(h) goods of sea-fishing and other marine life taken by vessels of that Party from the high seas in accordance with international law;

(i) goods processed or made on board any factory ships of that Party (3), exclusively from the goods referred to in subparagraph (g) or (h);

(j) waste or scrap derived from:

(i) production carried out there, or

(ii) used goods collected or salvaged there, provided that the waste or scrap is fit only for the recovery of raw materials; and

(k) goods produced or obtained there exclusively from goods referred to in subparagraph (a) through (j) or from their derivatives.

(1) For the purposes of this Article, "factory ships of that Party" or "vessels of that Party" respectively, means factory ships or vessels: (a) which are registered in that Party; and (b) which are entitled to fly the flag of that Party. (c) which are owned to an extent of at least 50 per cent by

nationals of the Party, or by a juridical person with its head office in the Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Party, and of which at least 50 per cent of the equity interest is owned by nationals or juridical persons of the Party; and (d) of which at least 75 per cent of the total of the master, officers and crew are nationals of the Party.

(2) For the purposes of determining the origin of goods of sea-fishing and other marine life, "rights to exploit" in this subparagraph include those rights of access to the fisheries resources of a coastal State, as accruing from any agreements or arrangements between a Party and the coastal State.

(3) See supra note 1.

Article 3.4. Goods Not Wholly Produced or Obtained

1. For the purposes of subparagraph (c) of Article 3.2 (Origin Criteria),except for those goods covered under paragraph 2, a good shall be treated as an originating good:

(a) if the goods have a qualifying value content of not less than 40 per cent calculated using the formula set out in Article 3.5 (Qualifying Value Content (QVC)); or

(b) if all non-originating materials used in the production of the goods have undergone a change in tariff classification (hereinafter referred to as "CTC") at four-digit level (i.e. a change in tariff heading) of the HS.

2. Notwithstanding paragraph 1, goods listed in Annex 3B (Product Specific Rules) shall qualify as originating goods if the goods satisfy the product specific tules set out therein.

Article 3.5. Qualifying Value Content (QVC)

1. The QVC of a good shall be calculated as follows:

QVC = FOB - VNM / FOB x 100

Where:

(a) "QVC" is the qualifying value content of the good, expressed as a percentage;

(b) "FOB" is the FOB value as defined in subparagraph (h) of Article 3.1 (Definitions); and

(c) "VNM" is the materials, which do not qualify as originating in any Party within the meaning of Article 3.2 (Origin Criteria) and the materials of undetermined origin.

2. For the purposes of calculating the QVC provided in paragraph 1, VNM shall be:

(a) the CIF value at the time of importation of the goods; or

(b) the earliest ascertained price paid for the goods of undetermined origin in the territory of the Party where the working or processing takes place.

3. All costs considered for the calculation of the QVC shall be recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of the Party where the good is produced.

Article 3.6. Indirect Material/Neutral Elements

Any indirect material used in the production of a good but not incorporated into the good shall be treated as an originating material, irrespective of whether it originates from a non-Party. Such indirect materials include:

(a) fuel, energy, catalysts, and solvents;

(b) equipment, devices, and supplies used for testing or inspection of the goods;

(c) gloves, glasses, footwear, clothing, and 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 materials which are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

Article 3.7. Minimal Operations and Processes That Do Not Confer Origin

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating goods, whether or not the requirements set out in Article 3.4 (Goods not Wholly Produced or Obtained) are satisfied:

(a) operations to ensure the preservation of goods in good condition during transport and storage;

(b) sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling, sharpening, simple grinding, or slicing;

(c) changes of packing, unpacking or repacking operations, and breaking up or assembly of consignments;

(d) cleaning, including removal of dust, paint, oil or other coverings and simple removal of oxide;

(e) simple painting and polishing operations;

(f) testing or calibration;

(g) placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards, and all other simple packaging operations;

(h) simple mixing of goods, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Chapter to enable them to be considered as originating goods;

(i) simple assembly of parts of articles to constitute a complete article or simple disassembly of goods into parts;

(j) slaughtering (4) of animals;

(k) affixing or printing marks, labels, logos, and other like distinguishing signs on goods or their packaging;

(l) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(m) mere making-up of sets of goods;

(n) ironing or pressing of textiles and textile articles;

(o) operations to colour sugar or form sugar lumps;

(p) simple peeling, stoning, and shelling;

(q) a combination of two or more of the operations specified in subparagraphs (a) through (p).

2. For the purposes of paragraph 1, operations shall be considered simple when neither special skills nor machines, apparatus, or tools especially produced or installed for those operations are required for their performance. However, simple mixing does not include chemical reaction. âChemical reactionâ means a process (including a bio-chemical process) which results in a molecule with a new structure by breaking intra molecular bonds and by forming new intra molecular bonds, or by altering the spatial arrangement of atoms in a molecule.

(4) For the purposes of this Article, "slaughtering" means the mere killing of animals.

Article 3.8. Cumulation of Origin

For the purposes of determining whether a good qualifies as an originating good of a Party, the originating materials from the territory of the Party within the meaning of Article 3.2 (Origin Criteria), incorporated in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party. The finished good to be exported shall comply with Article 3.4 (Goods not Wholly Produced or Obtained).

Article 3.9. De Minimis

1. A good that does not undergo a change in tariff classification shall be considered as originating if:

(a) the value of all non-originating materials used in its production that do not undergo the required change in tariff classification do not exceed 10 per cent of the FOB value of the good; and

(b) the good meets all other applicable criteria set forth in this Chapter for qualifying as originating goods.

2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable QVC requirement for the good.

Article 3.10. 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 goods or materials are commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Article 3.11. Accessories, Spare Parts, Tools, and Instructional or other Information Materials

1. If the goods are subject to the requirements of a change in tariff classification or specific manufacturing or processing operation, the origin of accessories, spare parts, tools, instructional, or other information materials delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be regarded as a part of the good, and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification provided that:

(a) the accessories, spare parts, tools, instructional or other information materials are classified with, and not invoiced separately from, the good; and

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

2. If the goods are subject to the QVC requirement, the value of the accessories, spare parts, tools, and instructional or information materials shall be taken into account as the value of originating or non-originating materials, as the case may be, in calculating the QVC of the goods.

Article 3.12. Treatment of Packages, Packing Materials, and Containers

1. For packages and packing materials for retail sale:

(a) if a good is subject to the QVC requirement as set out in Annex 3B (Product Specific Rules), the value of the packages and packing materials for retail sale shall be taken into account in determining the origin of that good as originating or non-originating, as the case may be, provided that the packages and packing materials are considered to be forming a whole with the good; and

(b) if a good is subject to the change in tariff classification criterion as set out in Annex 3B (Product Specific Rules), packages and packing materials classified together with the packaged good shall not be taken into account in determining origin.

2. The containers and packing materials exclusively used for the transport of a good shall not be taken into account for determining the origin of the said good.

Article 3.13. Direct Consignment

1. The goods shall be deemed as directly consigned from the exporting Party to the importing Party:

(a) if the goods are transported without passing through the territory of any non-Party; or

(b) if the goods are transported for the purposes of transit through a non- Party with or without transshipment or temporary storage in such non-Party, provided that:

(i) the goods have not entered into trade or consumption in the territory of the non-Party;

(ii) the transit entry is justified for geographical reason or by consideration related to transport requirements; and.

(iii) the goods have not undergone any operation in the territory of the non-Party other than unloading, reloading or any operation required to keep the goods in good condition.

2. The directly consigned goods shall retain their originating status.

3. In cases where the originating goods of the exporting Party are imported through one or more non-Parties, the customs authority of the importing Party may require importers, who claim the preferential tariff treatment for the goods, to submit the following documentation to the customs authority of the importing Party:

(a) a Through Bill of Lading or similar documents used in multimodal transportation; and

(b) supporting documents (5), in evidence that the requirements of subparagraphs 1(b)(i) through (iii) are being complied with.

(5) Supporting documents refers to a certificate of non-manipulation provided by the customs authority of the country of transit stating that the goods have remained under customs control or other documents required by the importing Party.

Article 3.14. Sets

Sets, as defined in General Interpretative Rule 3 of the HS, shall be regarded as originating when all component goods are originating goods. When a set is composed of originating and non-originating goods, the set as a whole shall be regarded as originating, provided that the value of the non-originating goods does not exceed 15 per cent of the FOB price of the set.

Section II. OPERATIONAL CERTIFICATION PROCEDURES

Article 3.15. General Requirements for Certificate of Origin

1. Goods originating in Sri Lanka shall, on importation into Thailand, and goods originating in Thailand shall, on importation into Sri Lanka, benefit from preferential tariff treatment under this Agreement upon submission of a Certificate of Origin.

2. Acclaim that goods are eligible for preferential tariff treatment under this Agreement shall be supported by a Certificate of Origin issued by the competent authority of the exporting Party.

3. Originating goods within the meaning of this Chapter shall, in the cases specified in Article 3.23 (Waiver of Certificates of Origin), benefit from preferential tariff treatment under this Agreement without it being necessary to submit the Certificate of Origin referred to in paragraph 1.

Article 3.16. Issuance of the Certificate of Origin

1. The Certificate of Origin shall be issued before or at the time of exportation whenever the goods to be exported can be considered as originating in that Party subject to this Chapter. The exporter or producer shall submit an application for the Certificate of Origin together with appropriate supporting documents proving that the goods to be exported qualify for the issuance of a Certificate of Origin.

2. Incases where a Certificate of Origin has not been issued before or at the time of exportation due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retrospectively but no later than one year from the date of shipment.

Article 3.17. Validity of Certificates of Origin

1. The issued Certificate of Origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for twelve months from the date of issuance.

2. The Certificate of Origin shall be submitted to customs authorities at the time the declaration of the goods is made.

3. Certificates of Origin which are submitted to the customs authorities of the importing Party after the period of validity specified in paragraph 1 may be accepted for the purposes of applying preferential treatment, where the failure to submit these documents within such period is due to exceptional circumstances. (6)

4. In cases of belated submission of Certificates of Origin in circumstances other than those provided for in paragraph 3, the customs authorities of the importing Party may accept the Certificates of Origin where the goods have been imported before the expiry of the period of validity specified in paragraph 1 in accordance with domestic laws and regulations. (7)

5. The Parties, to the extent possible, shall implement an electronic system for issuance of Certificate of Origin.

(6) Exceptional circumstances mean force majeure or other valid causes beyond the control of the exporter.

(7) Thailand has refund provision which allows importer to claim the preferential tariff treatment by submission of the Certificate of Origin after importation but within the validity period of such Certificate of Origin.

Article 3.18. Certificate of Origin

1. The Certificate of Origin shall:

(a) be in a format to be determined by the Parties;

(b) contain information specified in the minimum information requirements as set out in Annex 3A (Minimum Information Requirements for the Certificate of Origin);

(c) be in writing, or any other medium including electronic format as notified by the exporting Party; and

(d) specify that the good is originating and meets the requirements of this Chapter.

2. The Certificate of Origin shall be forwarded by the exporter to the importer for submission to the customs authority at the port or place of importation. The copy shall be retained by the competent authority in the exporting Party.

3. The Certificate of Origin shall be in the English language.

4. Each Certificate of Origin shall bear a serial reference number separately given by each place or office of issuance.

5. Each Certificate of Origin shall bear an authorised signature and official seal and shall be applied manually or electronically.

6. Each Party shall provide the other Party with the list of names, addresses, specimen signatures, and specimen of official seals of its competent authorities, in hard copy or soft copy format through the diplomatic channel or by any other channel mutually agreed by both Parties. Any change in names, addresses, signatures or seals shall be promptly informed in the same manner and shall be acknowledged by the customs authorities of the other Party before the signatures become effective.

Article 3.19. Application for Certificate of Origin

1. At the time of carrying out the formalities for exporting the goods under preferential treatment, the exporter or its authorised representative shall submit an application in writing or by electronic means for the Certificate of Origin together with all supporting documents specified by the issuing authority proving that the goods to be exported fulfill the originating criteria under this Agreement.

2. For the purposes of determining originating status, the competent authorities shall have the right to request supporting documentary evidence or to carry out check(s) considered appropriate in accordance with the laws and regulations of the Party.

Article 3.20. Obligations of the Competent Authority

The competent authority shall carry out proper examination upon each application for the Certificate of Origin to ensure, to the best of its ability, that:

(a) the application and the Certificate of Origin are duly completed and manually or electronically signed by the authorised

signatory;

(b) the origin of the good is in conformity with this Agreement;

(c) other statements on the Certificate of Origin correspond to the supporting documentary evidence submitted;

(d) description, quantity, and weight of goods, marks, and number of packages, number, and kinds of packages, as specified, conform to the goods to be exported; and

(e) multiple items declared on the same Certificate of Origin shall be allowed, provided that each item qualifies separately in its own right.

Article 3.21. Treatment of Erroneous Declaration In the Certificate of Origin

Neither erasures nor superimpositions shall be allowed on the Certificate of Origin. Any alteration shall be made on the request by the exporter to issue a new Certificate of Origin to replace the erroneous one. The new Certificate of Origin shall take effect from the date of issuance of the original Certificate of Origin.

Article 3.22. Loss of the Certificate of Origin

In the event of theft, loss or destruction of a Certificate of Origin, exporter may apply in writing to the issuing authority to issue acertified true copy within the period of validity of the original Certificate of Origin, on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY" in Box 12 of the Certificate of Origin. The certified true copy which must bear the date of issuance and the serial number of the original certificate will take effect from the date of issuance of the original Certificate of Origin.

Article 3.23. Waiver of Certificates of Origin

In the case of consignments of goods originating in the exporting Party and not exceeding US$200 FOB, the requirement of a Certificate of Origin may be waived provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the certification requirements of this Chapter.

Article 3.24. Treatment of Minor Discrepancies

1. The customs authority of the importing Party shall disregard minor errors, such as slight discrepancies or omissions, typing errors or overrunning the margin of the designated field, provided that these minor errors do not affect the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin. (8)

2. For multiple items declared under the same Certificate of Origin, a problem with one of the items listed shall not affect or delay the granting of preferential tariff treatment and customs clearance of the remaining items listed in the Certificate of Origin.

(8) When the difference in tariff classification is not regarded as minor discrepancy, the Parties agreed that the exporter needs to clarify the HS code with the importing Party before they apply for the Certificate of Origin with the issuing authority of the exporting Party.

Article 3.25. Claims for Preferential Treatment

1. Each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

(a) make a declaration for preference, based on importer's knowledge or information including a valid Certificate of Origin, that the good qualifies as an originating good;

(b) submit the Certificate of Origin at the time of the declaration referred to in subparagraph (a) to its customs authorities upon request; and

(c) promptly make a corrected declaration and pay any duties due, where the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is incorrect.

2. Each Party shall provide that the importing Party applies preferential tariff treatment only in cases where an importer proves the accuracy of origin of the imported goods through documentary evidence or any other relevant information in accordance with its laws and regulations.

3. A Party may deny preferential tariff treatment to an imported good if the importer fails to comply with requirements of this Chapter.

4. The importing Party shall grant preferential tariff treatment to goods imported after the date of entry into force of this Agreement, in cases where the importer does not have the Certificate of Origin at the time of importation, provided that (9):

(a) the importer had, at the time of importation, indicated to the customs authorities of the importing Party his intention to claim preferential tariff treatment; and

(b) the Certificate of Origin or other documentary evidence of origin is submitted to its customs authorities within such period from the date of payment of customs duties in accordance with the laws and regulations of the importing Party.

5. In cases where the Certificate of Origin is not accepted as stated in paragraph 4, the customs authority of the importing Party should accept and consider the clarifications made by the issuing authority and assess again whether or not the application can be accepted for the granting of the preferential treatment. The clarification should be detailed and exhaustive in addressing the grounds of preference raised by the customs authority of importing Party.

(9) For greater certainty, a Party may require, as a condition for the release of the goods, a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount required by the Party to ensure payment of custom duties and taxes, and no penalty or other charges shall be imposed in accordance with relevant laws and regulations of the importing Party.

Article 3.26. Verification of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request the competent authority of the exporting Party, information relating to the origin of the good, where it has reasonable doubt as to the authenticity of the Certificate of Origin or the accuracy of the information included in the Certificate of Origin.

2. In cases where the importer, exporter, or producer does not return the written request for information made by the importing Party within the given period or its extension, or that the information provided is false or incomplete, the importing Party may deny preferential tariff treatment.

3. Where the customs authority of the importing Party requests the information under paragraph 1, it shall provide the competent authority of the exporting Party with:

(a) the reasons why such verification is requested;

(b) the Certificate of Origin of the good or a copy thereof; and

(c) any information and documents as may be necessary for the purposes of such request.

4. For the purposes of paragraph 1, the competent authority of the exporting Party shall provide the information requested within a period of three months from the date of receipt of the request. If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent authority of the exporting Party shall, in accordance with its laws and regulations, provide the information requested within a period of two months from the date of receipt of the request.

5. The request for information in accordance with paragraph 1 shall not preclude the use of the verification method provided for in Article 3.27 (Verification Visit).

6. The competent authority of the exporting Party shall promptly transmit the information requested to the customs authority of the importing Party which shall then determine whether or not the goods concerned is originating. The entire process from the date of receipt of the request for the information until the notification of the result shall be completed within 180 days.

Article 3.27. Verification Visit

1. The customs authority or competent authority of the importing Party may request the competent authority of the exporting Party:

(a) to conduct a visit, whereby it shall deliver a written communication at least 90 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the competent authority of the exporting Party. The competent authority of the exporting Party shall request the written consent of the exporter or the producer of the good in the exporting Party whose premises are to be visited; and

(b) to provide information relating to the origin of the good in the possession of the competent authority of the exporting Party during the visit pursuant to subparagraph (a).

2. The communication referred to in paragraph 1 shall include:

(a) the identity of the customs authority or competent authority issuing the communication;

(b) the name of the exporter or producer, whose premises are requested. to be visited;

(c) the proposed date and place of the visit;

(d) the objective and scope of the proposed visit, including specific reference to the good subject to the verification, referred to in the Certificate of Origin; and

(e) the names and titles of the officials of the customs authority or competent authority of the importing Party to be present during the visit.

3. The competent authority of the exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

4. For the purposes of subparagraph 1(a), the competent authority of the exporting Party shall cooperate by providing the necessary information and relevant documentations as well as facilitating an on-site visit to the premises of the exporter or the producer of the goods in the exporting Party.

5. The competent authority of the exporting Party shall, in accordance with its laws and regulations, provide information within 60 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party pursuant to paragraph 1.

6. The determination of whether the good qualifies as an originating good shall be notified to the producer or exporter and the relevant competent authority. Any suspended preferential treatment shall be reinstated upon a determination that the good qualifies as an originating good.

7. If the good is determined to be non-originating, the producer or exporter shall be given 30 days from the date of receipt of the written determination to provide any written comments or additional information regarding the eligibility of the good for preferential tariff treatment. If the good is still found to be non-originating, the final written determination issued by the importing Party shall be communicated to the competent authority of the exporting Party within 30 days from the date of receipt of the comments or additional information from the producer or exporter.

Article 3.28. Determination of Origin and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment in the following cases:

(a) where the competent authority of the exporting Party fails to respond to the request within the period referred to in paragraph 4 of Article 3.26 (Verification of Origin) or paragraph 3 of Article 3.27 (Verification Visit);

(b) where the competent authority of the exporting Party refuses to conduct a visit, or fails to respond to the communication referred to in paragraph 1 of Article 3.27 (Verification Visit) within the period referred to in paragraph 3 of Article 3.27 (Verification Visit); or

(c) where the information provided to the customs authority of the importing Party pursuant to Articles 3.26 (Verification of

Origin) or Article 3.27 (Verification Visit) is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

In such cases, a written determination thereof shall be sent to the competent authority of the exporting Party.

3. After carrying out the procedures outlined in Articles 3.26 (Verification of Origin) or Article 3.27 (Verification Visit), as the case may be, the customs authority of the importing Party shall provide the competent authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination, within 45 days from the date of receipt of the information provided by the competent authority of the exporting Party pursuant to Articles 3.26 (Verification of Origin) or Article 3.27 (Verification Visit). The competent authority of the exporting Party shall inform the exporter of the good in the exporting Party, whose premises were subject to the visit referred to in Article 3.27 (Verification Visit), of such determination by the customs authority of the importing Party.

4. The competent authority of the exporting Party shall, when it cancels the decision to issue the Certificate of Origin, promptly notify the cancellation to the exporter to whom the Certificate of Origin has been issued, and to the customs authority of the importing Party, except where the Certificate of Origin has been returned to the competent authority of the exporting Party. The customs authority of the importing Party may deny preferential tariff treatment when it receives the notification.

Article 3.29. Preservation of Certificates of Origin and Supporting Documents

1. Each Party shall provide that an exporter or a producer in its territory that has obtained a Certificate of Origin shall maintain in its territory, for three years after the date on which the Certificate of Origin was issued or for such longer period as the Party may specify, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Partyâs territory shall maintain in that territory, for three years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the Certificate of Origin, as the Party may require relating to the importation of the good.

3. Each Party shall permit, in accordance with its laws and regulations, exporters in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved. and printed.

Article 3.30. Confidentiality

1. Any confidential information shall be treated as such in accordance with the laws and regulations of the Parties and shall be used for the validation of Certificates of Origin purposes only.

2. The Parties shall maintain, in accordance with their laws and regulations, the confidentiality of classified business information collected in the process of verification pursuant to Articles 3.26 (Verification of Origin) or Article 3.27 (Verification Visit) and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information. The classified business information may only be disclosed to those authorities responsible for the administration and enforcement of origin determination.

Article 3.31. Exhibitions

1. Notwithstanding Article 3.13 (Direct Consignment), originating goods sent for exhibition in a country other than a Party and sold after the exhibition for importation into a Party shall benefit on importation from the provisions of this Agreement provided that it is shown to the satisfaction of the customs authorities that:

(a) an exporter has consigned these goods from a Party to the country in which the exhibition is held and has exhibited them there;

(b) the goods have been sold or otherwise disposed of by that exporter to a person in a Party;

(c) the goods have been consigned during the exhibition or immediately thereafter in the State in which they were sent for exhibition; and

(d) the goods have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display, which is not organised for private purposes in shops or business premises with a view to the sale of foreign goods, and during which the goods remain under customs control.

3. A Certificate of Origin must be issued or made out in accordance with this Chapter. The name and address of the place of the exhibition must be indicated in the Certificate of Origin. Where necessary, additional documentary evidence of the conditions, under which they have been exhibited, may be required from the relevant authorities of the country where the exhibition took place.

Article 3.32. Sanctions Against False Declaration

1. Each Party shall establish or maintain appropriate sanctions against its exporters to whom a Certificate of Origin has been issued, for providing false declaration or documents to the competent authority of the exporting Party, prior to the issuance of the Certificate of Origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a Certificate of Origin has been issued if they fail to notify in writing to the competent authority of the exporting Party without delay after having known, after the issuance of the Certificate of Origin, that such good does not qualify as originating goods of the exporting Party.

3. When the exporter repeatedly provided false information or documentation, the competent authority may temporarily suspend the issuance of a new Certificate of Origin.

Article 3.33. Obligations of the Importer

1. Except as otherwise provided in this Chapter, the customs authority of the importing Party shall require an importer who claims preferential tariff treatment for goods imported from the other Party to:

(a) make a customs declaration, based on a valid Certificate of Origin, that the goods qualify as originating goods of the exporting Party;

(b) have the Certificate of Origin in its possession at the time the declaration is made;

(c) provide the Certificate of Origin on the request of the customs authority of the importing Party; and

(d) promptly notify the customs authority and pay any duties due where the importer has reason to believe that the Certificate of Origin on which a declaration was based contains information that is incorrect.

2. Animporter claiming preferential tariff treatment for goods imported into the Partyâs territory shall maintain for three years after the date of importation of the goods, a Certificate of Origin, and all other documents that the Party may require relating to the importation of the goods.

Article 3.34. Obligations of the Exporter

The exporter to whom a Certificate of Origin has been issued in the exporting Party shall notify in writing to the competent authority of the exporting Party without delay when such exporter knows that such good does not qualify as originating goods of the exporting Party.

Article 3.35. Third Party Invoices

An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer of a good, provided that, the good meets the requirements in this Chapter. The Third Party invoice shall include the Third Party located within the exporting Party and Third Party more than one country.

Article 3.36. Importation by Instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled goods are imported by instalments, a single Certificate of Origin for such goods may be submitted to the customs authorities upon importation of the first instalment.

Article 3.37. Cooperation between Competent Authorities

1. The customs authorities of the Parties shall provide each other with the addresses of the competent authorities responsible for verification.

2. In order to ensure the proper application of this Chapter, the Parties shall assist each other, through their competent authorities, in checking the authenticity of the Certificates of Origin and the correctness of the information given in these documents.

Article 3.38. Settlement of Disputes

1. Without prejudice to Chapter 13 (Dispute Settlement), where disputes arise in relation to the verification procedures prescribed in Article 3.26 (Verification of Origin) which cannot be settled between the competent authorities of the Parties, or where they raise a question as to the interpretation of this Chapter, such disputes or questions shall be submitted to the Committee on Rules of Origin.

2. All disputes between the importer and the competent authorities or customs authorities of the importing Party shall be settled in accordance with the laws and regulations of that Party.

Article 3.39. Transitional Provisions for Goods In Transit

This Agreement may be applied to goods which comply with the Articles of this Chapter and which on the date of entry into force of this Agreement are in transit, subject to the submission to the customs authorities of the importing Party, no later than one year after the import of the goods into the territory of that Party, of the Certificate of Origin made out retrospectively in accordance with Article 3.16 (Issuance of the Certificate of Origin), and if requested, together with the documents showing that the goods have been transported directly in accordance with Article 3.13 (Direct Consignment).

Article 3.40. Review and Appeal

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations, and administrative practices.

Article 3.41. Committee on Rules of Origin

1. The Parties hereby establish the Committee on Rules of Origin, comprising government representatives of each Party.

2. The functions of the Committee shall be to: (a) monitor and review the implementation and operation of this Chapter;

(b) report its findings to the Committee on Trade in Goods in accordance with Article 2.16 (Committee on Trade in Goods);

(c) identify areas relating to this Chapter to be improved for facilitating trade in goods between the Parties;

(d) consider any other matters as Parties may agree related to this Chapter; and

(e) carry out other functions as may be delegated by the Commission in accordance with paragraph 2(a) of Article 14.2 (Duties of the Commission).

3. The Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 4. CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1. Objectives

The objectives of this Chapter are to:

(a) simplify and harmonise customs procedures of Each Party;

(b) ensure consistency, predictability, and transparency in the application of customs laws and regulations of each Party;

(c) ensure efficient and expeditious clearance of goods;

(d) facilitate trade in goods between the Parties by the use of information and communications technology, to the extent possible taking into account international standards; and

(e) promote cooperation between the customs authorities of each Party.

Article 4.2. Scope

1. This Chapter shall apply to customs procedures for goods traded between the Parties and means of transport between the Parties.

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

Article 4.3. Definitions

For the purposes of this Chapter:

(a) customs authority means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

(i) inthe case of Thailand, the Customs Department; and

(ii) in the case of Sri Lanka, the Sri Lanka Customs;

(b) customs laws and regulations means such laws and regulations applied and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transshipment of goods, so far as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

(c) customs procedures means the treatment applied by the customs authority of each Party to goods and means of transport that are subject to customs laws and regulations including customs control; and

(d) Expedited Shipment means all goods imported by or through an enterprise operating a consignment service for the expeditious cross-border movement of goods who assumes liability to the customs authority for those goods.

Article 4.4. Pre-arrival Processing

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

2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in paragraph 1, in electronic format for pre- arrival processing of such documents.

Article 4.5. Advance Rulings

1. Customs authorities of each Party shall, subject to its laws and regulations, issue a written advance ruling prior to the importation of goods into its territory upon written request of a person who intends to import in or export to its territory, on the basis of the facts and circumstances provided by the requester, including a detailed description of the information required to process a request for an advance ruling, concerning an application of an exporter, importer or any person with respect to:

(a) the tariff classification of goods;

(b) valuation method, the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts; or

(c) whether goods qualify as originating goods under this Agreement.

2. The customs authorities shall issue advance rulings after receiving a written request, provided that the requester has submitted all necessary information. The issuance of advance ruling shall be made within 120 days.

3. Each Party shall provide advance rulings that shall be in force from their date of issuance, or such other date specified by the ruling, for the period of time, in accordance with its laws and regulations, provided that the facts or circumstances on which the ruling is based remain unchanged.

4. Each Party may modify or revoke an advance ruling: (a) if the ruling was based on an error of fact;

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

(c) to conform with a judicial decision; or

(d) based on reasons or circumstances specified in its laws and regulations.

5. Before issuing a decision, each Party may reject a request for an advance ruling:

(a) if the requester does not submit additional required information within specified period;

(b) if a request was based on an error of fact;

(c) if adetailed request is under verification by customs authority or other agencies; or

(d) based on reasons or circumstances specified by customs authority of each Party.

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

7. Where an importer claims that the treatment accorded to imported goods should be governed by an advance ruling, the customs authorities may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

8. Each Party shall make its advance rulings publicly available, subject to confidentiality requirements in its laws and regulations, for the purposes of promoting the consistent application of advance rulings to other goods.

9. If a requester provides false information or omits relevant circumstances or facts in its request for an advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply appropriate measures, including civil, criminal, and administrative actions, penalties, or other sanctions in accordance with its laws and regulations.

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

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

Article 4.6. Customs Procedures

1. The customs authority of each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate trade, including through the expeditious clearance of goods and means of transport.

2. Customs procedures of each Party shall, where possible and to the extent permitted by their respective customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization (WCO) and other international organisations as relevant to customs.

3. The customs authority of each Party shall review its customs procedures and practices with a view to their simplification to facilitate trade.

Article 4.7. Customs Clearance

1. Each Party shall endeavor to apply customs procedures in a predictable, consistent, and transparent manner for the efficient release of goods in order to facilitate trade between the Parties.

2. For prompt release of goods traded between the Parties, to the extent possible, each Party may:

(a) provide for the release of goods within a period no greater than the period that is required to ensure compliance with its customs laws or regulations;

(b) make use of information and communications technology;

(c) adopt or maintain procedures allowing, to the extent possible, goods to be released at the point of arrival, without temporary transfer to warehouses or other locations;

(d) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the WCO; and

(e) adopt or maintain procedures allowing the release of goods prior to, and without prejudice to, the final determination by its customs authority of the applicable customs duties, taxes, and fees, subject to domestic procedures.

3. Under normal circumstances, the Parties shall endeavor to ensure the simultaneous inspection of goods by the competent national authorities when goods are entering or leaving the Partiesâ customs territory at a single time and place.

Article 4.8. Trade Facilitation Measures for Authorised Operators

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

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

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

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

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

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

(iv) supply chain security.

(b) Such criteria shall not:

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

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

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

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

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

(c) rapid release time, as appropriate;

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

(e) use of comprehensive guarantees or reduced guarantees; and

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

4. Each Party is encouraged to develop authorised operator schemes based on international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

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

6. Each Party is encouraged to exchange relevant information about authorised operator schemes in force.

(1) A measure listed in subparagraphs (a) through (f) will be deemed to be provided to authorised operators if it is generally available to all operators.

Article 4.9. Risk Management

1. In order to facilitate release of goods traded between the Parties, the customs authority of each Party shall apply risk management methodology.

2. The customs authority of each Party is encouraged to exchange information, including best practices, on risk management techniques and other enforcement techniques.

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

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

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

Article 4.10. Expedited Shipments

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of expedited shipments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and selection, by:

(a) providing for pre-arrival processing of information related to expedited shipments to the extent possible;

(b) permitting, to the extent possible, the single submission of information covering all goods contained in an expedited shipment, through electronic means;

(c) minimizing, to the extent possible, the documentation required for the release of expedited shipments;

(d) providing for expedited shipments to be released under normal circumstances as rapidly as possible, and within six hours, when possible, after the arrival of the goods and submission of the information required for release;

(e) endeavouring to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of goods, provided that the treatment is not limited to low value goods such as documents; and

(f) providing, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article I of GATT 1994, are not subject to this subparagraph.

2. Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audit, including in connection with the use of risk management systems.

Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirement.

Article 4.11. Time Release Studies

1. The Parties are encouraged to measure the time required for the release of goods by the customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of Goods issued by the WCO with a view to assessing their trade facilitation measures and to considering opportunities for further improvement of the time required for the release of goods.

2. A Party is encouraged to share with the other Party their experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

Article 4.12. Temporary Admission of Goods

1. Each Party shall allow temporary admission of goods in accordance with relevant international standards applied by, and

international agreements applicable to, such Party and its laws and regulations.

2. For the purposes of this Article, temporary admission means customs procedures under which certain goods may be brought into a customs territory conditionally relieved, totally, or partially, from payment of customs duties. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

Article 4.13. Use of Automated Systems

1. The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures to support customs operations, including sharing best practices, for the purposes of improving their customs procedures.

2. The customs authorities of each Party, in implementing initiatives which provide for the use of paperless trading, shall take into account the methods agreed by the WCO, including adoption of the WCO data model for the simplification and harmonisation of data.

3. The customs authorities of each Party shall work towards having electronic means for all its customs reporting requirements, as soon as practicable.

4. The introduction and enhancement of information technology shall, to the greatest extent possible, be carried out in consultation with all relevant parties including businesses directly affected.

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

Article 4.14. Review and Appeal

1. Each Party shall ensure that with respect to its determinations on customs matters, importers in its territory have access to:

(a) administrative review issued by a superior official different from who made the determination; and

(b) judicial review of the determination or decision taken at the final level of administrative review.

2. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 4.15. Penalties Disciplines

Each Party shall maintain measures for the imposition of civil or administrative penalties or sanctions and, where appropriate, criminal sanctions for violations of its customs laws and other laws relating to customs according to its laws and regulations.

Article 4.16. Enquiry Points

1. Each Party shall designate one or more enquiry points to deal with enquiries from interested persons from either Party on customs matters arising from the implementation of this Agreement, and provide details of such enquiry points to the other Party's customs administration.

2. Information concerning the procedures for making such enquiries shall be made easily accessible to the public.

Article 4.17. Publication

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

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

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

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

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

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

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

(g) appeal procedures.

2. The information in paragraph 1 shall, to the extent practicable, be made available on the internet in the English language.

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

Article 4.18. Customs Cooperation

1. The Parties shall enhance their cooperation in customs and customs related. matters. In order to enhance cooperation on customs matters, the Parties shall, to the extent possible, inter alia:

(a) exchange information concerning their respective customs legislation, its implementation, and customs procedures, particularly in the following areas:

(i) simplification and modernisation of customs procedures;

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

(iii) transit movements and transshipment; and

(iv) relations with the business community;

(b) uphold their commitment to the facilitation of the legitimate movement of goods, and to the improvement of customs techniques and procedures in accordance with the provisions of this Agreement;

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

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

(e) strengthen coordination in international organisations such as the WTO and the WCO.

Article 4.19. Post-Clearance Audit

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

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

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

Article 4.20. Electronic Payment

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

Chapter 5. SANITARY AND PHYTOSANITARY MEASURES

Article 5.1. Objectives

The objectives of this Chapter are to:

(a) facilitate trade while protecting human, animal and plant life or health;

(b) enhance the implementation of the Sanitary and Phytosanitary Agreement under the World Trade Organization (hereinafter referred to as "SPS Agreement") with a view to minimize the negative effects of sanitary and phytosanitary (hereinafter referred to as "SPS") measures on trade between the Parties;

(c) encourage to use of the applicable harmonised SPS measures on the basis of International Standards, Guidelines, and Recommendations (herein after referred to as âISGRsâ) developed by the relevant international organisations.

(d) enhance mutual understanding of each Party's national laws, regulations, and procedures relating to the implementation of SPS measures; and

(e) strengthen cooperation and communication between the Parties, including solving SPS issues arising from the implementation of this Chapter.

Article 5.2. Scope

This Chapter shall apply to SPS measures that may, directly or indirectly, affect trade between the Parties.

Article 5.3. Definitions

1. For the purposes of this Chapter, the following definitions shall apply:

(a) the Definitions In Annex a of the SPS Agreement;

(b) Relevant definitions adopted under the auspices of the Codex Alimentarius Commission ("the CODEX"), the World Organization for Animal Health ("the WOAH") and the International Plant Protection Convention ("the IPPC");

(c) Competent Authorities mean those authorities within each Party recognised by the national government as responsible for developing and administering the SPS measures within that Party.

2. Further to paragraph 1, the definitions under the SPS Agreement shall prevail to the extent that there is an inconsistency between the definitions adopted under the auspices of the CODEX, the WOAH, the IPPC and the definitions under the SPS Agreement.

Article 5.4. General Provision

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

Article 5.5. Harmonization

The Parties are encouraged to harmonize their SPS measures based on the ISGRs developed by the relevant international organisations.

Article 5.6. Equivalence

1. The Parties recognise the application of equivalence, set out in Article 4 of the SPS Agreement. The Parties further recognise that equivalence can be accepted for a specific measure or a group of measures, or on a systems-wide basis related to a certain product or categories of products.

2. In application of equivalence, the Parties shall follow the procedures for determining the equivalence of a sanitary or phytosanitary measure, developed by the WTO SPS Committee, the CODEX, the WOAH and the IPPC, including in any future work related to equivalence undertaken by these international organisations.

3. The importing Party shall recognise a sanitary or phytosanitary measure of the exporting Party as equivalent to its own, if the exporting Party objectively demonstrate to the importing Party that its measure achieves the importing Partyâs appropriate level of protection.

4. To facilitate a determination of equivalence, the importing Party, on request of the exporting Party, shall explain the rationale and objective of its sanitary or phytosanitary measures and clearly identify the risks the sanitary or phytosanitary

measures are intended to address.

5. The exporting Party shall provide appropriate science-based and technical information to support its objective demonstration that its measure achieves the appropriate level of protection identified by the importing Party. For this purpose, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.

6. The importing Party shall determine the science-based and technical information provided by the exporting Party on its sanitary or phytosanitary measures with an aim of entering bilateral Mutual Recognition Agreements ("MRAs") on the equivalence of specified sanitary or phytosanitary measures.

7. The importing Party shall respond in a timely manner to any request from the exporting Party for consideration of the equivalence of its measures, normally within a six-month period of time, unless otherwise agreed.

8. When the importing Party has adopted a sanitary or phytosanitary measure on equivalence, it shall promptly communicate the decision in writing to the exporting Party.

9. The determination by an importing Party of a request for recognition of equivalence of its measures shall not be in itself a reason to disrupt or suspend ongoing imports from that Party of the product in question.

10. 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. The Party may refer the issue under the Article 5.13: Technical Consultation.

Article 5.7. Risk Analysis

1. The Parties recognise that risk analysis is an important tool for ensuring that their SPS measures are based on scientific evidence as provided for in Article 5 of the SPS Agreement, taking into account relevant decisions of the WTO SPS Committee and ISGRs.

2. The Parties shall endeavor to expedite the risk analysis process, by working together in determining principles and guidelines, in accordance with procedures, policies, resources and laws and regulations of the importing Party.

3. When conducting its risk analysis, each Party shall:

(a) consider risk management option(s) that are not more trade restrictive than required to achieve the level of protection that the Party determines to be appropriate; and

(b) select risk management options to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

4. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of the risk analysis status.

5. If the importing Party adopts the determination of risk analysis that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

6. If a determination does not result in the recognition of risk analysis, the importing Party shall provide the exporting Party with the rationale for its decision.

Article 5.8. Adaptation to Regional Conditions, Including Pest-or Disease- Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise the principles of regionalisation and _ its implementation as provided for in Article 6 of the SPS Agreement in the light of relevant decisions of the WTO SPS Committee and ISGRs.

2. When the importing Party receives a request for a determination of regional conditions from the exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an evaluation within a reasonable period of time.

3. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of evaluation for a determination of regional conditions.

4. When the importing Party adopts a measure that recognises regional conditions of the exporting Party, the importing

Party shall communicate to the exporting Party in writing and implement such measure within a reasonable period of time. Any arrangement of the recognition of regional conditions which is concluded between the Parties shall be recorded by the competent authorities of the Parties.

5. If the evaluation of the evidence provided by the exporting Party does not result in a determination of regional conditions, the importing Party shall provide the exporting Party with the rationale for its determination.

Article 5.9. Transparency

1. The Parties shall undertake cooperation as per transparency requirements set out in Annex B of the SPS Agreement, and strengthen the cooperation between Contact Points of the Parties as laid out in Article 5.16 (Competent Authorities and Contact Points).

2. The Parties, through the Competent Authorities or Contact Points established under Article 5.16 (Competent Authorities and Contact Points), shall notify proposed measures or changes to existing SPS measures that may have an effect on the trade of the other Party on a consistent and systematic basis.

3. In addition, the Party, upon request from the other Party shall provide information or clarification regarding the proposed measures within a reasonable period of time.

Article 5.10. Import Checks

When conducting import checks, the Parties agree that:

(a) the Parties shall ensure that their control, inspection and approval procedures are in accordance with Annex C of the SPS Agreement.

(b) the frequencies of import checks on importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

(c) the import checks shall be based on the risk associated with such importations. Import checks shall be carried out in a manner that is least trade- restrictive and without undue delay, and shall be based on the following principles:

(i) in carrying out the checks for health and food safety purposes, the importing Party shall ensure that plant and plant products, animal and animal products are inspected according to the risk involved;

(ii) in the event that the checks reveal non-compliance with the relevant regulatory requirements, the importing Party shall take measures appropriate to the risk involved;

(iii) when the goods are detained by the empowered authority at a port of entry, the reasons for the detention shall be promptly notified in writing or electronically to the importer or its representatives;

(iv) when a consignment is rejected, upon request, the importing Party shall endeavor to provide all appropriate information, including laboratory analytical results and methods used in the analysis to the exporting Party to objectively demonstrate the credibility of the action taken;

(v) unless there is a clearly identified risk in holding the consignment, the consignment shall not be destroyed without affording an opportunity to the exporter to take back the consignment; and

(vi) when a significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties concerned shall, upon request, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

Article 5.11. Certification

1. In applying certification requirements, each Party shall take into account the relevant decisions of the WTO SPS Committee and ISGRs.

2. Where certification is required for trade in goods, the importing Party shall ensure that such certification requirements are applied only to the extent necessary to protect human, animal or plant life or health.

3. Official certificate shall be issued by the competent authorities of the exporting Party.

4. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

Article 5.12. Audit

1. In undertaking an audit, each Party shall take into account the relevant decisions of the WTO SPS Committee and ISGRs.

2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party, to provide the required assurances and meet the sanitary or phytosanitary measures of the importing Party.

3. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale, the objectives and scope of the audit and other matters related specifically to the commencement of an audit.

4. On the exit meeting, the importing Party shall provide the exporting Party with an opportunity to comment on the accuracy of the findings of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing to the exporting Party within a reasonable period of time.

5. The cost incurred for the audit shall be mutually agreed by the Parties.

6. The importing Party and the exporting Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

Article 5.13. Technical Consultation

1. Upon the request of a Party for technical consultations on any matter arising under this Chapter, such Party may communicate through the Contact Points or Competent Authorities established under Article 5.16 (Competent Authorities and Contact Points). The other Party shall respond promptly to such request.

2. Consultations will be carried out within thirty 30) days of receiving the request, unless otherwise agreed by the Parties. Such consultations may be conducted via teleconferencing, video conferencing, or any other means mutually agreed by the Parties.

Article 5.14. Cooperation

The Parties shall strengthen their technical co-operation in the areas of capacity building, technical assistance, collaboration and information exchange of mutual interest in the field of SPS measures, inter alia:

(a) in strengthening the capacities of relevant authorities in implementing the provisions of this Chapter;

(b) in enhancing the capacities of relevant authorities (i.e. their competencies and fulfilling responsibilities), on sanitary or phytosanitary measures as defined in accordance with Annex A of the SPS Agreement, subject to the availability of appropriate resources; and

(c) in increasing collaboration between the relevant competent authorities in activities of the regional and international organisations.

Article 5.15. Working Group on Sanitary and Phytosanitary Measures

1. The Parties hereby establish a Working Group on Sanitary and Phytosanitary Measures (hereinafter referred to as "the SPS Working Group", with the objective of ensuring the implementation of this Chapter.

2. The Committee shall be comprised of representatives of each Party who have responsibilities for the development, implementation, and enforcement of SPS measures.

3. The SPS Working Group shall be coordinated by Contact Points established under Article 5.16 (Competent Authorities and Contact Points).

4. The Parties shall establish the SPS Working Group as soon as possible and no later than one year after the date of entry into force of this Agreement.

5. The functions of this SPS Working Group may include, but not limited to the following:

(a) to enhance mutual understanding of each Party SPS measures and the regulatory processes related to those measures;

(b) to discuss and exchange information on issues that a Party raises related to development, adoption or application of SPS measures, that may, directly or indirectly, affect human, animal and plant life or health and bilateral trade;

(c) to review progress on addressing bilateral issues arising from the implementation of SPS measures between the Parties;

(d) to monitor the implementation of this Chapter, including progress of work programmes agreed as part of cooperation under this Chapter;

(e) to facilitate and coordinate technical cooperation programmes on SPS measures;

(f) Any other functions mutually agreed by the Parties.

6. The SPS Working Group shall establish its own rules of procedure at its first meeting. These rules may be revised or further developed at any time.

7. Each Party shall ensure that its appropriate and relevant representatives participate in the meetings of the SPS Working Group. Upon mutual agreement, the Parties may invite concerned technical experts to participate in the meetings.

8. The SPS Working Group shall meet at least once a year, unless the Parties agree otherwise.

9. The SPS Working Group may agree to establish ad hoc technical working groups in accordance with its rules of procedure.

Article 5.16. Competent Authorities and Contact Points

1. The competent authorities responsible for the implementation of SPS measures and the Contact Points responsible for the communication between the Parties are described as follows:

(a) For Thailand:

(i) The competent authorities are Ministry of Agriculture and Cooperatives, consisting of Department of Agriculture, in the area of plant and plant products, Department of Livestock Development in the area of animal and animal products, and Department of Fisheries in the area of fish and fishery products and Ministry of Health, Food and Drug Administration, in the area of food products.

(ii) The contact point is the National Bureau of Agricultural Commodity and Food Standards, Ministry of Agriculture and Cooperatives.

(b) For Sri Lanka:

(i) The competent authorities are Ministry of Health, Ministry of Agriculture, National Plant Quarantine Service in the area of plant and plant products, Department of Animal Production and Health in the area of animal and animal products and Department of Fisheries and Aquatic Resources in the area of fish and fishery products and.

(ii) The contact point is Department of Commerce

2. A Party shall provide the other Party, through the contact points established under paragraph 1, a description of its competent authorities, including their functions and responsibilities.

3. A Party shall notify each other of any significant changes in the structure and organisation of the competent authorities or contact points.

Article 5.17. Dispute Settlement

Dispute settlement shall not apply to this Chapter.

Chapter 6. TECHNICAL BARRIERS TO TRADE

Article 6.1. Objectives

The objectives of this Chapter are to increase and facilitate trade in goods between the Parties by enhancing the implementation of the TBT Agreement, by ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacle to trade, and by strengthening bilateral cooperation.

Article 6.2. Scope

This Chapter shall apply to standards, technical regulations, and conformity assessment procedures of the Parties that may affect trade in goods between the Parties. This Chapter shall not apply to:

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

(b) any sanitary and phytosanitary measure which is covered by Chapter 5 (Sanitary and Phytosanitary Measures).

Article 6.3. Definitions

For the purposes of this Chapter, the definitions provided in Annex 1 of the TBT Agreement shall apply.

Article 6.4. Affirmation of the TBT Agreement

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

Article 6.5. International Standards

1. The Parties recognise the important role that international standards, guides, and recommendations can play in the harmonisation of technical regulations, conformity assessment procedures, and national standards, and in reducing unnecessary barriers to trade.

2. In determining whether an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement, (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as "WTO TBT Committee").

Article 6.6. Standards

1. With respect to the preparation, adoption, and application of standards, each Party shall ensure that its standardising body or bodies, that prepare, adopt, and apply national standards, accept and comply with Annex 3 of the TBT Agreement.

2. Where modifications to the contents or structure of the relevant international standards were necessary in developing a Partyâs national standards, that Party shall, on request of the other Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences.

3. Further to paragraph 2, each Party shall ensure that its standardising body or bodies ensure that the modifications of the contents and structure of international standards are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

4. Each Party shall encourage cooperation between the relevant standardising body or bodies in its territory and the standardising body or bodies of the other Party. Such cooperation may include:

(a) exchange of information on standards and their use of standards in support of technical regulations;

(b) exchange of information relating to standard setting procedures;

(c) cooperation in the work of international standardising bodies in areas of mutual interest; and

(d) exchange of information on cooperation agreement implemented by either Party on standardisation, provided that the information can be made available to the public.

Article 6.7. Technical Regulations

1. Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations, it shall, on request of the other Party, explain the

reasons therefor.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

3. In implementing paragraph 8 of Article 2 of the TBT Agreement, when a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall, on request of the other Party, provide its reasons therefor

4. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, the Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party. For the purposes of this paragraph, âreasonable intervalâ shall be understood to mean 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.

5. The Parties recognise the importance of good regulatory practice with regard to the preparation, adoption, and application of technical regulations, as provided for in the TBT Agreement.

Article 6.8. Conformity Assessment Procedures

1. Further to paragraph 4 of Article 5 of the TBT Agreement, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned, for, inter alia, such reasons as national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; and fundamental technological or infrastructural problems.

2. Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.

3. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

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

5. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party. Such mechanisms may include:

(a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties;

(b) cooperative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the Parties;

(c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by the other Party;

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

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

(f) manufacturer's or supplier's declaration of conformity.

6. Upon reasonable request, the Parties concerned shall exchange information or share experiences on the mechanisms referred to in paragraph 5, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.

7. The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties.

8. Further to paragraph 4 of Article 6 of the TBT Agreement, where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in the other Party in its conformity assessment procedures, it is encouraged, on request of the other Party, to explain the reason for its refusal decision.

9. Where a Party declines a request from the other Party to engage in negotiations for the conclusion of agreement for the mutual recognition of the results of conformity assessment procedures conducted by bodies in the other Partyâs territory, it shall, on request of the other Party, explain the reasons for its decision.

Article 6.9. Transparency

1. Each Party affirms its transparency obligations under the TBT Agreement with regard to the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.

2. Upon written request, a Party shall provide to the requesting Party, if already available, the full text or summary of its notified mandatory standards, technical regulations, and conformity assessment procedures in the English language. If unavailable, the requested Party shall provide to the requesting Party a summary stating the requirements of the notified mandatory standards, technical regulations, and conformity assessment procedures in the English language, within a reasonable period of time agreed by both Parties and, if possible, within 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the requested Party.

3. Each Party shall, on request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Party has adopted or is proposing to adopt.

4. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Party to provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. Each Party shall take the comments of the other Party into account and shall endeavour to provide responses to those comments upon request.

5. Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed by the Parties and, if possible, within 60 days. Upon request, the requested Party shall provide such information or explanation in the English language.

6. When a Party detains, at the point of entry due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.

Article 6.10. Cooperation

1. With a view to fulfilling the objectives of this Chapter, a Party shall, on request of the other Party, cooperate on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.

2. Such cooperation, which shall be on mutually determined terms and conditions, may include:

(a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations, and conformity assessment procedures;

(b) cooperation between conformity assessment bodies, both governmental and non-governmental, as defined under Annex 1 of the TBT Agreement, in the Parties, on matters of mutual interest;

(c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;

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

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

(f) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

Article 6.11. Technical Discussions

1. When a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may make a written request for technical discussions. The requested Party shall respond as early as possible to such a request.

2. The requested Party shall enter into technical discussions with the requesting Party within 30 days, unless otherwise mutually determined by the Parties, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means agreed by the Parties.

Article 6.12. Market Surveillance

1. For the purposes of this Article, "market surveillance" is the activities carried out and measures taken by regulatory or relevant public authorities of the Parties to monitor or address the compliance of product with the requirement set out in its laws and regulations.

2. The Parties recognise the importance of cooperation between their relevant regulatory authorities to exchange information, as the Parties are mutually interested, on market surveillance, safety, and compliance of products for the facilitation of trade and for the protection of consumers and other users.

3. The Parties shall endeavour to ensure that market surveillance functions are carried out by the competent authorities and that no conflicts of interest exist between the market surveillance function and the conformity assessment function.

Article 6.13. Marking and Labelling

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

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

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

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

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

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

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

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

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

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

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

4. Paragraph 3 shall apply to all products in paragraph 3 of Article 1 of the TBT Agreement in accordance with the Partiesâ laws and regulations.

Article 6.14. Contact Points

1. Each Party shall, within 30 days of the date of entry into force of this Agreement, designate one or more contact points responsible for coordinating the implementation of this Chapter, and notify the other Party of the contact details of the relevant official or officials in that contact point, including the telephone number, facsimile number, email address, and any other relevant details. Each Party shall promptly notify the other Party of any changes to those contact details.

2. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from the other Party.

Chapter 7. TRADE REMEDIES

Section I. ANTI-DUMPING AND COUNTERVAILING MEASURES

Article 7.1. Anti-Dumping Measures

1. Each Party retains its rights and obligations under Article VI of GATT 1994 and the WTO Agreement on Implementation of Article VI of GATT 1994 with regard to the application of antidumping duties, or any amendments or provisions that supplement or replace them. To this end, the provisions of the WTO Agreement on Anti-Dumping shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to anti-dumping measures.

Article 7.2. Countervailing Measures

1. Each Party retains its rights and obligations regarding countervailing measures under Articles VI and XVI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, or any amendments or provisions that supplement or replace them. To this end, the provisions of the WTO Agreement on Subsidies and Countervailing Measures shall apply, mutatis mutandis, to the extent not specifically provided for in this Agreement.

2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to countervailing measures.

Article 7.3. Practices Relating to Anti-dumping and Countervailing Duty Proceedings

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

2. In addition to the usual practice regarding notification in anti-dumping and countervailing investigations, the Parties, for the purposes of paragraph 1, designate the following contact points, to which such notification shall be forwarded in written copy and initially conveyed through electronic means at the earliest opportunity and not later than one week:

(a) for Thailand, the Department of Foreign Trade (email: butrade @moc.go.th), or its successor; and

(b) for Sri Lanka, the Department of Commerce (email: fortrade @doc.gov.lk), or its successor.

3. A Party, whose good is subject to an anti-dumping investigation by the other Party, may, by the due date for the submission of the response to the questionnaire (1), inform, where applicable, the investigating Party in the importing country that there are no significant exports of that product to the investigating Party. Such information, together with all relevant information on record, may be taken into account by the investigating authority of the other Party in its findings. The purpose of this provision, among others, is to determine whether the volume of dumped imports is negligible or not.

4. In any proceeding in which the investigating authorities determine to conduct an on-the-spot investigation to verify information provided by a respondent and pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify that respondent of their intent, and:

(a) shall provide to the respondent at least seven days advance notice of the date on which investigating authorities intend to conduct any such on-the- spot investigation to verify the information; and

(b) shall at least seven days prior to any such on-the-spot investigation to verify the information, provide to the respondent a document that sets forth the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation the respondent is to make available for review.

5. After an on-the-spot investigation is completed, and subject to the protection of confidential information (2), a written report that describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification shall, to the extent possible, be provided to the respondent.

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

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

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

The public file and a list of all documents that are contained in the record of the investigation or review shall be made available upon request for inspection and copying during the investigating authoritiesâ normal business hours or electronically available for download.

7. If, in an anti-dumping or countervailing duty investigation, a Party's investigating authorities determine that an interested party's timely response to a request for information does not comply with the request, the investigating authorities:

(a) inform that interested party that submitted the response of the nature of the deficiency; and

(b) to the extent practicable in light of the time-limits established to complete the anti-dumping or countervailing duty investigations, provide that interested party with an opportunity to remedy or explain the deficiency.

If that interested party submits further information in response to the deficiency and the investigating authorities find such response not satisfactory, or the response is not submitted within the applicable time limits, and if the investigating authorities disregard all or part of the original and subsequent responses, the investigating authorities explain the reasons for disregarding the responses in the determination or other written document.

8. Each Party shall ensure, before the final determination, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision to apply measures, without prejudice to paragraph 5 of Article 6 of the Anti-Dumping Agreement and paragraph 4 of Article 12 of the Subsidies and Countervailing Measures Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to provide their comments. The investigating authorities of a Party shall in their final determination, take into account such comments given during the time provided for such comments.

(1) This relates to the questionnaire referred to in Article 6 of the WTO Anti-Dumping Agreement.

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

Section II. COOPERATION

Article 7.4. Areas of Cooperation

1. The Parties will endeavor, within available resources, to cooperate in preventing circumvention of trade remedies. The areas of cooperation are as follows:

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

(b) exchanging information relating to investigations; and

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

2. This Section shall not be construed to require the other Party to furnish or allow access to confidential information

pursuant to this Chapter, the disclosure of which it considers would:

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

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

(c) impede law enforcement; or

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

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

4. Chapter 13 (Dispute Settlement) and Section I (Administration and Institutional Provisions) of Chapter 14 (Institutional and Final Provisions) shall not apply to this Article.

Section III. GLOBAL SAFEGUARD MEASURES

Article 7.5. Global Safeguards

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

2. No provision of this Agreement, including the provisions of Chapter 13 (Dispute Settlement) shall be construed as imposing any rights or obligations on the Parties with respect to global safeguards measures.

3. No Party shall apply, with respect to the same product at the same time:

(a) aprovisional or Bilateral safeguard measure; and

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

4. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of the notification given to the WTO Committee on Safeguards under paragraph 1(a) of Article 12. of the Safeguards Agreement.

Section IV. BILATERAL SAFEGUARD MEASURES

Article 7.6. Definitions

For the purposes of this Chapter:

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

(b) threat of serious injury means the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;

(c) domestic industry means the producers as a whole of the like or directly competitive products with respect to an imported good, operating in the territory of the Party or, when it is not possible, those whose collective output of the like or directly competitive products constitutes a major proportion of the total production of such products;

(d) bilateral safeguard measure means a safeguard measure described in this Section;

(e) competent authority means the investigating authorities as designated by the Parties for the purpose of this Section;

(f) critical circumstances means critical circumstances as referred to in paragraph 1 of Article 7.9 (Provisional Measures);

(g) transitional safeguard period means, in relation to a particular good, the period from the date of entry into force of this Agreement until eight years after the date on which the elimination or reduction of the customs duty on that good is completed, in accordance with a Partyâs Schedule of Tariff Commitments in Annex 2A (Schedule of Tariff Commitments -

Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka);

(h) customs duty means customs duties as defined in Article 2.1 (Definitions) of Chapter 2 (Trade in Goods); and

Gi) originating good means an originating good as defined in Article 3.1 (Definitions) of Chapter 3 (Rules of Origin).

Article 7.7. Application of Bilateral Safeguard Measures

1. If as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such good from the other Party cause or threaten to cause a serious injury to domestic producers of like or directly competitive products, the importing Party may, to the extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate its domestic industry's adjustment:

(a) suspend the further reduction of any rate of customs duty on the good provided for under Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka) on the originating good; or

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

(i) The MFN applied rate of customs duty in effect at the time the measure is taken; and

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

2. The Parties agree that neither tariff rate quotas nor quantitative restrictions are permissible forms of a bilateral safeguard measure.

Article 7.8. Conditions and Limitations on Imposition of a Bilateral Safeguard Measure

The following conditions and limitations shall apply to an investigation or a measure described in Article 7.7:

(a) A Party shall within five working days deliver written notice to the other Party upon:

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

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

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

(iv) taking a decision to modify a bilateral safeguard measure.

(b) in making the notification referred to in subparagraph (a), the Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports of originating good, precise description of the originating good subject to the bilateral safeguard measure including its heading and subheading under the Harmonized System and the national nomenclature of the Party and the proposed measure, proposed date of introduction and expected duration and, if applicable, a timetable for the progressive liberalisation of the bilateral safeguard measure, and in the case of an extension of the bilateral safeguard measure, evidence that the domestic industry concerned is adjusting.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations, with a view to, inter alia, reviewing the information provided under subparagraphs (a) and (b) that has arisen from the investigation, exchanging views on the bilateral safeguard measure, including consideration of alternative measures and compensation.

(d) A Party shall apply the measure only following an investigation by the competent authorities of such Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement; and to this end, Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement are incorporated into and made a part of this Agreement, mutatis mutandis.

(e) The investigation shall be promptly terminated and no measure taken if imports of the subject product represent less than 3 per cent of total imports (3) of products under the same HS code.

(f) Each Party shall ensure that its competent authorities complete any such investigation within one year from the date of

its initiation.

(g) No measure shall be maintained:

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

(ii) for a period exceeding three years except that, in exceptional circumstances, the period may be extended by up to an additional one year, to a total maximum of four years from the date of first imposition of the measure, if the investigating authorities determine in conformity with procedures set out in subparagraphs (a) through (f) that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting and provided that provisions of Article 7.8 (Conditions and limitations on imposition of a Bilateral Safeguard measure) and Article 7.10 (Compensation) are observed;

(iii) beyond the expiration of the transitional safeguard period.

(h) No bilateral safeguard measure shall be applied to the import of an originating good for a period of one year from the date on which the first tariff reduction or tariff elimination takes effect for that originating good as committed under this Agreement.

(i) Upon the termination of the bilateral safeguard measure, the rate of customs duty for an originating product subject to the measure shall be the rate which would have been in effect, as per Annex 2A (Schedule of Tariff Commitments - Thailand) or Annex 2B (Schedule of Tariff Commitments - Sri Lanka), but for the bilateral safeguard measure.

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

(3) The time frame to be used for calculating the applicable percentages shall be the most recent period of 12 months, where data is available.

Article 7.9. Provisional Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, an importing Party may apply a provisional bilateral safeguard measure, which shall take the form of the measures set out in subparagraph l(a) or (b) of Article 7.7 (Application of Bilateral Safeguard Measures), pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such increased imports have caused or are threatening to cause serious injury to a domestic industry of the importing Party.

2. The duration of any provisional safeguard measure shall not exceed 200 days, during which period the Party applying that provisional measure shall comply with the requirements of subparagraph (d) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure). If the investigation referred to in subparagraph (d) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure) does not result in a finding that the requirements of Article 7.7 (Application of Bilateral Safeguard Measures) are met, the Party applying the provisional safeguard measure shall promptly refund any additional customs duties collected as a result of the provisional safeguard measure. For greater certainty, the duration of any provisional safeguard measure shall be counted as part of the total period prescribed by subparagraph (g)(@i) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure).

3. A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations shall be initiated immediately after the provisional bilateral safeguard measure is applied.

Article 7.10. Compensation

1. A Party proposing to apply or extend a bilateral safeguard measure shall, in consultation with the Party that would be affected by such a measure, provide mutually agreed, adequate means of trade compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. The Party applying a bilateral safeguard measure shall provide the Party that would be affected by such a measure with an opportunity to consult within 30 days after the date on which the bilateral safeguard measure was applied.

2. If the consultations referred to in paragraph 1 do not result in an agreement on trade compensation within 30 days after the commencement of such consultations, the Party against whose good the bilateral safeguard measure is applied may

suspend the application of substantially equivalent concessions to the trade in goods of the Party applying the bilateral safeguard measure.

3. A Party against whose good a bilateral safeguard measure is applied shall deliver a written notice to the Party applying the bilateral safeguard measure at least 30 days before it suspends the application of concessions in accordance with paragraph 2.

4. The obligation to provide compensation under paragraph 1 and the right to suspend the application of concessions in accordance with paragraph 2 shall cease on the termination of the bilateral safeguard measure.

5. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first three years during which the bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.

Article 7.11. Administration of Emergency Action Proceedings

1. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measures.

2. Each Party shall entrust the determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority.

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

4. Nothing in this Section shall require the Parties to disclose confidential information the disclosure of which would be prejudicial to public order, impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

5. A written notice referred to in subparagraph (a) of Article 7.8 (Conditions and Limitations on Imposition of a Bilateral Safeguard Measure), paragraph 3 of Article 7.9 (Provisional Measures) and paragraph 3 of Article 7.10 (Compensation) shall be in English.

Article 7.12. Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 13 (Dispute Settlement) for any matter arising under Section I (Anti-Dumping and Countervailing Measures) and Section III (Global Safeguard Measures).

Chapter 8. TRADE IN SERVICES

Article 8.1. Definitions

For the purposes of this Chapter:

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

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

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

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

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

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

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

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

(g) juridical person of the other Party means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party,

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

1. natural persons of that Party; or

2. juridical persons of that Party, identified under sub- paragraph (i);

(h) a juridical person is

owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party.

controlled by persons of a Party if such persons have the power to name a majority of directors or otherwise legally direct its actions.

affiliated with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

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

(j) measures by a Party means measures taken by:

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

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

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

(k) measures by a Party affecting trade in services includes measures in respect of:

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

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

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

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

(m) natural person of a Party means a natural person who resides in the territory of a Party or elsewhere and who under the law of that Party is a national of that Party;

(n) person means either a natural person or a juridical person;

(o) sector of a service means,

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

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

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

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

(r) service consumer means any person that receives or uses a service;

(s) service of a Party means a service which is supplied:

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

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

(t) service supplier means any person that supplies a service;

(u) supply of a service includes the production, distribution, marketing, sale and delivery of a service;

(v) trade in services is defined as the supply of a service:

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

(ii) in the territory of a Party to the service consumer of the other Party ("consumption abroad");

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

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

(w) air traffic rights means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

Article 8.2. Scope and Coverage

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

2. This Chapter shall not apply to measures affecting:

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

(b) a service supplied in the exercise of governmental authority;

(c) government procurement;

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

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(e) natural persons seeking access to the employment market of a Party; or

(f) citizenship, residence or employment on a permanent basis.

3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of requiring a visa shall not be regarded as nullifying or impairing benefits under a specific commitment.

4. Unless they are specifically defined in this Chapter or in Annex 8A (Schedule of Specific Commitments - Thailand) or Annex

8B (Schedule of Specific Commitments - Sri Lanka), terms used in this Chapter and in the Annexes shall be construed in accordance with their meaning in GATS, mutatis mutandis.

5. Notwithstanding any other provision of this Chapter, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system; or to ensure the stability of the exchange rate, including to prevent speculative capital flows subject to the following:

(i) where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Partyâs commitments or obligations under this Chapter.

(ii) for measures to ensure the stability of the exchange rate including to prevent speculative capital flows, such measures shall be no more than necessary, and phased out when conditions no longer justify their institution or maintenance.

Article 8.3. Market Access

1. With respect to market access through the modes of supply defined in sub-paragraph (v) of Article 1 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in Annex 8A (Schedule of Specific Commitments - Thailand) or Annex 8B (Schedule of Specific Commitments - Sri Lanka) (1).

2. Insectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annex 8A (Schedule of Specific Commitments - Thailand) or Annex 8B (Schedule of Specific Commitments - Sri Lanka), are:

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

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

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

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

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

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

(1) If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in sub-paragraph (v) (i) of Article 1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v) (iii) of Article 1, it is thereby committed to allow related transfers of capital into its territory.

(2) This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Article 8.4. National Treatment

1. Inthe sectors inscribed in Annex 8A (Schedule of Specific Commitments - Thailand) or Annex 8B (Schedule of Specific Commitments - Sri Lanka), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (3)

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

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

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

Article 8.5. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 (Market Access) or Article 8.4 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Partyâs Schedule.

Article 8.6. Schedule of Specific Commitments

1. Each Party shall set out in a Schedule the Specific Commitments it undertakes under Article 8.3 (Market Access), Article 8.4 (National Treatment) and Article 8.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate, the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with both Article 8.3 (Market Access) and Article 8.4 (National Treatment) shall be inscribed in the column relating to Article 8.3 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

3. The Schedules of Specific Commitments shall be annexed to this Chapter and shall form an integral part thereof.

Article 8.7. Modification of Schedules

1, A Party may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. It shall notify the other Party of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party whose benefits under this Agreement may be affected by a proposed modification or withdrawal notified under paragraph 1, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Party concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of Specific Commitments prior to such negotiations.

3. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to the provisions of Chapter 13 (Dispute Settlement).

Article 8.8. Domestic Regulation

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

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

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

4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

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

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

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

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

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

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

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

7. In determining whether a Party is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organisations (4) applied by that Party.

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

Article 8.9. Recognition

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

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

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

Article 8.10. Monopolies and Exclusive Service Suppliers

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

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

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

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

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

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

Article 8.11. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 10, may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic laws and regulations and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 8.12. Emergency Safeguard Measures

1. The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, the affected Party may request for consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph shall be mutually agreed by the Parties. The Parties shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

Article 8.13. Payments and Transfers

1, Except under the circumstances envisaged in Article 8.14 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 8.14 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the International Monetary Fund.

Article 8.14. Restrictions to Safeguard Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate among WTO Members;

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

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

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

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

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

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

5. The Party adopting any restrictions in accordance with paragraph 1 shall commence consultations with the other Party promptly in order to review the restrictions adopted.

Article 8.15. Transparency

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

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

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Communication between the Parties in this regard shall be done through their designated contact points.

Article 8.16. Disclosure of Confidential Information

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

Article 8.17. Denial of Benefits

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

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

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

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

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

(c) to a service supplier, that is juridical person, if it establishes that it is not a service supplier of the other Party where the Party establishes that the service supplier is owned or controlled by persons of a non-Party and that it has no substantive business operations in the territory of a Party.

Article 8.18. Contact Points

Each Party shall designate one or more contact points to facilitate communication between the Parties on any matter covered by this Chapter, and shall provide details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 8.19. Committee on Trade In Services

1. The Parties hereby establish a Committee on Trade in Services that shall meet as mutually determined by the Parties or the Joint Committee to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation and operation of this Chapter,

(b) exchanging information and recommendation of measures to promote increased trade in services between the Parties; and

(c) considering and discussing any issues related to this Chapter.

Article 8.20. Miscellaneous Provisions

The GATS Annexes, namely, Annex on Movement of the Natural Persons Supplying Services under the Agreement, Annex on Air Transport Services, Annex on Financial Services, and Annex on Telecommunications, shall apply to this Chapter, mutatis mutandis.

Chapter 9. INVESTMENT

Article 9.1. Definitions

For the purposes of this Chapter:

(a) covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, expanded or operated thereafter, which has been admitted and, where applicable, specifically approved in writing for protection by the competent authorities of the host Party, in accordance with its laws, regulations, and policies;

(b) freely usable currencies means a freely usable currency as determined by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto, or any currency that is used to make international payments and is widely traded in international principal exchange markets;

(c) investments means every kind of asset that an investor owns or controls, which has the characteristics of an investment, (1) such as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. The forms that an investment may take include in particular:

(i) a juridical person;

(ii) movable and immovable property, and any other property rights, such as leases, mortgages, liens, and pledges; (2)

(iii) shares, stocks, and any other form of equity participation, excluding beneficial ownership, of a juridical person and rights derived therefrom;

(iv) bonds and debentures of a juridical person and rights derived therefrom;

(v) returns reinvested;

(vi) claims to money and to any other rights to contractual performance having a financial value related to investment; (3)

(vii) intellectual property rights which are recognised pursuant to the laws and regulations of the host Party;

(viii) rights under contracts, including construction, management, production, or revenue-sharing contracts; and

(ix) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licences, authorisations, and permits.

The term "investment" does not include an order or judgment, sought or entered in any judicial, administrative, or arbitral proceeding, including an arbitral award.

For the purposes of the definition of investment in this subparagraph, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

(d) investor of a Party means a natural person of a Party, (4) or a juridical person of a Party recognised as a legal entity by the law of the other Party, that seeks to make, (5) is making an investment or has made a covered investment in the territory of the other Party;

(e) juridical person means any entity constituted or organised under the applicable law of the host Party; (6) (7) (8)

(f) juridical person of a Party means a juridical person constituted or otherwise organised under the laws and regulations of that Party and is engaged in substantive business operations in that Party;

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

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

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

(h) natural person of a Party means any natural person possessing the nationality or citizenship of that Party in accordance with its laws and regulations; and

(i) return means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

(1) Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take.

(2) For greater certainty, market share, access to market, expected gains, and opportunities for profit making are not, by themselves, investments.

(3) For greater certainty, the term "investment" does not include claims to money that arise solely from: (a) commercial contracts for the sale of goods or services by a natural person or juridical person in the territory of a Party to a natural person or juridical person in the territory of the other Party; or (b) the extension of credit in connection with a commercial transaction, such as trade financing.

(4) Natural persons who hold two or more nationalities shall be deemed to be exclusively nationals of the State of their dominant and effective nationality.

(5) For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of the other Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor of the other Party that has initiated such notification or approval process.

(6) For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

(7) For greater certainty, the inclusion of a "branch" in the definition of "juridical person" is without prejudice to a Party's ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

(8) A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

Article 9.2. Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

3. This Chapter shall not apply to:

(a) government procurement;

(b) subsidies or grants provided by a Party, including government supported loans, guarantees, insurance, and any conditions attached to the receipt or continued receipt of such subsidies or grants;

(c) services supplied in the exercise of governmental authority;

(d) any taxation measure, except as provided for in Article 9.11 (Expropriation and Compensation) and Article 9.12 (Transfers); and

(e) any measure adopted or maintained by a Party to the extent that it is covered by Chapter 8 (Trade in Services).

4. Notwithstanding subparagraph 3(e), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), Article 9.13 (Subrogation), and Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party) shall apply, mutatis mutandis, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party covered by Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in the Party's Schedule of Specific Commitments in Annex 8A (Schedule of Specific Commitments - Thailand) or Annex 8B (Schedule of Specific Commitments - Sri Lanka).

5. For the purposes of liberalisation, this Chapter shall apply to investments, subject to Article 9.9 (Reservations and Non-conforming Measures), in the non-service sectors.

6. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system or to ensure the stability of the exchange rate, including to prevent speculative capital flow. Where such measures are taken, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

7. For greater certainty, the provisions of this Chapter do not impose any obligation on either Party in relation to any act or fact that took place, or any situation that ceased to exist, before the date of entry into force of this Agreement.

Article 9.3. National Treatment

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

2. For greater certainty, whether treatment is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investments of investors on the basis of legitimate public welfare objectives.

Article 9.4. Most-Favoured-Nation Treatment

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

3. For greater certainty, whether treatment is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

4. The treatment, as set forth in paragraphs 1 and 2, shall not include:

(a) any preferential treatment accorded to investors or their investments under any existing bilateral, regional or international agreements, or any forms of economic or regional cooperation with any non-Party;

(b) in the case of Thailand, any measure that accords preferential treatment to ASEAN Member States under any agreements between all ASEAN Member States, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between ASEAN Member States and non-ASEAN Member States;

(c) in the case of Sri Lanka, any measure that accords preferential treatment to SAARC Member States under any agreements between all SAARC Member States, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between SAARC Member States and non-SAARC

Member States;

5. For greater certainty, paragraphs 1 and 2 shall not be construed as granting to investors options or procedures for the settlement of disputes other than those set out in Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party).

Article 9.5. Treatment of Investment

1. Each Party shall accord to covered investments of nationals or juridical persons of the other Party, fair and equitable treatment and full protection and security in its territory. No Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or juridical persons of other Party. Each Party shall observe any obligation it may have entered into with regard to investments of nationals or juridical persons of the other Party.

2. For greater certainty:

(a) "fair and equitable treatment" requires each Party not to deny justice in any legal, criminal, civil, administrative or adjudicatory proceedings in accordance with the principle of due process;

(b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investments; and.

(c) the concepts of fair and equitable treatment and full protection and security in subparagraphs (a) and (b) do not require treatment in addition to or beyond that is required by the customary international law minimum standard of treatment of aliens, (9) and do not create additional substantive rights.

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.

(9) Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Article 9.6. Compensation for Losses

1. Each Party shall accord to investors of the other Party, whose covered investments suffered losses due to war or other armed conflict, state of national emergency, civil strife or other similar events in its territory, treatment no less favourable than that it accords, in like circumstances, to its own investors or investors of a non-Party, relating to restitution, indemnification, compensation or other forms of settlement.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

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

(b) destruction of its investment or part thereof by the other Party's forces or authorities, which was not required by the necessity of the situation,

the other Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss.

Article 9.7. Performance Requirements

The provisions of the WTO Agreement on Trade-related Investments Measures (TRIMs), which are not specifically mentioned in or modified by this Agreement shall apply, mutatis mutandis, to this Agreement.

Article 9.8. Senior Management and Boards of Directors

1. A Party shall not require that a juridical person 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 a juridical person of that Party

that is a covered investment, be of a particular nationality or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor of the other Party to exercise control over its investment.

3. For the avoidance of doubt, nothing in this Article shall be construed to limit a Party from exercising its rights as a shareholder.

Article 9.9. Reservations and Non-Conforming Measures

1. Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board 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 List A of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment - Sri Lanka);

(ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment - Sri Lanka); 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, at the date of entry into force of this Agreement, with Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board of Directors).

2. Article 9,3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board 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 List B of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment - Sri Lanka).

3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by List B of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment - Sri Lanka), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

4. Article 9.3 (National Treatment) and Article 9.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 3 or 4 of the TRIPS Agreement.

Article 9.10. Transparency

1. To achieve the objectives of this Chapter, each Party, to the extent possible, shall:

(a) make publicly available all relevant laws, regulations, and administrative guidelines of general application that pertain to, or affect, investments in the territory of the Party;

(b) promptly, and at least annually, inform the other Party of the introduction of any new law or of any changes to existing laws, regulations, or administrative guidelines of general application which significantly affect investments or commitments of a Party under this Chapter;

(c) promptly, and at least annually, inform the other Party of any investment-related agreements or arrangements which it has entered into and where preferential treatment was granted; and

(d) establish or designate an enquiry point where, upon request of any natural person or juridical person of the other Party, all information relating to the measures required to be published or made available under subparagraphs (b) and (c) may be promptly obtained.

2. Nothing in this Chapter shall require a Party to furnish or allow access to any confidential information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

Article 9.11. Expropriation and Compensation

1. A Party shall not nationalise or expropriate, either directly or through measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation"), (10) a covered investment of an investor of the other Party, unless such a measure is taken on a nondiscriminatory basis, for a public purpose in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The compensation referred to in paragraph 1 shall:

(a) be equivalent to the fair market value of the expropriated investment at the time when, or immediately before, the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;

(b) be effectively realisable and freely transferable in accordance with Article 9.12 (Transfers) between the territories of the Parties;

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

(d) be paid without delay. (11)

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Party making the expropriation. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in paragraphs 2 and 3 shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 10 (Intellectual Property) and the TRIPS Agreement. (12)

(10) For the avoidance of doubt, any measure of expropriation relating to land shall be as defined in the Party's respective existing domestic laws and regulations and any amendments thereto, and shall be for the purpose and upon payment of compensation in accordance with the aforesaid laws and regulations.

(11) Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(12) For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.

Article 9.12. Transfers

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

(a) capital and additional amounts to maintain or increase an investment;

(b) profits, capital gains, dividends, interest, royalty payments, technical assistance and technical and management fees, license fees, and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract relating to the covered investment, including a loan agreement;

(e) payments made pursuant to Articles 9.6 (Compensation for losses) and Articles 9.11 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and

(g) earnings and other remuneration of personnel engaged from abroad in connection with the covered investment.

2. Each Party shall permit such 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. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations 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 and the recovery of the proceeds of crime;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

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

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes;

(h) severance entitlement of employees; and

(i) requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of that Party.

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under its Articles of Agreement as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 9.18 (Temporary Safeguard Measures) or at the request of the IMF.

Article 9.13. Subrogation

1. If a Party or its designated agency makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity that it has granted on non-commercial risk in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or its designated agency has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or its designated agency making the payment, pursue those rights and claims against the other Party.

3. In the exercise of subrogated rights or claims, a Party or its designated agency exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party.

Article 9.14. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party and to the investorâs covered investments if the investor is a juridical person owned or controlled by a person of a non-Party or of the denying Party, and such juridical person has no substantive business operations in the territory of the other Party.

2. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the request of the other Party.

Article 9.15. Promotion of Investment

The Parties shall endeavour to promote and increase awareness of the Parties as an investment area, including through:

(a) encouraging investments between the Parties;

(b) organising investment promotion activities between the Parties;

(c) promoting business matching events;

(d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations, and policies; and

(e) conducting information exchanges on other issues of mutual concern relating to investment promotion.

Article 9.16. Facilitation of Investment

Subject to its laws and regulations, each Party shall endeavor to cooperate in investment facilitation between the Parties including through:

(a) creating the necessary environment for all forms of investment;

(b) simplifying procedures for investment applications and approvals;

(c) promoting the dissemination of investment information, including investment rules, laws, regulations, policies, and procedures; and

(d) establishing or maintaining either contact points, one-stop investment centres, focal points or other entities in the respective host Party to provide assistance and advisory services to investors, including the facilitation of operating licences and permits.

Article 9.17. Special Formalities and Treatment of Information

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 covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by that Party to investors of the other Party and 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 the other Party or its covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 9.18. Temporary Safeguard Measures

1. A Party may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 9.1 (Definitions) in the event that it is in serious balance of payments and external financial difficulties or under threat thereof, or where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. Such restrictions shall be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party and be applied in good faith so as to avoid unnecessary damage to the commercial, economic, and financial interests of the other Party.

3. The duration of the restrictions stipulated in paragraph 1 shall not exceed those necessary to deal with the circumstances described in paragraph 1, provided that such restrictions are consistent with the IMF Articles of Agreement.

4. Such restrictions shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

5. Where such restrictions are adopted or maintained, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter or under the IMF Articles of Agreement.

Article 9.19. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or

unjustifiable discrimination between the Parties or their investors where like conditions prevail, or a disguised restriction on investors or investments made by investors of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order; (13)

(b) necessary to protect human, animal or plant life or health; (14)

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

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

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

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(e) relating to the conservation of exhaustible natural resources (15).

(13) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. For greater certainty, the Parties understand that the fundamental interests of society include the maintenance of religious harmony.

(14) The Parties understand that the measures referred to in sub-paragraph (b) include environmental measures necessary to protect human, animal or plant life or health.

(15) The Parties understand that the measures referred to in sub-paragraph (e) applies to the measures necessary to conserve living and non-living exhaustible natural resources.

Article 9.20. Security Exceptions

1. For the purposes of this Chapter, nothing in this Chapter shall be construed:

(a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

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

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

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures;

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

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

2. A Party that takes actions under subparagraph 1(b) or (c) shall inform the other Party to the fullest extent possible of the actions taken and of their termination.

Article 9.21. Term of Bilateral Investment Treaty

1. Subject to paragraph 2, the Parties agree that the Agreement between the Government of the Kingdom of Thailand and the Government of the Democratic Socialist Republic of Sri Lanka Concerning the Promotion and Protection of Investments, signed at Bangkok, Thailand, on 3 May 1996 ("BIT"), as well as all the rights and obligations derived from the said agreement, shall cease to have effect on the date of entry into force of this Agreement.

2. Any and all investments made pursuant to the BIT before the entry into force of this Agreement will be governed by the said BIT regarding any matter arising while the BIT was in force. An investor may only submit an arbitration claim pursuant to the BIT regarding any matter arising while the BIT was in force, pursuant to the rules and procedures established in it, and provided that no more than three years have elapsed since the date of entry into force of this Agreement.

Article 9.22. Corporate Social Responsibility

Each Party should encourage investors 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.

Article 9.23. Committee on Investment

1. The Parties hereby establish a Committee on Investment with a view to accomplishing the objectives of this Chapter. The functions of the Committee shall be to:

(a) discuss and review the implementation and operation of this Chapter;

(b) exchange information on, and discuss investment-related matters within, the scope of this Chapter which relate to the improvement of investment environment;

(c) consider any issues raised by either Party concerning investment agreements; and

(d) discuss any other investment-related matters concerning this Chapter. 2. The Committee shall meet as agreed by the Parties.

3. Any dispute arising out of the interpretation, implementation, or application of this Chapter, shall be referred to the Committee without prejudice to Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), and the Committee shall seek to resolve disputes that may arise in areas covered by this Chapter.

Article 9.24. Settlement of Investment Disputes between a Party and an Investor of the other Party

Scope and Definitions

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nations Treatment), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.7 (Performance Requirements), Article 9.8 (Senior Management and Board of Directors), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), and Article 9.13 (Subrogation) which causes loss or damage to the investor in relation to its covered investment or the covered investment that has been made by that investor with respect to the management, conduct, operation, sale or other disposition of such covered investment.

2. This Article shall not apply to:

(a) pre-investment activities and expenditures relating to admission, establishment, acquisition, or expansion;

(b) disputes arising out of events which occurred prior to the entry into force of this Agreement;

(c) disputes where the disputing investor holds the nationality or citizenship of the disputing Party; and

(d) disputes arising out of an investment which has not been made in good faith and has not been made in accordance with domestic laws and regulations.

3. A claim with respect to public debt shall be subject to this Article and Annex 9C (Public Debt).

4. For the purposes of this Article:

(a) Appointing Authority means:

(i) in the case of arbitration under subparagraph 8(a), the Secretary- General of the Permanent Court of Arbitration; or

(ii) any person as agreed between the disputing parties;

(b) disputing Party means a Party against which a claim is made under this Article;

(c) disputing party means a disputing investor or a disputing Party;

(d) disputing parties means a disputing investor and a disputing Party;

(e) disputing investor means an investor of a Party that makes a claim against the other Party on its own behalf under this Article and, where relevant, includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls according to business registration record in the host country and the claim shall only be limited to the proportion of the equity owned;

(f) ICSID means the International Centre for Settlement of Investment Disputes;

(g) 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;

(h) ICSID Convention means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington on 18 March 1965;

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

(Gj) non-disputing Party means the Party of the disputing investor; and

(k) UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Consultations

5. In the event of an investment dispute referred to in paragraph 1, the disputing parties shall, as far as possible, resolve the dispute through consultations with a view towards reaching an amicable settlement. Such consultations may include the use of non-binding, third party procedures, and shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

6. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

Claim by an Investor of a Party

7. If an investment dispute has not been resolved within 180 days after the date of receipt by a disputing Party of a request for consultations, the disputing investor may submit to conciliation or arbitration a claim:

(a) that the disputing Party has breached an obligation arising under Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nations treatment), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.7 (Performance Requirements), Article 9.8 (Senior Management and Board of Directors), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), or Article 9.13 (Subrogation) relating to the management, conduct, operation, sale or other disposition of a covered investment; and.

(b) that the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

Submission of a Claim

8. A disputing investor may submit a claim referred to in paragraph 7 at the choice of the disputing investor:

(a) under the UNCITRAL Arbitration Rules; or

(b) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under subparagraphs (a) and (b) shall exclude resort to any other forum.

9. Acclaim shall be deemed submitted to arbitration under this Section when the disputing investor's notice of or request for arbitration made in accordance with paragraph 12 is received under the applicable arbitration rules.

10. The arbitration rules applicable under subparagraphs 8(a) and (b), as in effect on the date on which the claim or claims were submitted to arbitration under this Section shall govern the arbitration, except to the extent modified by this Article.

11. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

12, The disputing investor shall provide with the notice of arbitration: (a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

Conditions and Limitations on Submission of a Claim

13. The submission of a dispute as provided for in paragraph 7 to conciliation or arbitration under subparagraphs 8(a) and (b) in accordance with this Article, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years after the date on which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 7(a) causing loss or damage to the investor in relation to its covered investment or the covered investment that has been made by that investor;

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration, and which briefly summarises the alleged breach of the disputing Party, including the provisions of this Chapter alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or a covered investment;

(c) the notice of arbitration being accompanied by the disputing investorâs written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, other dispute settlement procedures, or any proceeding with respect to any measure alleged to constitute a breach referred to in paragraph 7.

14. Notwithstanding subparagraph 13(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and that does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

15. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Section, unless the other Party has failed to abide by and comply with the award rendered in such a dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

16. A disputing Party shall not assert, as a defence, counter-claim, right of set off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Selection of Arbitrators

17. Unless the disputing parties otherwise agree, the tribunal shall comprise of three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

18. Arbitrators shall have expertise or experience in public international law, international trade, or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non- disputing Party or the disputing investor.

19. The Appointing Authority shall serve as an appointing authority for arbitration under this Section.

20. If a tribunal has not been constituted within 75 days after the date that a claim is submitted to arbitration under this

Article, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

21. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitratorâs remuneration.

22. Where any arbitrator appointed as provided for in this Section resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and the successor shall have all the powers and duties of the original arbitrator.

Consolidation

23. Where two or more claims have been submitted separately to arbitration under paragraph 7, and the claims have a question of law or fact in common and. arise out of the same or similar events or circumstances, all disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Conduct of the Arbitration

24. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide on the matter before proceeding to the merits.

25. A disputing Party may, no later than 45 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

26. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

27. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

Place of Arbitration

28. Unless the disputing parties otherwise agree, the tribunal shall determine the seat of arbitration in accordance with the applicable arbitration rules, provided that the seat place shall be in the territory of a State that is a party to the New York Convention. (16)

29. Unless the disputing parties otherwise agree, the venue of arbitration shall be in the territory of either Party.

30. Where an investor claims that the disputing Party has breached Article 9.11 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determine whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Article shall accord serious consideration to the decision of both Parties under this paragraph.

31. If both Parties fail either to initiate consultations referred to in paragraph 30, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days after the date of the receipt of request for consultations referred to in paragraphs 5 and 6, the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Article.

(16) The tribunal shall take into consideration that the English language is the preferred language of the Parties in determining the seat of arbitration.

Transparency of Arbitral Proceedings

32. Subject to paragraphs 33 and 34, the disputing Party may make publicly available all awards and decisions produced by the tribunal.

33. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

34. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties, shall be protected from disclosure to the public.

35. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

36. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Partyâs laws protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

37. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify the other Party of the receipt of the notice of arbitration within 30 days thereof.

Governing Law

38. Subject to paragraphs 39 and 40, when a claim is submitted under paragraph 7, the tribunal shall decide on the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties, and, where applicable, any relevant law of the disputing Party.

39. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is at issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days after the delivery of the request. Without prejudice to paragraph 40, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide on the issue on its own account.

40. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Awards

41. Where a tribunal makes a final award against either of the disputing parties, 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 disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

42. A tribunal may also award costs and attorney's fees in accordance with this Article and the applicable arbitration rules.

43. A tribunal may not award punitive damages.

44. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

45. Subject to paragraph 46 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. (17)

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

(a) in the case of a final award 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;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to subparagraph 8(b):

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

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

47. Each Party shall provide for the enforcement of an award in its territory.

(17) The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

Annex 9A. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT

Annex 9A. THAILAND

LIST A. EXPLANATORY NOTES

1. This Schedule is made pursuant to Chapter 9 (Investment) only. Any commitment of Thailand made pursuant to Chapter 8 (Trade in Services) is found in Thailand's Schedule in Annex 8A (Schedule of Specific Commitments - Thailand).

2. For the purposes of liberalisation, Chapter 9 (Investment) shall apply to investment, subject to Article 9.9 (Reservations and Non-Conforming Measures), in the following non-service sectors:

(a) manufacturing;

(b) agriculture;

(c) fisheries;

(d) forestry; and

(e) mining and quarrying.

3. List A sets out, pursuant to Article 9.9 (Reservations and Non-Conforming Measures), Thailand's measures that do not conform to the obligations under:

(a) Article 9.3 (National Treatment);

(b) Article 9.4 (Most-Favoured-Nation Treatment);

(c) Article 9.7 (Performance Requirements); or

(d) Article 9.8 (Senior Management and Board of Directors).

4. List A and List B, pursuant to Article 9.9 (Reservations and Non-Conforming Measures), follow the negative list with two-list approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures. Paragraph 1 of Article 9.9 (Reservations and Non-Conforming Measures) applies to this List only; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors, and activities.

5. Thailand may add, withdraw or modify any of its reservations as set out in List A for a period of 24 months from the date of entry into force of this Agreement, provided that relevant non-conforming measure is in existence as of that date. Any such addition, withdrawal or modification will be notified to Sri Lanka, including the relevant laws and regulations. Such reservation shall be deemed to be part of this Schedule upon such notification.

6. Each entry in List A sets out the following elements, where applicable: (a) Sector refers to the sector or sectors for which an entry is made;

(b) Subsector refers to the specific industries, products, and activities for which the entry is made;

(c) Industry Classification refers to the activity covered by the entry, according to the International Standard Industrial Classification (SIC) Revision 4.

As necessary and appropriate, Thailand may specify the exact coverage of the entry if the entry does not exactly conform to the classification system;

(d) Level of Government specifies the level of government (e.g., Central or Regional) maintaining the measure for which the entry is made;

(e) Type of Obligation refers to the obligations of Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements) or Article 9.8 (Senior Management and Board of Directors), as the case may be, which does not apply to the listed measure;

(f) Description of Measure describes measures that do not conform to Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), or Article 9.8 (Senior Management and Board of Directors) for which the entry is made; and

(g) Source of Measure is identified for transparency purposes only, for existing measures that apply to the sector, subsector, or activity covered by the entry.

7. In the interpretation of any entry, all elements of the entry shall be considered. The Description of Measure element shall prevail over all other elements.

8. These Explanatory Notes form an integral part of List A.

1. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

In the case where the Head of the National Council for Peace and Order is of opinion that it is necessary for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption, or suppression of any act which undermines public peace and order or national security, the Monarchy, national economy or administration of State affairs, whether that act emerges inside or outside Thailand, the Head of the National Council for Peace and Order shall have the powers to make any order to disrupt or suppress regardless of the legislative, executive, or judicial force of that order. In this case, that order, act or any performance in accordance with that order is deemed to be legal, constitutional and conclusive, and it shall be reported to the National Legislative Assembly and the Prime Minister without delay.

In the event of the occurrence of an emergency situation and the Prime Minister considers that it is appropriate to use the force of administrative officials or police officers, civil officials or military officers to jointly provide assistance, prevent, remedy, suppress, withhold the emergency situation, rehabilitate or provide assistance to the people, the Prime Minister, upon the approval of the Council of Ministers, is empowered to declare an emergency situation applicable to the whole country or in some area or locality as necessary for the situation.

Source of Measure

- Constitution of the Kingdom of Thailand B.E. 2560 (2017)

- Martial Law B.E. 2457 (1914), as amended

- Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005), as amended

- Internal Security Act B.E. 2551(2008), as amended

2. Sector: Manufacturing

Subsector: Playing cards

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

No natural person or juridical person is allowed to produce or import playing cards, except receiving approval from the Director General of Excise Department.

Source of Measure

- Playing Cards Act B.E. 2486 (1943), as amended, and its subsidiary legislation

- Excise Act B.E. 2560 (2017), as amended, and its subsidiary legislation

3. Sector: Manufacturing

Subsector: Manufacturing of notes and minting

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

Only the Bank of Thailand has the right and authority to print, manage, and issue the notes of the Government of Thailand under the law governing the Bank of Thailand.

Only the Ministry of Finance has the right and authority to mint and put coins into circulation.

No person shall make, issue, use, or put into circulation any material or token for money except by authorisation from the Minister of Finance.

Source of Measure

Currency Act B.E. 2501 (1958), as amended

4. Sector: Manufacturing

Subsector: Manufacturing of lottery

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

Only the Government Lottery Office is authorised to produce, manage, and distribute the lottery in Thailand.

Source of Measure

The Government Lottery Office Act B.E. 2517 (1974), as amended

5. Sector: Manufacturing

Subsector: Manufacturing of tobacco products

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure

Only the Tobacco Authority of Thailand is allowed to produce tobacco products.

Source of Measure

Tobacco Authority of Thailand Act B.E. 2561 (2018), as amended

LIST B. EXPLANATORY NOTES

1. This Schedule is made pursuant to Chapter 9 (Investment) only. Any commitment of Thailand made pursuant to Chapter 9 (Trade in Services) is found in Thailand's Schedule in Annex 8A (Schedule of Specific Commitments).

2. For the purposes of liberalisation, Chapter 9 (Investment) shall apply to investment, subject to Article 9.9 (Reservations and Non-Conforming Measures), in the following non-service sectors:

(I) manufacturing;

(ii) agriculture;

(iii) fishery;

(iv) forestry; and

(v) mining and quarrying.

3. List B sets out, pursuant to Article 9.9 (Reservations and Non-Conforming Measures), Thailand's measures that do not conform to the obligations under:

(a) Article 9.3 (National Treatment);

(b) Article 9.4 (Most-Favoured-Nation Treatment);

(c) Article 9.7 (Performance Requirements); or

(d) Article 9.8 (Senior Management and Board of Directors).

4. List A and List B, pursuant to Article XX.9 (Reservations and Non- Conforming Measures) follow the negative list with two-list approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures. Paragraph 1 of Article 9.9 (Reservations and Non-Conforming Measures) applies to this List only; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors, and activities.

5. Each entry in List B sets out the following elements, where applicable:

(a) Sector refers to the sector or sectors for which an entry is made;

(b) Subsector refers to the specific industries, products, and activities for which the entry is made;

(c) Industry Classification refers to the activity covered by the entry, according to the International Standard Industrial Classification (ISIC) Revision 4.

As necessary and appropriate, Thailand may specify the exact coverage of the entry if the entry does not exactly conform to the classification system;

(d) Level of Government specifies the level of government (e.g., Central or Regional) maintaining the measure for which the entry is made;

(e) Type of Obligation refers to the obligations of Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements) or Article 9.8 (Senior Management and Board of Directors), as the case may be, which does not apply to the listed measure;

(f) Description of Measure describes measures that do not conform to Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), or Article 9.8 (Senior Management and Board of Directors) for which the entry is made; and

(g) Source of Measure is identified for transparency purposes only, for existing measures that apply to the sector, subsector, or activity covered by the entry.

6. In the interpretation of any entry, all elements of the entry shall be considered. The Description of Measure element shall prevail over all other elements.

7, These Explanatory Notes form an integral part of List B.

1. Sector: Agriculture

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to agriculture.

Source of Measure

2. Sector: Fisheries

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to fisheries.

Source of Measure

3. Sector: Forestry

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to forest plantation and the forest industry.

Source of Measure

- Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislation

- Natural Reserved Forest Act B.E. 2507 (1964), as amended

- Commercial Forest Plantation Act B.E. 2535 (1992), as amended

4. Sector: Mining and Quarrying

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity

related to mining and quarrying.

Source of Measure

5. Sector: Energy

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to energy.

Source of Measure

6. Sector: Manufacturing

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in all manufacturing sectors, except for subsectors below, a foreigner (1) is allowed to obtain up to 100 per cent of registered capital:

Processing and preserving of meat (ISIC 1010);

Processing and preserving of fish, crustaceans and molluscs (ISIC 1020);

Processing and preserving of fruit and vegetables (ISIC 1030);

Manufacture of dairy products (ISIC 1050);

Manufacture of starches and starch products (ISIC 1062);

Manufacture of macaroni (ISIC 1074);

Preparation and spinning of textile fibres, except any activity relating to production, weaving or printing of Thai silk (ISIC 1311);

Finishing of textiles, except any activity relating to production, weaving or printing of Thai silk CSIC 1313);

Manufacture of luggage, handbags and the like, saddlery and harness (ISIC 1512);

Manufacture of rubber tyres and tubes (ISIC 2211);

Manufacture of other rubber products (ISIC 2219);

Manufacture of plastics products (ISIC 2220);

Manufacture of electronic components and boards (ISIC 2610);

Manufacture of peripheral equipment (ISIC 2620);

Manufacture of television monitors and displays, tadio receivers, video cassette recorders and duplicating equipment (ISIC 2640);

Manufacture of watches and clocks (ISIC 2652);

Manufacture of electric motors, generators, transformers and electricity distribution and control apparatus (ISIC 2710);

Manufacture of other electronic and electric wires and cables (ISIC 2732);

Manufacture of electric lighting equipment (ISIC 2740);

Manufacture of domestic appliances (ISIC 2750);

(1) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

Manufacture of office machinery and equipment (except computers and peripheral equipment) (ISIC 2817);

Manufacture of industrial robots performing multiple tasks for special purposes (Part of ISIC 2829 Manufacture of other special-purpose machinery);

Manufacture of motor vehicles ISIC 2910); Manufacture of parts and accessories for motor vehicles (ISIC 2930);

Manufacture of aircraft and spacecraft (ISIC 3030);

Manufacture of railway locomotives and rolling stock (ISIC 3020);

Manufacture of furniture (ISIC 3100), except product of wood carving furniture;

Manufacture of sports goods (ISIC 3230); Manufacture of medical and surgical equipment and orthopaedic appliances (ISIC 3250); and Manufacture of green food packaging.

Source of Measure

7. Sector: All new sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure relating to a sector or subsector which is specified as "not elsewhere classified (n.e.c.)" in ISIC Revision 4 at the date of entry into force of this Agreement.

Source of Measure

8. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure

A foreign national or a domestic company which is deemed foreigner (2) is not allowed to purchase or own land in Thailand. However, it may lease or hire land and own building.

Thailand reserves the right to adopt or maintain any measure in relation to acquisition or usage of land in Thailand, including the development or usage of land or the type of activities which may be conducted on land in accordance with its land zoning, land usage, urban planning, development control, conservation, and preservation policies, as well as policies relating to environmental protection, nature reserves, and national parks.

Source of Measure

- The Land Code

- Civil and Commercial Code

- Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), as amended

- Agricultural Land Reform Act B.E. 2518 (1975), as amended

- Land Lease for Agriculture Act (No. 2) B.E. 2559 (2016), as amended

- Act Promulgating the Land Code B.E. 2497 (1954), as amended

- Regulations of the Agricultural Land Reform Executive Committee on Rules, Procedures and Conditions for the Selection of Farmers Eligible to Acquire Land from Agricultural Land Reform B.E. 2535 (1992)

- Regulations of the Agricultural Land Reform Executive Committee on Rules, Procedures and Conditions for Granting Permission and Being Complied with by the Recipients of the Granting in Respect of Utilization on Land or Immovable Property for Activities, which Support or are Related to Agricultural Land Reform B.E. 2541 (1998)

(2) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

9. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to:

1. devolution to the private sector of any investment in the exercise of government authority at the date of entry into force of this Agreement;

2. the privatisation of an entity or asset owned wholly or partially by the government; and

3. divestment of an asset through transfer or disposal of equity interests or assets owned wholly or partially by the government.

Source of Measure

10. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to portfolio investments.

Source of Measure

11. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to foreign exchange transactions by non- resident and any measure relating to transactions in, and holdings of, local currency by non-resident, for the prevention of Thai Baht speculation.

Note: Examples of measures to prevent Thai Baht speculation include:

- measures to limit Thai Baht liquidity

- measures to curb capital inflows

- measures on Non-Resident Baht Account (NRBA) and Non-Resident Baht Account for Securities (NRBS) accounts

- measures on non-deliverable forwards

Source of Measure

12. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to small and medium enterprises.

Source of Measure - Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislation, regulations and announcements issued thereunder

- Small and Medium Enterprises Promotion Act B.E. 2543 (2000), as amended, and its Ministerial regulations, subsidiary legislation, and announcements

- National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislation, regulations and announcements issued thereunder

13. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure that accords preferences or provides favourable treatment to any minority person or disadvantaged person.

Source of Measure

14. Sector: Industrial estate

Subsector: - Establishment or expansion of an industrial estate - Land entitlement in industrial estate area

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to industrial estate.

An applicant for Joint Development of an Industrial Estate Establishment Project with the Industrial Estate Authority of Thailand (IEAT) shall possess the following qualifications:

- being a Thai juridical person; and

- having evidence of ownership or possession right in the land intended for an Industrial Estate Project, or evidence showing acquisition of ownership or possession right in the land, with consent from the land owner, to be developed as an industrial estate.

If the business operator, which is a foreigner (3), dissolves or transfers its business to another person, the business operator shall dispose of such land for which permission has been granted to hold the ownership under the Notification to the IEAT or the business transferee, as the case may be, within three years from the date of such dissolution or business transfer. If the business operator fails to do so, the Director-General of the Land Department shall dispose of such land together with its component part to IEAT or other persons in accordance with the Land Code.

Regarding the rules for consideration of the number of foreigners who are skilled workers or experts to stay in Thailand and work in industrial estate, the IEAT shall consider granting permission for the business operator to bring a foreigner to stay in Thailand according to the number and for the period of work in an industrial estate, by taking into account business category, registered capital, number of Thai workers, and business areas of the business operator.

Source of Measure

- The Industrial Estate Authority of Thailand Act B.E. 2522 (1979), as amended, including its regulations, notifications, and administrative guidelines

- Promotion and Conservation of National Environmental Quality Act B.E. 2535 (1992), as amended, including its regulations, notifications, and administrative guidelines

- Factory Act B.E. 2535 (1992), as amended, including its regulations, notifications, and administrative guidelines

- Eastern Economic Corridor Act B.E. 2561 (2018), and as amended

(3) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

15. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: Local

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to environment, health, or culture.

Source of Measure

16. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure

To operate business in Thailand, a foreigner (4) shall obtain a licence or certificate from the Department of Business Development, and comply with conditions set forth in the Foreign Business Act B.E. 2542 (1999) (5) and subsidiary legislation.

A foreigner must meet a minimum capital requirement which is stipulated in the Ministerial Regulation prescribing the Minimum Capital and Period for Bringing or Remitting the Minimum Capital into Thailand B.E. 2562 (2019).

Minimum capital required to be registered at the commencement of the business under the Lists attached to the Foreign Business Act B.E. 2542 (1999) shall not be less than that prescribed by the Ministerial Regulations, which in no case shall be less than three million Thai Baht.

In all other cases, minimum capital required to be registered at the commencement of the business operation shall not be less than that prescribed by the Ministerial Regulations and shall in no case be less than two million Thai Baht.

Source of Measure :

- Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislation

- Ministerial Regulations prescribing the Minimum Capital and Period for Bringing or Remitting the Minimum Capital into Thailand B.E. 2562 (2019)

(4) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

(5) For illustrative purposes, "conditions set forth in the Foreign Business Act B.E. 2542 (1999)" may include the ratio of the capital to loans and the number of foreign directors who must have a domicile in Thailand.

17. Sector : All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

A foreigner (6) must meet the criteria and requirements in Section V of the Foreign Business Act B.E. 2542 (1999), where it is stipulated that in granting permission to a foreigner for the operation of business under the Act, regard shall be had to advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer, and research and development.

Source of Measure

Foreign Business Act B.E. 2542 (1999), as amended, and its Ministerial Regulations

(6) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

18. Sector: All Services sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure relating to investment in service sectors.

Source of Measure

19. Sector: All sectors

Subsector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Thailand reserves the right to adopt or maintain any measure under Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislation, regulations and announcements and National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislation, regulations and announcements.

Source of Measure

- Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislation, regulations and announcements issued thereunder

- National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislation, regulations and announcements issued thereunder

ANNEX 9B. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. SRI LANKA

LIST A. Explanatory Notes

1. This Schedule is made pursuant to Chapter 9 (Investment) only. Any commitment of Sri Lanka made pursuant to Chapter 8 (Trade in Services) is found in Sri Lanka's Schedule in Annex 8B (Schedule of Specific Commitments - Sri Lanka).

2. For the purposes of liberalisation, the Chapter 9 (Investment) shall apply to investment, subject to Article 9.9 (Reservations and Non-Conforming Measures), in the following non-service sectors:

(a) manufacturing;

(b) agriculture;

(c) fisheries;

(d) forestry; and

(e) mining and quarrying.

3. List A sets out, pursuant to Article 9.9 (Reservations and Non-Conforming Measures), Sri Lanka's measures that do not conform to the obligations under:

(a) Article 9.3 (National Treatment);

(b) Article 9.4 (Most-Favoured Nation Treatment);

(c) Article 9.7 (Performance Requirements); or

(d) Article 9.8 (Senior Management and Board of Directors).

4. List A and List B, pursuant to Article 9.9 (Reservations and Non-Conforming Measures), follow the negative list with two-list

approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures. Paragraph 1 of Article 9.9 (Reservations and Non-Conforming Measures) applies to this List only; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors, and activities.

5. Sri Lanka may add, withdraw or modify any of its reservations as set out in List A for a period of 24 months from the date of entry into force of this Agreement, provided that relevant non-conforming measure is in existence as of that date. Any such addition, withdrawal or modification will be notified to Thailand, including the relevant laws and regulations. Such reservation shall be deemed to be part of this Schedule upon such notification.

6. Each entry in List A shall set out the following elements, where applicable: (a) Sector refers to sector or sectors for which an entry is made;

(b) Subsector refers to specific industries, products, and activities for which an entry is made;

(c) Industry Classification refers to the activities covered by the entry according to the International Standard Industrial Classification (ISIC) Revision 4. As necessary and appropriate, Sri Lanka may specify the exact coverage of the entry if the entry does not exactly conform to the classification system;

(d) Level of Government specifies the level of government (e.g., Central, Regional, Provincial or Local) maintaining the measure for which an entry is made;

(e) Type of Obligation refers to the obligation of Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements) or Article 9.8 (Senior Management and Board of Directors), as the case may be, which does not apply to the listed measure;

(f) Description of Measure describes measures that do not conform to Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), or Article 9.8 (Senior Management and Board of Directors) for which an entry is made; and

(g) Source of Measure is identified for transparency purposes only, for existing measures that apply to the sector, subsector, or activity covered by the entry.

7. Inthe interpretation of any entry, all elements of the entry shall be considered. The Description of Measure element shall prevail over all other elements.

8. These Explanatory Notes form an integral part of List A.

1. Sector: Fisheries

Subsector(s): Coastal Fishing

Industry Classification -

Level of Government: All levels

Type of Obligation National Treatment

Description of Measure

Non-resident investors (1) are not permitted to invest in voting shares of a company engaged in any activity related to coastal fishing.

Source of Measure

- Fisheries and Aquatic Resources Act No. 2 of 1996

- Foreign Exchange Act No. 12 of 2017

and their subsequent amendments, subsidiary legislation, regulations, and orders.

(1) Non-Resident Investors shall mean any person resident outside Sri Lanka, country funds, regional funds, investment funds, and mutual funds established outside Sri Lanka.

2. Sector: Manufacturing

Subsector(s): Lotteries (including manufacture of lotteries)

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

Only the relevant Legal or Administrative Authority established by the Government of Sri Lanka can approve the foreign shareholding percentage of an incorporated company engaged in the manufacture of Lotteries.

Source of Measure

- Development Lotteries Board Act No. 20 of 1997

- National Lotteries Board Act No. 11 of 1963

- Foreign Exchange Act No.12 of 2017

and their subsequent amendments, subsidiary legislation, regulations, and orders.

3. Sector: Manufacturing

Subsector(s): Arms and Explosives

Industry Classification -

Level of Government: All levels

Obligations Concerned: National Treatment. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description

Only the relevant Legal or Administrative Authority established by the Government of Sri Lanka can approve the foreign shareholding percentage of an incorporated company engaged in the manufacture of arms and explosives.

Existing Measures

Explosives Act No. 21 of 1956

Industrial Promotion Act No. 46 of 1990

Foreign Exchange Act No. 12 of 2017

and their subsequent amendments, subsidiary legislation, regulations, and orders.

LIST B. Explanatory Notes

1. This Schedule is made pursuant to Chapter 9 (Investment) only. Any commitment of Sri Lanka made pursuant to Chapter 8 (Trade in Services) is found in Sri Lanka's Schedule in Annex 8B (Schedule of Specific Commitments).

2. For the purposes of liberalisation, Chapter 9 (Investment) shall apply to investment, subject to Article 9.9 (Reservations and Non-Conforming Measures), in the following non-service sectors:

(i) manufacturing;

(ii) agriculture;

(iii) fisheries;

(iv) forestry; and

(v) mining and quarrying

3. List B sets out, pursuant to Article 9.9 (Reservations and Non- Conforming Measures), Sri Lanka's measures that do not conform to the obligations under:

(a) Article 9.3 (National Treatment);

(b) Article 9.4 (Most-Favoured-Nation Treatment);

(c) Article 9.7 (Performance Requirements); or

(d) Article 9.8 (Senior Management and Board of Directors).

4. List A and List B pursuant to Article 9.9 (Reservations and Non- Conforming Measures) follow the negative list with two-list approach as follows:

(a) List A sets out commitments in relation to existing non- conforming measures. Paragraph 1 of Article 9.9 (Reservations and Non- Conforming Measures) applies to this List only; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors, and activities.

5. Each entry in List B sets out the following elements, where applicable:

(a) Sector refers to the sector or sectors for which an entry is made;

(b) Subsector refers to the specific industries, products, and activities for which the entry is made;

(c) Industry Classification refers to the activity covered by the entry, according to the International Standard Industrial Classification (ISIC) Revision 4.

As necessary and appropriate, Sri Lanka may specify the exact coverage of the entry if the entry does not exactly conform to the classification system;

(d) Level of Government specifies the level of government (e.g., Central, Regional, Provincial or Local) maintaining the measure for which the entry is made;

(e) Type of Obligation refers to the obligations of Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements) or Article 9.8 (Senior Management and Board of Directors), as the case may be, which does not apply to the listed measure;

(f) Description of Measure describes measures that do not conform to Article XX.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), or Article 9.8 (Senior Management and Board of Directors) for which the entry is made; and

(g) Source of Measure is identified for transparency purposes only, for existing measures that apply to the sector, subsector, or activity covered by the entry.

6. In the interpretation of any entry, all elements of the entry shall be considered. The Description of Measure element shall prevail over all other elements.

7. These Explanatory Notes form an integral part of List B.

1. Sector: Agriculture

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to agriculture.

Source of Measure

2. Sector: Forestry

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to forestry.

Source of Measure

3. Sector: Fisheries

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to fisheries.

Source of Measure

4. Sector: Mining and Quarrying

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to mining and quarrying.

Source of Measure

5. Sector: Energy

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to the energy sector.

Source of Measure

6. Sector: Manufacturing

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment in all manufacturing sectors except for subsectors below, where a foreigner is allowed to obtain up to 100 per cent of registered capital in the investment:

- Manufacture of electronic components and boards (ISIC 2610);

- Manufacture of computers and peripheral equipment CSIC 2620);

- Manufacture of consumer electronics (ISIC 2640);

- Manufacture of parts and accessories for motor vehicles CISIC 2930);

- Manufacture of motor vehicles (ISIC 2910);

- Weaving of textiles (except Handloom weaving) (ISIC 1312);

- Manufacture of knitted and crocheted fabrics (SIC 1391);

- Manufacture of other textile n.e.c. (ISIC 1399);

- Preparation and spinning of textile fibers (except Preparation of Coir) (ISIC 1311);

- Finishing of textile (except Batik industry) (ISIC 1313);

- Manufacture of machinery for textile, apparel and leather production (ISIC 2826);

- Manufacture of other special purpose machinery (ISIC 2829);

- Manufacture of optical instruments and photographic equipment (ISIC 2670);

- Manufacture of magnetic and optical media (ISIC2680);

- Manufacture of irradiation, electromedical and electrotherapeutic equipment (ISIC 2660);

- Manufacture of measuring, testing, navigating and control equipment (ISIC 2651);

- Manufacture of batteries and accumulators (ISIC 2720);

- Manufacture of pharmaceuticals, medicinal chemical and botanical products (except indigenous/ayurvedic medicaments, botanical products) (ISIC 2100);

- Manufacture of glass and glass products (ISIC 2310);

- Reproduction of recorded media (ISIC 1820);

- Canning of Fish (ISIC 1020);

- Manufacture of medical and dental instruments and supplies (ISIC 3250);

- Manufacture of air and spacecraft and related machinery CSIC 3030);

- Routine repair of aircraft (SIC 3315);

- Manufacture of steam generators, except central heading hot water boilers (ISIC 2513);

- Manufacture of ovens, furnaces & furnace burners (ISIC 2815);

- Manufacture of lifting and handling equipment (ISIC 2816);

- Manufacture of engine and turbines, except aircraft, vehicle and cycle engine (ISIC 2811);

- Manufacture of bearings, gears, gearing and driving elements (ISIC 2814);

- Manufacture of prepared animal feeds (except manufacture of prepared feeds for farm animals, including animal feed concentrates and feed supplements) (ISIC 1080);

- Manufacture of technical or laboratory articles of precious metal (ISIC 3211);

- Manufacture of mechanically and electrically sounding musical instruments (ISIC 3220);

- Manufacture of Games and Toys (other than from locally sourced timber) (ISIC 3240); and

- Manufacture of:

(i) Food products of fruits and vegetables including packing, canning (ISIC 1030);

(ii) processing and preserving nuts, potatoes and manioc CISIC 1030);

(iii) Nut, food and pastes (peanut butter) (ISIC 1030).

Source of Measure

7. Sector: All New sectors/ not elsewhere classified

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure relating to a sector or subsector which is specified as "not elsewhere classified (n.e.c.)" in ISIC Revision 4 at the date of entry into force of this Agreement for Sri Lanka.

Source of Measure

8. Sector: All Sectors

Subsector(s) -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure in relation to acquisition or usage of land in Sri Lanka, including the development or usage of land or the type of activities which may be conducted on land in accordance with its laws and policies relating to land zoning, land usage, urban planning, development control, conservation, and preservation, environmental protection, nature reserves, and national parks.

However, a foreign national or a domestic incorporated company with majority foreign shareholding may lease or hire land and own apartments.

Source of Measure

- Land (Restrictions on Alienation) Act No. 38 of 2014

- Land Acquisition Act No. 9 of 1950

- Land Grants (Special Provisions) Act No. 43 of 1979

- Land Development Ordinance No. 19 of 1935

- Land Resumption Ordinance No. 4 of 1887

- State Lands Ordinance No. 8 of 1947

- State Lands Encroachments Ordinance No. 12 of 1840

- State Lands (Recovery of Possession) Act No. 7 of 1979

- Mahaweli Authority of Sri Lanka Act No. 23 of 1979

- National Environmental Act No. 56 of 1988

- Urban Development Projects (Special Provisions) Act No. 2 of 1980

- Fauna and Flora Protection Ordinance No. 2 of 1937

and their subsequent amendments, subsidiary legislation, regulations, and orders.

9. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to:

1. devolution to the private sector of any investment in the exercise of government authority at the date of entry into force of this Agreement;

2. the privatisation of an entity or asset owned wholly or partially by the government; and

3. divestment of an asset through transfer or disposal of equity interests or assets owned wholly or partially by the government.

Source of Measure

- Conversion of Public Corporation or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987

- Companies Act No. 7 of 2007

- Finance Act No. 38 of 1971

and their subsequent amendments, subsidiary legislation, regulations, and orders.

10. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment relating to portfolio investments.

Source of Measure

11. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment relating to foreign exchange transactions by a non-resident and any measure relating to transactions in, and holdings of, local currency by a non-resident, for the prevention of Sri Lanka Rupee speculation.

Note: Examples of measures to prevent Sri Lanka Rupee speculation include:

- measures to limit Sri Lanka Rupee liquidity; and

- measures to curb capital inflows

Source of Measure

- Foreign Exchange Act No. 12 of 2017

- Central Bank of Sri Lanka Act No. 16 of 2023

- Banking Act No. 30 of 1988

and their subsequent amendments, subsidiary legislation, regulations, and orders.

12. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to small and medium enterprises.

Source of Measure

13. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

SL reserves the right to adopt or maintain any measure that accords preferences or provides favourable treatment to any minority person or disadvantaged person.

Source of Measure

Protection of Rights of Disabilities Act No. 28 of 1996

and its subsequent amendments, subsidiary legislation, regulations, and orders.

14. Sector: All sectors

Sub-Sector Establishment and Maintenance of Export Processing Zones, Industrial Processing Zones, Industrial Parks, Special Economic Zones, and other similar areas to attract investment

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Prohibition on Performance Requirements Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to Export Processing Zones, Industrial Processing Zones, Industrial Parks, Special Economic Zones, and other similar areas to attract investment

Source of Measure

- Board of Investment Law No. 4 of 1978

- Industrial Development Act No. 36 of 1969

and their subsequent amendments, subsidiary legislation, regulations, and orders.

15. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: Central level

Type of Obligation: National Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure with respect to an investor or investment relating to environment, health, and culture.

Source of Measure

16. Sector: All service sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure relating to investment in service sectors.

Source of Measure

17. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt any measure relating to natural resources within the territory of Sri Lanka.

Source of Measure

18. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measures relating to national defence, public order and security, arms and ammunition, explosives, river ports, sea ports, and airports.

Source of Measure

- The Constitution of Democratic Socialist Republic of Sri Lanka 1978

- Penal Code No. 2 of 1883

- Code of Criminal Procedure Act No. 15 of 1979

- Prevention of Terrorism Act No. 48 of 1979

- Public Securities Ordinance No. 25 of 1947

- Sri Lanka Air Force Act No. 41 of 1949

- Sri Lanka Army Act No. 17 of 1949

- Sri Lanka Navy Act No. 34 of 1950

- Sri Lanka Police Ordinance No. 16 of 1865

- Convention on the Suppression of Terrorist Financing Act No. 25 of 2005

- The Suppression of Terrorist Bombings Act No. 11 of 1999 - Prevention of Hostage Taking Act No. 41 of 2000

- Offences Against Aircraft Act No. 24 of 1982

- Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Act No. 31 of 1996

- Suppression of Unlawful Acts against the Safety of Maritime Navigation Act No. 42 of 2000

- Prevention and Punishment of Crimes against Internationally - Protected Persons Act No. 15 of 1991

- Prevention of Money Laundering Act No. 5 of 2006

and their subsequent amendments, subsidiary legislation, regulations, and orders.

19. Sector: All sectors

Sub-Sector -

Industry Classification -

Level of Government: All levels

Type of Obligation: National Treatment. Most Favoured Nation Treatment. Performance Requirements. Senior Management and Board of Directors

Description of Measure

Sri Lanka reserves the right to adopt or maintain any measure relating to the admission of a foreign investment into Sri Lanka under investment promotion law and its subsequent amendments, subsidiary legislation, regulations, and orders, in line with national interests, including consumer protection, customs, traditions, cultural heritage, religion, technology transfer, research and development, and social impact.

Source of Measure

- Board of Investment Law No. 4 of 1978

- Strategic Development Project Act No. 14 of 2008

- Finance Act No. 12 of 2012

- Commercial Hub Regulations

- Foreign Exchange Act No. 12 of 2017

- Companies Act No. 7 of 2007

and their subsequent amendments, subsidiary legislation, regulations, and orders.

20. Sector: All Sectors

Subsector(s): Restrictions on capital transactions carried out by Non-resident Investors

Level of Government: All levels

Type of Obligation National Treatment

Description of Measure Sri Lanka reserves the right to adopt measures with respect to capital transactions of non-resident investors. (2)

Source of Measure

- Foreign Exchange Act No. 12 of 2017, as amended and Regulations published thereof

- Securities and Exchange Commission Act No. 19 of 2021

- Companies Act No. 7 of 2007

- Local Treasury Bills Ordinance No. 8 of 1923

- Registered stock and securities Ordinance No. 7 of 1937, as amended

- Central Bank of Sri Lanka Act No. 16 of 2023

- Banking Act No. 30 of 1988

and their subsequent amendments, subsidiary legislation, regulations, and orders.

(2) Non-Resident Investors shall mean any person resident outside Sri Lanka, country funds, regional funds, investment funds, and mutual funds established outside Sri Lanka.

ANNEX 9C. PUBLIC DEBT

1. For the purposes of this Annex, 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.

2. 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 disputing investor for a claim under paragraph 7 of Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party) with respect to default or non-payment of debt issued by a Party unless the disputing investor meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Chapter 9 (Investment), including an uncompensated expropriation pursuant to Article 9.11 (Expropriation and Compensation).

3. No claim that a restructuring of debt issued by a Party breaches an obligation under Chapter 9 (Investment) shall be submitted to, or if already submitted, continue in, arbitration under Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), 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 9.3 (National Treatment) or Article 9.4 (Most- Favoured-Nation Treatment) of Chapter 9 (Investment).

4. Notwithstanding paragraph 7 of Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party), and subject to paragraph 3, an investor of the other Party shall not submit a claim under Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the Other Party) that a restructuring of debt issued by a Party breaches an obligation under Chapter 9 (Investment), other than Article 9.3 (National Treatment) or Article 9.4 (Most-Favoured-Nation Treatment) of Chapter 9 (Investment), unless 365 days have elapsed from the date of receipt by the disputing Party of the written request for consultations pursuant to paragraphs 5 and 6 of Article 9.24(Settlement of Investment Disputes between a Party and an Investor of the other Party).

Chapter 10. INTELLECTUAL PROPERTY

Article 10.1. Affirmation of the TRIPS Agreement

1. Each Party affirms its rights and obligations with respect to the other Party under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (the "TRIPS Agreement").

2. 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.

3. The Parties may, in formulating or amending their 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 the TRIPS Agreement.

4. Appropriate measures, 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, provided that such measures are consistent with the provisions of the TRIPS Agreement.

5. The Parties reaffirm the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001.

6. The Parties shall ensure enforcement procedures as specified in Part III of the TRIPS Agreement so as to permit effective action against any act of infringement of intellectual property rights, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. 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.

Article 10.2. Cooperation

1. The Parties agree to promote and strengthen cooperation in the area of intellectual property rights in order to enhance their economic and trade relations. Cooperation may cover areas such as:

(a) exchange of knowledge, experiences and best practices on intellectual property issues such as geographical indications and international registration of trademarks under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;

(b) education and awareness relating to intellectual property; (c) intellectual property issues relevant to:

(i) genetic resources, traditional knowledge and traditional cultural expressions; and.

(ii) small and medium-sized enterprises; (d) enforcement of intellectual property rights; and (e) other activities as may be mutually agreed between the Parties.

2. All cooperation under this Article shall be at the request of a Party, on mutually agreed terms, subject to the relevant laws and regulations and availability of resources of each party.

Chapter 11. ECONOMIC COOPERATION

Article 11.1. Objectives

1. The Parties agree to establish a framework for collaborative activities as a means to expand and enhance the benefits of this Agreement for building a strategic economic partnership.

2. The Parties will establish close economic cooperation aimed, inter alia, at:

(a) strengthening and building on existing cooperative relationship between the Parties, including a focus on promoting economic and technological development, fostering innovation and encouraging research and development;

(b) stimulating productive synergies, creating new opportunities for trade, investment and tourism, and promoting competitiveness and innovation;

(c) supporting the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(d) encouraging the presence of the Parties and their goods and services in their respective markets of Southeast Asia and South Asia;

(e) reinforce and expand cooperation, collaboration and mutual exchange in the areas of trade, investment and tourism; and

(f) increasing the level of and deepening cooperation activities between the Parties in areas of mutual interests.

Article 11.2. Scope

1. Cooperation between the Parties should contribute to achieving the objectives of this Agreement through the identification and development of innovative cooperation programmes capable of providing added value to their relations.

2. Cooperative activities will be agreed between the Parties and may include, though not limited to, encouraging the exchange of information and technical expertise, and working on joint research and collaboration in those areas.

3. Cooperation between the Parties under this Chapter will complement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

4. The Parties affirm the importance of all forms of cooperation, including, but not limited to, the areas of cooperation listed in Article 11.3 (Areas of Cooperation) and other areas that the Parties may agree.

Article 11.3. Areas of Cooperation

1. the Areas of Cooperation May Include, but Are Not Limited to, the Following: (a) Trade and Investment Promotion (including Export Development); (b) Infrastructure (including Transport and Port Sector); (c) Agriculture and Agro Industry; (d) Fisheries; (e) Gems and Jewellery; (f) Tourism; (g) Small and Medium Enterprises (SMEs) and MSMEs; (h) Financial Cooperation; (i) Packaging Industry; G) Information and Communication Technology (ICT); and (k) Technical and Vocational Education and Training.

Article 11.4. Implementation of Cooperation

1. The Free Trade Commission established under this Agreement shall be the mechanism to facilitate the effective implementation of this Chapter. The Free Trade Commission may agree to establish ad hoc working group in accordance with the Free Trade Commission's term of reference.

2. The implementation of cooperation under this Chapter shall be subject to the availability of resources and the applicable laws, regulations and policies of each Party.

3. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels, in an equitable manner to be mutually agreed by the Parties.

4. The Parties shall designate a focal point for all matters relating to the implementation of proposed cooperation activities and shall keep the other party updated on its focal point's detail.

Article 11.5. Revision, Modification or Amendment

Proposals for review, expansion and update of this Chapter, may be submitted by either Party to the Free Trade Commission established under Chapter 14 (Institutional and Final Provisions) for consideration. Implementation of cooperation in such new areas shall proceed in accordance with and subject to the fulfilments of the requirements outlined in Article 11.4 (implementation of Cooperation).

Article 11.6. Dispute Settlement

1. The dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

2. Any dispute concerning the interpretation, implementation or application of this Chapter shall be resolved through consultations by the Free Trade Commission established under this Agreement.

Article 11.7. Relation to other Agreements

1. Any Memorandum of Understanding, Agreements or Protocols on economic cooperation concluded between the Parties that exist before the entry into force of this Agreement shall continue to be valid.

2. The Memorandum of Understanding on Strategic Economic Partnerships, signed on 12 July 2018, shall be superseded by this Agreement six months after the date of entry into force of this Agreement. The cooperation activities under the Memorandum of Understanding on Strategic Economic Partnerships will be transferred to the Agreement and carried out under Article 11.4 (Implementation of Cooperation).

3. Cooperation under this Chapter shall be carried out alongside cooperation under other relevant Memoranda of Understanding, Agreements or Protocols that have been concluded by the Parties and are still in force.

Chapter 12. TRANSPARENCY

Article 12.1. Definition

For the purposes of this Chapter, 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 the other Party in a specific case; or

(b) aruling that adjudicates with respect to a particular act or practice.

Article 12.2. 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, including on the internet where feasible, or otherwise made available in such a manner as to enable the other Party and interested persons of each Party to become acquainted with them.

2. Each Party shall, to the extent possible and practicable under its domestic law:

(a) publish in advance any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement that it proposes to adopt; and

(b) provide, where appropriate, the other Party and interested persons of each Party with a reasonable opportunity to comment on any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement.

Article 12.3. Provision of Information

A Party shall, upon the request by the other Party, respond to specific questions from, and provide information to, the latter, in the English language, with respect to matters referred to in Article 12.2 (Publication).

Article 12.4. Confidentiality and Disclosure of Information

1. Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

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

Article 12.5. Administrative Proceedings

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of the other Party in specific cases that:

(a) wherever possible, a person of the other Party that is directly affected by such a proceeding is provided with reasonable notice, in accordance with its 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 the other Party that is directly affected by such 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) it follows its procedures in accordance with its laws and regulations.

Article 12.6. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of prompt review and, where warranted, correction of final administrative actions with respect to any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, each party to a proceeding is provided with the right to:

(a) a reasonable opportunity to support or defend that party's positions; and

(b) a decision based on the evidence and submissions of record or, where required. by its laws and regulations, the record compiled by the relevant office or authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that the decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 12.7. Contact Points

1. In order to facilitate communication between the Parties on any matter covered by this Agreement, the Parties hereby establish the following contact points:

(a) for Thailand, the Department of Trade Negotiations, Ministry of Commerce, or its successor; and

(b) for Sri Lanka, Ministry of Trade, or its successor.

2. On request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter pertaining to the implementation of the Agreement, and provide the required support to facilitate communication with the requesting Party. Each Party shall notify the other Party of any changes in its contact point in due time.

Article 12.8. Relations to Specific Provisions

In the event of any inconsistency between this Chapter and the specific provisions of other Chapters with respect to issues covered by this Chapter, such specific provisions shall prevail to the extent of the inconsistency.

Chapter 13. DISPUTE SETTLEMENT

Article 13.1. Scope

Except as provided otherwise in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of disputes between the Parties regarding the interpretation, application or implementation of this Agreement, wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 13.2. Choice of Forum

1. Where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute and that forum shall be used to the exclusion of other fora.

2. For the purposes of this Article, the complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of Article 13.5 (Establishment of an Arbitral Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel or tribunal under another international trade or investment agreement.

3. This Article shall not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

Article 13.3. Consultations

1. Either Party may request in writing consultations with the other Party concerning any matter described in Article 13.1 (Scope).

2. The complaining Party shall deliver the request for consultations to the other Party, setting out the reasons for the request, including identification of the measure at issue and an indication of the factual and legal basis for the complaint, as well as providing sufficient information to enable an examination of the matter.

3. The responding Party shall immediately acknowledge its receipt of the request for consultations made pursuant to paragraph 1, by way of notification to the complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the responding Partyâs receipt of the request.

4. Each Party shall accord adequate opportunity for consultations with the other Party with respect to any matter affecting the interpretation, application or implementation of this Agreement. Any differences shall, as far as possible, be settled through consultations between the Parties.

5. Unless the Parties agree otherwise,

(a) consultations shall be held within 30 days after the date of receipt of the request and take place, in the territory of the Party complained against or any other venue mutually agreed on. The consultations shall be deemed concluded within 60 days after the date of receipt of the request;

(b) consultations on matters of urgency, including those regarding perishable goods, shall be held within 15 days after the date of receipt of the request, and shall be deemed concluded within 30 days after the date of receipt of the request;

(c) if the Party to which the request is made does not respond to the request for consultations within 10 days after the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 5(a) of this Article or in paragraph 5(b) of this Article respectively, or if consultations have been concluded and no solution has been agreed upon by the Parties, the complaining Party may request the establishment of an Arbitral Panel in accordance with Article 13.5 (Establishment of an Arbitral Panel).

6. The Parties shall make every attempt to reach a mutually agreed solution through consultations of any matter raised in accordance with this Article. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the interpretation, application or implementation of this Agreement; and

(b) treat any secret and confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

7. For the purposes of consultations under this Article, a Party may request the other Party to make available personnel of its government agencies or other regulatory bodies who have expertise in the matter.

8. The consultations under this Article shall be confidential and without prejudice to the rights of any Party in any further or other proceedings under this Chapter.

Article 13.4. Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an Arbitral Panel established under Article 13.5 (Establishment of an Arbitral Panel).

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

Article 13.5. Establishment of an Arbitral Panel

1. The complaining Party that requested consultations under Article 13.3 (Consultations) may request in writing the establishment of an Arbitral Panel to consider the matter, if the consultations under Article 13.3 (Consultations) are not held within the time frames laid down in paragraph 5 of Article 13.3 (Consultations), or if the Parties fail to resolve the matter through consultations under Article 13.3 (Consultations) within:

(a) 30 days after the date of receipt of the request for consultations under Article 13.3 (Consultations) in cases of urgency, including those which concern perishable goods; or

(b) 60 days after the date of receipt of the request for consultations under Article 13.3 (Consultations) for any other matter; or

(c) such other period as the Parties may agree upon.

2. In its request for the establishment of an Arbitral Panel, the complaining Party shall state in writing to the other Party, the measures complained of and indicate the details of factual and legal basis (including the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint, as well as providing sufficient evidence to enable a detailed examination of the matter.

3. The responding Party shall immediately acknowledge its receipt of the request for the establishment of an Arbitral Panel made pursuant to paragraph 1, by way of notification to the complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the responding Party's receipt of the request.

4. An Arbitral Panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

5. The date of the establishment of an Arbitral Panel shall be the date on which the chair of the Arbitral Panel is appointed pursuant to Article 13.7 (Composition of Arbitral Panels).

Article 13.6. Terms of Reference

The Arbitral Panel shall have the following terms of reference unless the Parties agree otherwise within 20 days from the date of the establishment of an Arbitral Panel:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an Arbitral Panel pursuant to Article 13.5 (Establishment of an Arbitral Panel), and to make findings, determinations, and any recommendations for the resolution of the dispute, together with its reasons therefor, in a written

report."

Article 13.7. Composition of Arbitral Panels

1. An arbitral panel shall comprise three panelists.

2. Unless the Parties agree otherwise, the following procedures in selecting panelists shall apply:

(a) Within 30 days after the date of receipt of the request for the establishment of an Arbitral Panel, each Party shall appoint one panelist and nominate up to three candidates to serve as the chair of the Arbitral Panel. The Parties shall notify each other of their appointments and the lists of nominations.

(b) If the complaining Party fails to appoint a panelist within the time frame 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 panelist within the time frame specified in subparagraph (a), the panelist not yet appointed shall be appointed in accordance with the procedure set out in subparagraph (e).

(d) Within 60 days after the date of receipt of the request for the establishment of an Arbitral Panel, the Parties shall endeavor to agree on the appointment of the chair of the Arbitral Panel, taking into account the candidates nominated pursuant to subparagraph (a).

(e) If the responding Party fails to nominate the panelist as provided in subparagraph (c) or the Parties fail to agree on and appoint the chair of the Arbitral Panel within the time frame specified in subparagraph (d), any Party to the dispute may request the Director-General of the WTO to appoint the remaining panelists within 30 days after the date of such request. In the event that the Director-General is a national of one of the Parties, the Deputy Director-General or the officer next in seniority who is not a national of either Party shall be requested to make the necessary appointments.

(f) If the Director-General of the WTO or the person who has been requested to make the necessary appointments notifies the Parties that he or she is unavailable, or does not appoint the remaining panelists within 30 days after the date of the request made pursuant to subparagraph (e), any Party may request the Secretary-General of the Permanent Court of Arbitration to appoint the remaining panelists promptly.

3. All panelists shall:

(a) have expertise or experience in law, international trade or 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 be affiliated with or take instructions from, any Party;

(d) comply with the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Dispute in Annex II to the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes, which is incorporated into and made part of this Agreement, mutatis mutandis.

4. The chair of the Arbitral Panel shall:

(a) not be a national of either Party;

(b) not have his or her usual place of residence in the territory of either Party;

(c) not have dealt with the matter in any capacity.

5. If a panelist appointed under this Article dies, becomes unable to act or resigns, a successor shall be appointed within 20 days in accordance with the appointment procedure provided for in paragraph 2 which shall be applied respectively, mutatis mutandis.

6. The work of the Arbitral Panel shall be suspended for a period beginning on the date the original panelist dies, becomes unable to act or resigns. The work of the Arbitral Panel shall resume on the date the successor is appointed.

7. An Arbitral Panel that is reconvened for the purposes of Article 13.14 (Non-Implementation â Compensation and Suspension of Concessions or other Obligations) or Article 13.15 (Compliance Review) shall have, wherever possible, the panelists of the original Arbitral Panel. If this is not possible, then the panelists shall be appointed in accordance with the appointment procedure provided for in paragraph 2 which shall be applied, mutatis mutandis.

Article 13.8. Functions of Arbitral Panels

1. The function of an Arbitral Panel is to make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement, and make such findings and determinations as are called for in its terms of reference.

2. In addition to its findings and determinations, the Arbitral Panel may recommend ways in which the responding Party could implement the report, if the Parties so request.

3. The findings, determinations and, if applicable, recommendations cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

4. The Arbitral Panel shall endeavor to take its decision by consensus. If the Arbitral Panel is unable to reach consensus, it may take its decisions by majority vote.

5. The Arbitral Panel shall consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution to the dispute.

Article 13.9. Rules of Procedures

1. The Arbitral Panel shall meet in closed session. The Parties shall be present at the meetings only when invited by the Arbitral Panel to appear before it. The venue for the meetings, unless otherwise agreed by the Parties, shall be Thailand, where the complaining Party is Sri Lanka, and Sri Lanka, where the complaining Party is Thailand.

2. The Arbitral Panel shall have no ex parte communications concerning a dispute it is considering.

3. The deliberations of the Arbitral Panel and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing to the public statements of its own positions or its submissions, but a Party shall treat as confidential and not disclose, information or written submissions submitted by the other Party to the Arbitral Panel which the latter Party has designated as confidential.

4. The Parties shall transmit to the Arbitral Panel written submissions in which they present the facts of their cases and their arguments and shall do so within the following time limits:

(a) for the complaining Party, within 30 days after the establishment of the Arbitral Panel; and

(b) for the responding Party, within 30 days after the transmission of the written submission of the complaining Party.

5. Each Partyâs written submissions, including any comments on the initial report made in accordance with Article 13.11 (Initial Report), written versions of oral statements and responses to questions put by the Arbitral Panel shall be made available to the other Party.

6. At the request of a Party or on its own initiative, the Arbitral Panel may seek information and technical advice from any person or body that it deems appropriate, and subject to such terms and conditions as the Parties may set. The Arbitral Panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments thereon.

7. The Arbitral Panel shall, in consultation with the Parties, regulate its own procedures governing the rights of the Parties to be heard and its own deliberations where such procedures are not set out otherwise in this Chapter.

8. The rules of procedure or time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 13.10. Suspension or Termination of Proceedings

1. Where the Parties agree, the Arbitral Panel may suspend its work at any time for a period not exceeding 12 months. In the event of such a suspension, all relevant time frames set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the Arbitral Panel has been suspended for more than 12 months, the Arbitral Panel's authority for considering the dispute shall lapse, unless the Parties agree otherwise.

2. The Parties may agree at any time to terminate the proceedings of an Arbitral Panel established under this Chapter by jointly notifying the chair of the Arbitral Panel.

Article 13.11. Initial Report

1. The Arbitral Panel shall base its report on the relevant provisions of this Agreement, the submissions, and arguments of the Parties and any information before it. The report shall be drafted without the presence of the Parties.

2. Unless the Parties agree otherwise, the Arbitral Panel shall present to the Parties an initial report:

(a) within 90 days after the date of its establishment, in cases of urgency, including those relating to perishable goods; or

(b) within 150 days after the date of its establishment.

3. The initial report shall contain:

(a) findings of fact, the applicability of the relevant provisions, and the basic rationale behind any findings;

(b) conclusions as to whether the measure at issue has not conformed with the obligations under this Agreement or any other determination if requested in the terms of reference; and

(c) recommendations, if any, for the resolution of the dispute.

4. In exceptional cases, if the Arbitral Panel considers it cannot release its initial report within the time frames laid down in paragraph 2, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties agree otherwise.

5. A Party may submit written comments to the Arbitral Panel on its initial report within 15 days after the date of presentation of the initial report, or within such other period as the Parties may agree.

6. After considering any written comments by the Parties on the initial report, the Arbitral Panel may modify its initial report and make any further examination it considers appropriate.

Article 13.12. Final Report

1. Unless the Parties agree otherwise, the Arbitral Panel shall present a final report to the Parties, including any separate opinions on matters not agreed to by consensus, within 30 days after the date of the presentation of the initial report.

2. Neither initial report nor final report shall disclose which panelists are associated. with majority or minority opinions.

3. Final reports are final and binding on the Parties.

4. Unless the Parties agree otherwise, the final report of the Arbitral Panel shall be made available to the public within 15 days after its presentation to the Parties subject to the requirement of non-disclosure of secret and confidential information.

Article 13.13. Implementation of the Report

1. The responding Party shall promptly comply with the final report of an Arbitral Panel, or, if this is not practicable, within a reasonable period of time.

2. Unless the Parties agree otherwise, within 30 days after the date of receipt of the final report, the responding Party shall notify the complaining Party in writing of actions it proposes to take to implement the final report of the Arbitral Panel.

3. If the responding Party considers that prompt compliance with the final report of the Arbitral Panel is impracticable, the Parties shall immediately enter into consultations with a view to mutually determining a reasonable period of time to implement the final report.

4. Where the Parties fail to agree on the reasonable period of time within 45 days after the date of issuance of the final report of the Arbitral Panel, either Party may request in writing the original Arbitral Panel to determine such matter. Such request shall be notified to the other Party.

5. Unless the Parties agree otherwise, the Arbitral Panel shall issue its determination on the extent of the reasonable period of time for compliance to the Parties within 40 days after the date of the submission of the request.

6. In the event that any member of the original Arbitral Panel is no longer available, the procedures set out in Articles 13.5 (Establishment of an Arbitral Panel) and 13.7 (Composition of Arbitral Panels) shall apply.

7. The reasonable period of time may only be extended by mutual agreement of the Parties.

Article 13.14. Non-Implementation - Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations shall be temporary measures. None of these measures is preferred to full elimination of the non-conformity as determined in the final report of the Arbitral Panel. Compensation and suspension of concessions or other obligations shall only be applied until such time as the non-conformity is fully eliminated or a mutually agreed solution is reached.

2. The responding Party shall, if so requested by the complaining Party, enter into negotiations with the complaining Party with a view to reaching mutually acceptable resolution, such as compensation or any alternative arrangement if:

(a) the complaining Party has not received any notice from the responding Party under paragraph 2 of Article 13.13 (Implementation of the Report); or

(b) the responding Party notifies the complaining Party that it is impracticable to implement the final report; or

(c) the responding Party failed to comply with the final report within the reasonable period of time as determined by the Arbitral Panel under paragraph 5 of Article 13.13 (implementation of the Report).

3. If:

(a) the circumstances under paragraph 2(a), 2(b) or 2(c) exist and the complaining Party does not request for negotiations pursuant to paragraph 2; or

(b) the Parties are unable to agree on a mutually acceptable resolution under paragraph 2 within 30 days after the commencement of negotiations under such paragraph; or

(c) the Parties agreed on a mutually acceptable resolution under paragraph 2 and the complaining Party considers that the responding Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide a written notice to the other Party that it intends to suspend the application of concessions of equivalent effect to the non- conformity found by the Arbitral Panel. Such notification shall specify the level of benefits that the complaining Party intends to suspend.

4. The complaining Party may begin suspending concessions or other obligations under this Agreement within 30 days after the receipt of a written notice by the responding Party specifying concessions or other obligations and the level thereof that the complaining Party proposes to suspend. The responding Party shall immediately acknowledge its receipt of the notice specifying concessions or other obligations and the level thereof that the complaining Party proposes to suspend, indicating the date on which the notice was received, otherwise the date when the notice was made shall be deemed to be the date of the responding Party's receipt of the notice.

5. In considering what concessions or other obligations to suspend, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the Arbitral Panel has found the non-conformity; and.

(b) if it considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors. The notice of such suspension pursuant to paragraph 3 shall indicate the reasons on which it is based.

6. The level of suspension referred to in paragraph 4 shall be equivalent to the level of the nullification or impairment.

7. If the responding Party objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 5 have not been followed, it may request the Arbitral Panel to reconvene under this Article and consider the matter.

8. The Arbitral Panel that is reconvened for the purposes of this Article shall determine:

(a) the level of suspension it considers to be of equivalent effect, if it finds that the level of suspension is not equivalent to the level of nullification or impairment; and

(b) in which sector(s) the complaining Party may suspend concessions or other obligations in accordance with the principles and procedures set forth in paragraph 5, if it finds that the complaining Party has not followed such principles and procedures.

9. The Arbitral Panel shall present its determination to the Parties within 45 days after the date when the matter is referred to it. Concessions or other obligations shall not be suspended during the course of the determination.

10. The Parties shall accept the determination as final. The complaining Party shall suspend concessions or other obligations in a manner consistent with the Arbitral Panel's determination, unless the Parties agree otherwise.

Article 13.15. Compliance Review

1. If the responding Party considers that it has eliminated the non-conformity that the Arbitral Panel has found, it shall provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original Arbitral Panel within 60 days after its receipt of such written notice.

2. The Arbitral Panel shall release its report within 90 days after the referral of the matter.

3. If the Arbitral Panel decides that the responding Party has eliminated the non-conformity, the complaining Party shall promptly reinstate any benefits it has suspended under Article 13.14 (Non-Implementation â Compensation and Suspension of Concessions or other Obligations).

4. If the Arbitral Panel rules that measures taken to comply are in conformity with the rulings and recommendations of the Arbitral Panel, the suspension of obligations shall be terminated immediately. If the Panel rules otherwise, the measures shall remain in place until such further request to the Arbitral Panel.

Article 13.16. Expenses

1. Unless the Parties agree otherwise, each Party shall bear the costs of its appointed panelist and its own expenses and legal costs.

2. Unless the Parties agree otherwise, the costs of the chair of the Arbitral Panel and other expenses associated with the conduct of the Arbitral shall be borne in equal parts by the Parties.

Chapter 14. INSTITUTIONAL AND FINAL PROVISIONS

Section I. ADMINISTRATION AND INSTITUTIONAL PROVISIONS

Article 14.1. Free Trade Commission

1. The Parties hereby establish a Free Trade Commission (hereinafter referred to as the "Commission").

2. The Commission shall be composed of relevant government officials of each Party and shall be co-chaired by:

(a) in the case of Thailand, the Director-General of the Department of Trade Negotiations of Ministry of Commerce for Thailand, or their respective designee; and

(b) in the case of Sri Lanka, Secretary of the Ministry of Trade or their respective designee.

Article 14.2. Duties of the Commission

1. The Commission shall:

(a) review the implementation and operation of this Agreement;

(b) consider and, as appropriate, decide on specific matters relating to the operation and implementation of this Agreement, including matters reported by committees or working groups established under this Agreement;

(c) supervise and coordinate the work of committees, working groups and contact points established under this Agreement;

(d) take such other action as the Parties may agree.

2. The Commission may:

(a) establish, refer matters and delegate responsibilities to any committee or working group;

(b) consider and adopt any modifications of the rules of origin established in Annex 3B (Product Specific Rules).

Article 14.3. Procedures of the Commission

1. Unless the Parties agree otherwise, the Commission shall convene at least once a year in regular session and meet alternately in the territory of each Party.

2. Unless the Parties agree otherwise, the Commission shall also meet in special session within 45 days after the request in writing of a Party.

3. The Commission shall establish its rules and procedures at its first meeting.

4. All decisions of the Commission shall be taken by mutual agreement of the Parties.

Section II. EXCEPTIONS

Article 14.4. General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), and Chapter 6 (Technical Barriers to Trade), Article XX of GATT 1994 and its interpretive note are incorporated into and made part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis.

3. Nothing in this Agreement shall be construed as to prevent a Party from taking action authorised by the WTO Dispute Settlement Body. This is referring to a suspension of concession. A Party taking such action shall inform the Commission to the fullest extent possible of measures taken and of their termination.

Article 14.5. Security Exceptions

1. Nothing In this Agreement shall be construed to:

(a) require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

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

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

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

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

2. A Party shall inform the Commission to the fullest extent possible of measures taken under subparagraphs (b) and (c) of paragraph 1 and of their termination.

Article 14.6. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights and obligations are also granted or imposed under the WTO Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention or other arrangements relating to taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention or arrangements, the latter shall prevail to the extent of the inconsistency. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall

include representatives of the competent tax authorities of each Party.

4. For the purposes of this Article, taxation measures do not include any import or customs duties.

Section III. FINAL PROVISIONS

Article 14.7. Annexes, Notes, and Footnotes

The Annexes, notes, and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 14.8. General Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which the Agreements enters into force and every fifth calendar year thereafter, unless otherwise agreed by the Parties.

Article 14.9. Amendments

1. The Parties may agree, in writing, to amend the Agreement.

2. An amendment to this Agreement shall be approved by the Parties in accordance with their respective legal requirements and procedures, and shall enter into force 60 days after the date of the latter notification by either Party to the other Party that it has completed its legal requirements and procedures or after such other period as the Parties may agree.

3. When so agreed, and approved in accordance with the legal requirements and procedures of each Party, such amendment shall constitute an integral part of this Agreement.

Article 14.10. Entry Into Force

Unless the Parties agree otherwise, this Agreement shall enter into force on the thirtieth day after the date of the latter notification by either Party to the other Party that it has completed its internal legal requirements and procedures for the entry into force of this Agreement.

Article 14.11. Termination

1. This Agreement shall remain in force unless terminated.

2. Either Party may terminate this Agreement by written notification to the other Party. This Agreement shall terminate 180 days after the date of such notification, or after such other period as the Parties may agree.

3. Within 30 days after the notification under paragraph 2, either Party may request a consultation regarding whether the termination of any provision of this Agreement should take effect at a later date than that provided under paragraph 2. .

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective governments, have signed this Agreement.

DONE at Colombo, Sri Lanka, in duplicate in the English language on this third day of February 2024.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

Nalin Fernando

Minister for Trade, Commerce and Food Security

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

M.P. Phumtham Wechayachai

Deputy Prime Minister and Minister for Commerce