NEW ZEALAND - MALAYSIA FREE TRADE AGREEMENT

New Zealand and Malaysia, hereinafter referred to as "the Parties":

Inspired by their longstanding friendship and cooperation and growing trade and investment relationship;

Desiring to enlarge the framework of relations between the Parties through further liberalising trade and investment;

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;

Building on their rights, obligations and undertakings under the World Trade Organization, and other multilateral, regional and bilateral agreements and arrangements;

Recalling the Asia-Pacific Economic Cooperation ("APEC") goals;

Recognising the significance of good governance and the need for a predictable, transparent and consistent business environment to enable businesses to conduct transactions freely, and use resources efficiently and take investment and planning decisions with certainty;

Confirming their shared commitment to trade-facilitation through removing non- tariff barriers to the movement of goods between Malaysia and New Zealand;

Desiring to strengthen the cooperative framework for the conduct of economic relations to ensure it is dynamic and encourages broader and deeper economic cooperation;

Aware that economic development, social development and environmental protection are components of sustainable development and that free trade agreements can play an important role in promoting sustainable development;

Recognising the desire to enhance communication and cooperation on labour and environment through bilateral cooperative agreements between them; and

Affirming the rights of their Governments to regulate in order to meet national policy objectives.

Have agreed as follows:

Chapter ONE. INITIAL PROVISIONS

Article 1.1. Malaysia-New Zealand Free Trade Agreement

This Agreement establishes a free trade agreement between the Parties, consistent with Article XXIV of GATT 1994 and Article V of GATS, based upon the principles of common interest and cooperation and the goals of free and open trade and investment.

Article 1.2. Objectives

1. The objectives of this Agreement are:

(a) to strengthen trade and economic partnerships between the Parties;

(b) to liberalise trade in goods and services and establish a framework conducive for investment;

(c) to establish a framework to enhance socio-economic cooperation, by way of exchange of information, skills and technology in fields as agreed in this Agreement;

(d) to improve the efficiency and competitiveness of their goods and services sectors by promoting conditions for

competition cooperation, for innovation and for mutually beneficial business collaboration; and

(e) to facilitate trade and investment by establishing transparent rules and seeking to minimise transaction costs.

Chapter 1.3. Definitions of General Application

For the purposes of this Agreement, unless otherwise specified:

(a) Agreement means the Malaysia – NewZealand Free Trade Agreement;

(b) APEC means the Asia – Pacific Economic Cooperation;

(c) Customs Administration means:

(i) in relation to Malaysia, the Royal Malaysian Customs, and

(ii) in relation to New Zealand, the New Zealand Customs Service;

(d) Customs duty includes any duty or charges of any kind imposed in connection with the importation of a good, and any surtaxes or surcharges imposed in connection with such importation, but does not include:

(i) charges equivalent to an internal tax imposed consistently with GATT 1994, including excise duties and goods and services tax;

(ii) any anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures; and

(iii) fees or other charges that:

(1) are limited in amount to the approximate cost of services rendered; and

(2) do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

(e) Customs Valuation Agreement means the WTO Agreement on Implementation of Article VII of GATT 1994;

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

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

(h) Enterprise of a Party means an enterprise constituted or organised under the law of a Party;

(i) GATS means the WTO General Agreement on Trade in Services;

(j) GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994;

(k) Harmonized Commodity Description and Coding System or HS or HS Code means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Description and Coding System signed at Brussels on 14 June 1983, as amended;

(l) Joint Commission means the Malaysia – New Zealand Free Trade Agreement Joint Commission established under Article 15.1 (Joint Commission);

(m) Measure includes any law, regulation, procedure, requirement or practice;

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

(o) Preferential tariff treatment or preferential tariff rate means the rate of Customs duty applicable to an originating good of the exporting Party in accordance with each Party's Schedule in Annex 1 (Schedules of Tariff Commitments);

(p) Territory means:

(i) with respect to Malaysia,

(1) the territories of the Federation of Malaysia;

(2) the territorial waters of Malaysia and the seabed and subsoil of the territorial waters, and the airspace above such areas over which Malaysia has sovereignty; and

(3) any area extending beyond the limits of the territorial waters of Malaysia, and the seabed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living; and

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

(q) WTO means the World Trade Organization;

(r) WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on April 15, 1994;

(s) WTO TRIPS Agreement means the WTO Agreement on Trade- Related Aspects of Intellectual Property Rights.

Chapter TWO. TRADE IN GOODS

Article 2.1. Scope

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

Article 2.2. National Treatment

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

Article 2.3. Elimination of Customs Duties

Except as otherwise provided in this Agreement and subject to a Party's Tariff Schedule as set out in Annex 1 (Schedules of Tariff Commitments), as at the date of entry into force of this Agreement each Party shall eliminate all Customs duties on originating goods of the other Party.

Article 2.4. Accelerated Tariff Elimination

1. At the request of either Party, the Parties shall promptly enter into consultations to consider accelerating the elimination of Customs duties on originating goods as set out in its Tariff Schedule in Annex 1 (Schedules of Tariff Commitments).

2. An agreement by the Parties to accelerate the elimination of Customs duties on originating goods shall enter into force after the Parties have exchanged written notification advising that they have completed the necessary internal legal procedures, and on such date or dates as may be agreed between them.

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 Tariff Schedule in Annex 1 (Schedules of Tariff Commitments). A Party considering doing so shall inform the other Party before the new rate of Customs duties takes effect, or in any event as early as practicable.

Article 2.5. Administrative Fees and Formalities

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

2. Each Party shall make available in print form, or on the Internet or a comparable computer-based telecommunications network where feasible, a current list of the fees and charges it imposes in connection with importation or exportation.

Article 2.6. Agricultural Export Subsidies

1. For the purposes of this Article, agricultural goods means those products listed in Annex 1 of the WTO Agreement on Agriculture and export subsidies shall have the meaning assigned to that term in Article 1(e) of the WTO Agreement on Agriculture, including any amendment of that Article.

2. The Parties share the objective of the multilateral elimination of all forms of export subsidies for agricultural goods and shall continue to cooperate in an effort to achieve an agreement to their elimination and prevent their reintroduction in any form.

3. Consistent with their rights and obligations under the WTO Agreement, the Parties agree to eliminate, as of the date of entry into force of this Agreement, all forms of export subsidy for agricultural goods destined for the other Party, and to prevent the reintroduction of such subsidies in any form.

Article 2.7. Non-Tariff Measures

Neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its rights and obligations under the WTO Agreement or in accordance with in this Agreement.

Article 2.8. Import Licensing

1. Each Party shall ensure that all automatic and non-automatic import licensing measures are implemented in a transparent and predictable manner, and applied in accordance with the WTO Agreement on Import Licensing Procedures.

2. Each Party shall promptly notify the other Party of existing import licensing procedures. Thereafter, each Party shall notify the other Party of any new import licensing procedures and any modification to its existing import licensing procedures, to the extent possible 60 days before it takes effect, but in any case no later than within 60 days of publication. The information in any notification under this Article shall be in accordance with Articles 5.2 and 5.3 of the WTO Agreement on Import Licensing Procedures.

3. Each Party shall respond within 60 days to all reasonable enquiries from the other Party with regard to the criteria employed by its respective licensing authorities in granting or denying import licenses.

Article 2.9. Notification and Consultation

1. Where a Party considers that any proposed or actual measure might materially affect trade in goods between the Parties, that Party shall promptly notify the other Party.

2. On request of the other Party, a Party shall provide information and respond to questions pertaining to any actual or proposed measure within 30 days from the date of the request, whether or not that other Party has been previously notified of that measure.

3. Either Party may request technical discussions with the other Party on any matter affecting trade in goods between the Parties. Unless the Parties mutually determine otherwise, such technical discussions shall be held within 30 days from the date of the request.

4. This Article is without prejudice to the Parties' rights and obligations under Chapter 16 (Dispute Settlement).

5. This Article does not preclude that a proposed or actual measure or matter affecting trade in goods might be more appropriately addressed under either Chapter 6 (Sanitary and Phytosanitary Measures) or Chapter 7 (Technical Barriers to Trade).

Article 2.10. Committee on Trade In Goods

1. The Parties shall establish a Committee on Trade in Goods ("the Committee") to consider any matters relating to the implementation of this Chapter and the implementation of Chapter 3 (Rules of Origin) including:

(a) any matter raised pursuant to Article 2.9 (Notification and Consultations);

(b) any other matter affecting trade in goods between the Parties that is not more appropriately addressed by either the Sanitary and Phytosanitary Measures or Technical Barriers to Trade Committees.

2. The Committee shall meet as mutually determined by the Parties.

Chapter THREE. RULES OF ORIGIN

Article 3.1. Definitions

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) CIF means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;

(c) FOB means the free-on-board valuation of the good, inclusive of the cost of transport to the port or site of final shipment abroad;

(d) Generally Accepted Accounting Principles means the recognised accounting standards 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 standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(e) Good(s) means any merchandise, product, article or material;

(f) Identical and interchangeable material means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished good cannot be distinguished from one another for origin by virtue of mere visual examination;

(g) Indirect material(s) means goods used in the production, testing, or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, such as:

(i) fuel, energy, catalysts and solvents;

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

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

(iv) tools, dies and moulds;

(v) spare parts and materials used for maintenance of equipment and buildings;

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

(vii) any other goods 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;

(h) Material(s) means any matter or substance including raw materials, ingredients, parts, and components used or consumed in the production of goods or physically incorporated into a good subjected to a process in the production of another good;

(i) Minimal operations or processes mean operations or processes which contribute minimally to the essential characteristics of the goods and which, by themselves or in combination, do not confer origin;

(j) Non-originating good(s) or non-originating material(s) means goods or materials which does not qualify as originating under this Chapter;

(k) Originating good(s) or originating material(s) means goods or materials that qualify as originating under this Chapter;

(l) Packing materials and containers for shipment means goods used to protect a good during its transportation other than containers and packaging materials used for retail sale;

(m) Producer means a person who engages in the production of a good; and

(n) Production means methods of obtaining goods, including growing, cultivating, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, farming, trapping, hunting, manufacturing, aquaculture, producing, processing or assembling a good.

Article 3.2. Origin Criteria

For the purposes of this Chapter, goods imported by a Party shall be deemed to be originating goods if they conform to the origin requirements under any one of the following:

(a) goods which are wholly obtained or produced as defined in Article 3.3 (Wholly Obtained or Produced Goods);

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

(c) goods produced in the Parties from non-originating materials provided such goods meet the requirements specified in Annex 2 (Product Specific Rules);

and meet all other applicable requirements of this Chapter.

Article 3.3. Wholly Obtained or Produced Goods

For the purposes of Article 3.2(1)(a) (Origin Criteria), the following goods shall be considered as wholly produced or obtained:

(a) plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, cultivated, harvested, picked, or gathered in the territory of a Party;

(b) live animals born and raised in the territory of a Party;

(c) goods obtained from live animals in the territory of a Party;

(d) goods obtained from hunting, trapping, fishing, farming, cultivating, aquaculture, gathering, or capturing in the territory of a Party;

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters or seabed and subsoil, in the territory of a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”), by any vessel registered or recorded and entitled to fly the flag of that Party;

(g) goods produced on board any factory ship registered or recorded and entitled to fly the flag of a Party from the goods referred to in subparagraph (f);

(h) goods taken by a Party, or a person of a Party, from the seabed and subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with the UNCLOS;

(i) goods which are:

(i) waste and scrap derived from production and consumption in the territory of a Party provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected in the territory of a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained in the territory of a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

Article 3.4. Qualifying Value Content

1. For the purposes of Annex 2 (Product Specific Rules), Qualifying Value Content (“QVC”) of a good shall be calculated as follows:

QVC = FOB–VNM X 100

FOB

where:

QVC is the qualifying value content of a good, expressed as a percentage. VNM is the value of the non-originating materials.

The VNM shall be:

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

(b) the earliest ascertained price paid or payable for non-originating materials, including materials of undetermined origin in the territory of the Party where the working or processing takes place. When, in the territory of a Party, the producer of a good acquires non- originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs and any other costs incidental to the transport of those materials from the location of the supplier to the location of production.

2. The value of the goods under this Chapter shall be determined in accordance with the Customs Valuation Agreement.

Article 3.5. Cumulative Rule of Origin

For the purposes of Article 3.2 (Origin Criteria), a good which complies with the origin requirements provided therein and which is used in the other Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

Article 3.6. Minimal Operations and Processes

Operations or processes undertaken by themselves or in combination with each other for the purpose, such as those listed below, are considered to be minimal and shall not confer origin:

(a) ensuring preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation;

(c) packaging (1) or presenting goods for sale;

(d) affixing of marks, labels or other like distinguishing signs on products or their packaging;

(e) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; and

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

(1) This excludes encapsulation which is termed “packaging” by the electronics industry.

Article 3.7. De Minimis

1. A good which does not satisfy a change in tariff classification required pursuant to Annex 2 (Product Specific Rules) is nonetheless an originating good if the value of non-originating materials used in the production of the good that do not undergo the required change in tariff classification do not exceed ten percent of the FOB value of the good.

2. Notwithstanding paragraph 1, a good classified in Chapters 50 through 63 of the HS Code which does not satisfy a change in tariff classification required pursuant to Annex 2 (Product Specific Rules) may nonetheless be an originating good if the weight of all non-originating materials used in the production of the good that do not undergo the required change in tariff classification do not exceed ten percent of the total weight of the good.

3. The goods under paragraphs 1 and 2 shall meet all other applicable requirements of this Chapter.

Article 3.8. Direct Consignment

A good shall retain its originating status as determined under Article 3.2 (Origin Criteria) if either of the following conditions have been met:

(a) the good has been transported to the importing Party without passing through any non-Party; or

(b) the good has transited through a non-Party, provided that:

(i) the good has not entered the commerce of a non-Party;

(ii) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing, or any other operations necessary to preserve it in good condition or to transport it to the other Party; and

(iii) the transit entry is justified for geographical, economic or logistical reasons.

Article 3.9. Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining whether those goods have undergone the appropriate change in tariff classification set out in Annex 2 (Product Specific Rules). However, if the goods are subject to a QVC requirement, the value of the packaging and containers used for retail sale shall be considered as originating or non-originating, as the case may be, in calculating the value of the goods.

Article 3.10. Packing Materials and Containers for Shipment

The containers and packing materials exclusively used for the shipment of goods shall not be taken into account in determining the origin of any good.

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

1. Accessories, spare parts, tools or instructional and information materials normally presented with the goods shall be regarded as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods have undergone the applicable change in tariff classification, provided that:

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

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

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

3. This Article does not apply where the accessories, spare parts, tools or instructional and information materials have been added solely for the purpose of artificially raising the QVC of the goods.

Article 3.12. Indirect Materials

Indirect materials shall be considered to be originating materials, without regard to where they were produced, and their value shall be the cost registered in the accounting records of the producer of the goods.

Article 3.13. Identical and Interchangeable Goods and Materials

For the purpose of establishing if a good is originating, when its manufacture utilises originating and non-originating materials, mixed or physically combined, the origin of such materials shall be determined by Generally Accepted Accounting Principles of stock control or inventory management applicable in the exporting Party.

Article 3.14. Declaration of Origin/Certificate of Origin

A claim that goods are eligible for preferential tariff treatment shall be supported by a Declaration of Origin or Certificate of Origin as set out in Annex 3 (Procedures and Verification).

Article 3.15. Denial of Preferential Tariff Treatment

The Customs Administration of the importing Party may deny a claim for preferential tariff treatment when:

(a) the good does not qualify as an originating good; or

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

Article 3.16. Review and Appeal

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

Chapter FOUR. CUSTOMS PROCEDURES AND COOPERATION

Article 4.1. Definitions

For the purposes of this Chapter:

(a) Customs law means any legislation administered, applied, or enforced by the Customs Administration of a Party;

(b) Customs procedures means the treatment applied by the Customs Administration of each Party to goods that are subject to Customs control; and

(c) Express consignment means all goods imported by a person operating a commercial courier service for the expeditious international movement of goods who assumes liability to a Customs Administration for those goods.

Article 4.2. Objectives

The objectives of this Chapter are to:

(a) simplify and harmonise Customs procedures of the Parties;

(b) ensure consistency, predictability and transparency in the application of Customs laws and regulations of the Parties;

(c) promote efficient and expeditious clearance of goods;

(d) facilitate trade in goods between the Parties; and

(e) promote cooperation between the Customs Administrations.

Article 4.3. Scope

This Chapter applies, in accordance with the Parties' respective laws, regulations and policies, to Customs procedures applied to goods traded between the Parties, and Customs cooperation between the Customs Administrations of the Parties.

Article 4.4. Customs Cooperation

1. To the extent permitted by their domestic laws, the Customs Administrations of the Parties shall assist each other, in relation to:

(a) implementation and operation of this Agreement;
(b) security of trade in goods between the Parties;
(c) prohibitions and restrictions on exports and imports; and
(d) such other issues as the Parties may determine.

2. To the extent permitted by their Customs laws, the Customs Administrations may provide each other with mutual assistance in order to prevent and/or investigate breaches of Customs law.

3. The Customs Administrations shall endeavour to provide to each other technical advice and assistance for the purpose of risk assessment, simplifying and expediting Customs procedures and improving technical skills.

4. Each Customs Administration shall provide the other Customs Administration with notice of any significant modification

of Customs law or policies governing the movement of goods that is likely to substantially affect the operation of this Chapter.

Article 4.5. Facilitation

1. Each Party shall ensure that its Customs procedures and practices are predictable, consistent, transparent and facilitate trade in goods.

2. Customs procedures of the Parties shall, where possible, conform with the standards and recommended practices of the World Customs Organization, including those of the International Convention on the Simplification and Harmonization of Customs Procedures (as amended).

3. The Customs Administrations of the Parties shall conduct periodic reviews of Customs procedures to further simplify and develop mutually beneficial arrangements to facilitate the flow of goods between the Parties.

Article 4.6. Express Consignments

Each Party shall adopt procedures to expedite the clearance from Customs control of express consignments. Such procedures shall, inter alia:

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

(b) permit submission of a single document, where possible, in a form approved by the importing Party, covering all goods imported in any one express consignment through, if possible, electronic means; and

(c) minimise, to the extent possible, documentation required for the release of express consignments.

Article 4.7. Use of Automated Systems

1. The Customs Administrations of the Parties, in implementing initiatives that provide for the use of electronic declarations, shall take into account the methods agreed in the World Customs Organization.

2. The Customs Administrations of the Parties shall, as soon as practicable, adopt electronic procedures for all reporting requirements.

Article 4.8. Customs Valuation

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

Article 4.9. Review and Appeal

1. Each Party shall provide, with regard to Customs administrative rulings, determinations or decisions, the right of appeal by the importer, exporter or any other person affected by that administrative ruling, determination or decision.

2. An initial right of appeal may be to an authority within the Customs Administration, but the legislation of each Party shall provide for the right of appeal to a judicial authority.

3. The decision on the appeal shall be given to the appellant and the reasons for such decision shall be provided in writing.

Article 4.10. Advance Rulings

1. Each Party shall provide in writing advance rulings with respect to the classification and origin (2) of goods to a person described in paragraph 2(a).

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

(a) provide that an importer, an exporter or producer of a Party may apply for an advance ruling before importation of the goods in question;

(b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to process an application for an advance ruling;

(c) provide that its Customs Administration may, at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information within a specified period;

(d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker;

(e) endeavour to issue an advance ruling to the applicant expeditiously within 40 days but shall in any case do so within 90 days of receipt of all necessary information; (3) and

(f) ensure that any decision to decline or make an advance ruling, or any failure to comply with subparagraph (e), is promptly notified to the applicant together with the reasons for that decision or delay in making the ruling.

3. A Party may reject requests for an advance ruling where the additional information requested by it in accordance with paragraph 2(c) is not provided within a specified period.

4. Subject to paragraph 5, each Party shall apply an advance ruling to all importations of goods described in that ruling imported into its territory within three years of the date of that ruling.

5. A Party may modify or revoke an advance ruling upon a determination that the advance ruling was based on an error of fact or law (including human error), or if there is a change in:

(a) domestic law consistent with this Agreement;

(b) a material factor; or

(c) the circumstances on which the ruling was based.

6. Any fees charged for advance rulings shall not exceed the approximate cost of the service rendered in providing the advance ruling.

(2) This Article shall include advance rulings on origin only to the extent provided for in each Party's domestic legislation.

(3) The Parties understand that further time maybe necessary if third party analysis is required.

Article 4.11. Release of Goods

Each Party shall adopt or maintain procedures which allow goods to be released within 48 hours of submission of all relevant Customs import documents unless:

(a) the importer fails to provide any information required by the importing Party at the time of first entry;

(b) the goods are selected for closer examination by the competent authority of the importing Party through the application of risk management techniques;

(c) the goods are to be examined by any agency, other than the competent authority of the importing Party, acting under powers conferred by the domestic legislation of the importing Party; or

(d) fulfilment of all necessary Customs formalities has not been able to be completed or release is otherwise delayed by virtue of force majeure.

Article 4.12. Early Resolution of Differences

1. Where significant differences between the Customs Administrations of the Parties arise with respect to the application of this Chapter, a Party's Customs Administration may request consultations with the other Party's Customs Administration to resolve such differences. The modalities of such consultations shall be agreed between the Customs Administrations.

2. Consultations pursuant to this Article are without prejudice to the rights of the Parties under Chapter 16 (Dispute Settlement) or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

Article 4.13. Risk Management

1. The Parties shall endeavour to administer Customs procedures so as to facilitate the expeditious clearance of low risk goods thereby allowing their resources to be focused on high risk goods. The Customs Administrations shall regularly review these procedures.

2. Where a Party deems that an inspection of goods is not necessary to authorise their clearance from Customs control, it shall endeavour to provide a single point for the documentary or electronic processing of those goods.

Article 4.14. Security of Trade In Goods

The Customs Administrations shall, as necessary, consult with a view to agreeing procedures to secure the movement of goods between the Parties.

Article 4.15. Publication and Enquiry Points

1. Each Party shall publish on the Internet and/or in print form all statutory and regulatory provisions and procedures applicable or enforced by its Customs Administration.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons of the other Party concerning Customs matters, and shall make available on the Internet, and/or print form, information concerning procedures for making such enquiries.

Chapter FIVE. TRADE REMEDIES

Section A. General Trade Remedies

Article 5.1. General Provisions

1. Each Party shall retain its rights and obligations under the WTO Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement"), the WTO Agreement on Subsidies and Countervailing Measures, Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

2. The Parties shall endeavour to carry out any trade remedy actions in a transparent manner.

Article 5.2. Anti-Dumping Measures

1. As soon as possible, but no longer than five working days, following the receipt of a properly documented application from an industry in one Party for the initiation of an anti-dumping investigation in respect of products from the other Party, the Party that has received the properly documented application shall give written notice to the other Party through the Contact Points designated pursuant to this Chapter.

2. Where a Party considers that in accordance with Article 5 of the Anti- Dumping Agreement, there is sufficient evidence to justify the initiation of an anti- dumping investigation, it shall provide the notification required by Article 12.1 of that Agreement in writing to the other Party within five working days of the decision to initiate an investigation.

3. A Party shall respond within ten working days of any request for consultations made in accordance with Article 17.2 of the Anti-Dumping Agreement, in respect of a decision to initiate an investigation. This is without prejudice to the rights of the Parties under Article 17 of the Anti-Dumping Agreement.

4. The time period to be used for determining if the volume of dumped imports is "negligible", as the term is understood in Article 5.8 of the Anti- Dumping Agreement, shall be either:

(a) the period of data collection for the dumping investigation;

(b) the most recent 12 consecutive months prior to initiation for which data are available; or

(c) the most recent 12 consecutive months prior to the date on which the application was filed, for which data are available, provided that the lapse of time between the filing of the application and the initiation of the investigation is no longer than 90 days.

5. Each Party shall inform the other Party through their designated Contact Points at the time of entry into force of this Agreement which of the time periods in paragraph 4 they shall use. If in any investigation the chosen methodology is not utilised, one of the two other methodologies shall be adopted and the other Party shall be notified through their Contact

Point of the change in methodology, along with an explanation of the reasons for the change. Any Party which adopts the time period mentioned in paragraph 4(c) shall also notify which of the other two time periods they shall use in any case in which the lapse of time between the filing of the application and the initiation of the investigation is longer than 90 days, unless a Party's domestic law prohibits such a lapse.

Article 5.3. Global Safeguards

A Party taking any global safeguard measure pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards may exclude imports of an originating product of the other Party from the action where such imports are not a cause of serious injury or threat thereof.

Article 5.4. Contact Points

Each Party shall designate one or more Contact Points for the purposes of this Chapter and 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.

Section B. Transitional Bilateral Safeguards

Article 5.5. Definitions

For the purposes of this Section:

(a) Domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;

(b) Provisional measure means a provisional bilateral safeguard measure described in Article 5.9 (Provisional Measures);

(c) Safeguard measure or safeguard measures means a transitional bilateral safeguard measure or measures described in Article 5.6 (Application of Safeguard Measures);

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

(e) Threat of serious injury means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility; and

(f) Transition period, in relation to a particular product, means the period from the entry into force of this Agreement until two years after the date on which the Customs duty on that product is to be eliminated in accordance with Annex 1 (Schedules of Tariff Commitments).

Article 5.6. Application of Safeguard Measures

If, as a result of the reduction or elimination of a Customs duty pursuant to this Agreement, an originating product of a Party is being imported into the other Party’s territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive products, the other Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

(a) the suspension of the further reduction of any rate of Customs duty provided for under this Agreement on the originating product from the date on which the action to apply the safeguard measure is taken; or

(b) an increase of the rate of Customs duty on the originating product to a level not to exceed the lesser of:

(i) the Most Favoured Nation (“MFN”) applied rate of Customs duty in effect on the date on which the action to apply the safeguard measure is taken;

(ii) the MFN applied rate of Customs duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(iii) for a new safeguard measure applied from 2016, the preferential tariff rate in effect under this Agreement on the day three years preceding the date on which the action to apply the safeguard measure is taken.

Article 5.7. Scope and Duration of Safeguard Measures

1. A Party shall apply a safeguard measure for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. A Party may apply a safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to one year provided that the conditions of this Chapter are met and that the safeguard measure continues to be applied to the extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a safeguard measure, including any extensions thereof, shall not exceed three years.

2. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a product shall terminate at the end of the transition period for such product. No new safeguard measure may be applied to a product after the end of the transition period.

3. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the safeguard measure shall progressively liberalise it at regular intervals during the application of the safeguard measure, including at the time of any extension.

4. A Party shall not apply a safeguard or provisional measure again on the same originating product for a period of time equal to the duration of the previous safeguard measure or two years, whichever is longer.

5. A Party shall not apply a safeguard or provisional measure on an originating product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture, a measure on a product to which a safeguard measure is being applied, it shall terminate the safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture.

6. Each Party shall not apply a safeguard or provisional measure on an originating product imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Tariff Schedule in Annex 1 (Schedules of Tariff Commitments).

7. On the termination of a safeguard measure, the Party that applied the measure shall apply the rate of Customs duty in effect as set out in its Tariff Schedule as specified in Annex 1 (Schedules of Tariff Commitments) on the date of termination as if the safeguard measure had never been applied.

Article 5.8. Investigation

1. A Party may apply or extend a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the WTO Agreement on Safeguards.

2. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest.

3. An investigation shall as far as possible be completed within 180 days after being initiated but in no case shall exceed one year. A Party shall prior to the 180th day notify the other Party of the expected duration of the investigation, if the investigation is likely to take more than 180 days to complete. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

Article 5.9. Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional measure, which shall take the form of the measure set out in Article 5.6(1)(a) or 1(b) (Application of Safeguard Measures), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating product of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement have caused or are threatening to cause serious injury.

2. The duration of such a provisional measure shall as far as possible not exceed 120 days, but shall not extend beyond 200 days, during which period the pertinent requirements of Articles 5.5 (Definitions) to 5.8 (Investigation) shall be met. The

duration of any such provisional measure shall be counted as part of the total period referred to in Article 5.7 (Scope and Duration of Safeguard Measures).

3. Any additional Customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 5.8 (Investigation) does not determine that increased imports of an originating product of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the provisional measure shall apply the rate of Customs duty set out in its Tariff Schedule in Annex 1 (Schedules of Tariff Commitments) as if the provisional measure had never applied.

Article 5.10. Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:

(a) initiating an investigation under Article 5.8 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a Customs duty on the product pursuant to this Agreement;

(c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and

(d) taking a decision to progressively liberalise a safeguard measure previously applied.

2. A Party shall provide to the other Party a copy of the public version of the

report of its competent authorities required under Article 5.8(1) (Investigation) immediately after it is available.

3. In the written notice referred to in paragraph 1(a), the reason for the initiation of the investigation, a precise description of an originating product subject to the investigation and its subheading or more detailed level of the HS, the period subject to the investigation and the date of initiation of the investigation shall be included.

4. In notifying under paragraphs 1(b) and (c), the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a Customs duty pursuant to this Agreement; a precise description of the product involved and its subheading or more detailed level of the HS; the details of the proposed safeguard measure; and the date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, inter alia, reviewing the information provided under paragraph 4, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 5.11(1) (Compensation).

6. Where a Party applies a provisional measure referred to in Article 5.9 (Provisional Measures), on request of the other Party, consultations shall be initiated immediately after such application.

7. The provisions on notification in this Article shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 5.11. Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with Article 5.10(5) (Notification and Consultation), shall take place prior to the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least 30 days before suspending concessions under paragraph 2.

4. The Party exercising the right of suspension shall suspend the application of concessions of Customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained. The right of suspension provided for in this paragraph shall not be exercised for the first year that the safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as the result of an absolute increase in imports and that such a measure conforms to this Section.

5. The obligation to provide compensation under paragraph 1 and the right to suspend substantially equivalent concessions under paragraph 2 shall terminate on the date of the termination of the safeguard measure.

Chapter SIX. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Definitions

For the purpose of this Chapter:

(a) the definitions in Annex A of the SPS Agreement and relevant definitions developed by Codex Alimentarius Commission ("Codex"), the World Organisation for Animal Health ("OIE"), and the International Plant Protection Convention ("IPPC") shall apply to the implementation of this Chapter; and

(b) SPS Agreement means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 6.2. Objectives

The objectives of this Chapter are to:

(a) uphold and enhance implementation of the SPS Agreement and applicable international standards, guidelines and recommendations developed by Codex, OIE, and the relevant international and regional organisations developed under the framework of the IPPC;

(b) establish a mechanism to facilitate trade between the Parties while protecting human, animal or plant life or health in the territory of the Parties, including through possible development of Implementing Arrangements on matters of mutual interest to the Parties;

(c) provide a means to improve communication, consultation and cooperation between the Parties on sanitary and phytosanitary issues; and

(d) strengthen collaboration between the Parties in relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

Article 6.3. Scope

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

Article 6.4. International Obligations

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

2. Nothing in this Chapter or any Implementing Arrangements shall limit the rights or obligations of the Parties pursuant to the SPS Agreement.

Article 6.5. Competent Authorities and Contact Points

1. Recognisingtheimportanceofcloseandeffectiveworkingrelationships between the Parties in giving effect to the objectives of this Chapter, the Parties shall promote communication to enhance present and future relationships between their competent authorities.

2. Both Parties shall recognise that the competent authorities are those authorities which are accountable for the implementation of matters within the scope of this Chapter. As at the date of entry into force of this Agreement, the competent authorities shall be as set out in the Implementing Arrangement (Competent Authorities and Contact Points).

3. Where requested by a Party, or where appropriate in the circumstances (for example where proposed changes to sanitary

or phytosanitary measures would have a significant effect on bilateral trade), each Party shall provide the other Party through the designated Contact Points information relevant to the implementation of this Chapter. As at the date of entry into force of this Agreement, the Contact Points for such communications shall be those set out in the Implementing Arrangement (Competent Authorities and Contact Points).

4. Each Party shall notify the other Party of any changes to the competent authorities or Contact Points and of any significant changes in the structure, organisation and division of responsibility within its competent authorities or Contact Points.

Article 6.6. Sanitary and Phytosanitary Committee

1. The Parties shall establish a Sanitary and Phytosanitary Committee ("the Committee") consisting of representatives of the competent authorities of the Parties and any other representatives of the Parties. The Committee shall consider any matters relating to the implementation of the Chapter including:

(a) establishing technical working groups, as required, to identify and address technical and scientific issues arising from this Chapter;

(b) initiating, developing, adopting, reviewing and modifying Implementing Arrangements on technical matters which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties;

(c) establishing, monitoring and reviewing work plans; and

(d) reporting to the Joint Commission.

2. This Committee shall meet within one year of the entry into force of this Agreement and annually thereafter, or as mutually determined by the Parties. It shall meet in person, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties. The Committee may also address issues through correspondence, including e-mail.

3. Decisions of the Committee shall be by consensus.

Article 6.7. Facilitation of Trade and Implementing Arrangements

1. The Parties may adopt, through the Committee, Implementing Arrangements which further elaborate the provisions of this Chapter in order to facilitate trade between the Parties or to achieve other mutually agreed objectives related to sanitary or phytosanitary measures. Such Implementing Arrangements may set out understandings reached with respect to matters of mutual interest, including competent authorities, Contact Points, equivalence, regionalisation, certification, and verification as provided for, inter alia, in Articles 6.5 (Competent Authority and Contact Points), 6.8 (Equivalence), 6.9 (Regionalisation) and 6.10 (Verification).

2. Where Implementing Arrangements have been adopted, they shall be applied to trade between the Parties. Where conditions for trade are not set out in an Implementing Arrangement, trade shall take place under the conditions required by the importing Party to meet its appropriate level of sanitary or phytosanitary protection.

3. Each Party shall take all necessary actions to implement the understandings reached in an Implementing Arrangement within three months of the adoption of the Implementing Arrangement by the Committee under Article 6.6(1)(b) (Sanitary and Phytosanitary Committee), or as otherwise mutually determined by the Parties.

Article 6.8. Equivalence

1. The Parties recognise the principle of equivalence as set down in the SPS Agreement and, in particular, Article 4 of that Agreement, which provides for the recognition of sanitary or phytosanitary measures as equivalent where the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of sanitary or phytosanitary protection.

2. Where equivalence is recognised, it may be recognised by the Parties in relation to an individual measure and/or a group of measures and/or systems applicable to a sector or part of a sector. The Parties may mutually decide principles and procedures applicable to determinations of equivalence and record them in an Implementing Arrangement. Any determinations of equivalence shall be recorded in an Implementing Arrangement.

Article 6.9. Regionalisation

1. The Parties recognise the concept of regionalisation, zoning and compartmentalisation, as set down in Article 6 of the SPS Agreement, and as elaborated in OIE and IPPC Standards, which provide, inter alia, for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence where the exporting Party objectively demonstrates to the importing Party that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively.

2. Within this framework, the Parties may mutually recognise regionalisation, zoning and compartmentalisation at various levels, including farms and processing establishments, as having appropriate biosecurity measures, as mutually agreed.

3. The Parties may mutually decide principles, procedures and/or certification provisions applicable to regionalisation decisions and record them in an Implementing Arrangement. Where the Parties come to an agreed determination with respect to commodities or situations where regionalisation decisions are, or will be, accepted, these shall be recorded in an Implementing Arrangement.

Article 6.10. Verification

1. In order to maintain confidence in the effective implementation of the provisions in relation to trade, each Party shall have the right to carry out verification and audit of the exporting Party's regulatory control system to enable trade to commence. Audit procedures shall be risk-based and reflect performance. They may include reviews of the exporting Party's central or regional controls, onsite visits to a sample of establishments and/or checks of a proportion of imports from the exporting Party.

2. The Parties may decide on the principles and guidelines that are applicable to any audit procedures. Such principles and guidelines shall be recorded in an Implementing Arrangement.

Article 6.11. Emergency Measures

A Party may, on serious human, animal or plant life or health grounds, take provisional measures necessary for the protection of human, animal or plant life or health. These measures shall be notified within 24 hours to the other Party and, on request, consultations regarding the situation shall be held within 14 days unless otherwise agreed between the Parties. The Parties shall take due account of any information provided through such consultations.

Article 6.12. Notification

The Parties shall notify each other, in a timely and appropriate manner, in writing through the Contact Points of any significant food safety issue or change in animal health, plant health or pest status relevant to existing trade.

Article 6.13. Situations of Non-Compliance

The Parties shall cooperate where there is a notification of non- compliance of imported consignments for products subject to sanitary or phytosanitary measures, drawing on the guidelines of relevant international organisations where available. In particular, where such non-compliance arises, the importing Party shall notify as soon as possible the exporting Party of the consignment details. Unless specifically required by its laws, regulations or policies, the importing Party shall avoid suspending trade based on one consignment, but in the first instance shall contact the exporting Party to ascertain how the problem has occurred. The Parties shall consult to ensure that appropriate remedial actions are undertaken to address the area of non- compliance, and that further consignments are unaffected.

Article 6.14. Explanation of Measures and Consultations

Where a Party considers that a sanitary or phytosanitary measure affecting trade between it and the other Party warrants further discussion, it may, through the Contact Points, request a fuller explanation of the sanitary or phytosanitary measure including explanations as to why it is deemed necessary for trade between the Parties and the objectives of the measure. The request may additionally ask for consultations to be held. The other Party shall respond promptly to any requests for such explanations. Where a Party requests consultations, these consultations shall take place as soon as practicable.

Article 6.15. Cooperation

The Parties shall explore opportunities for further cooperation, collaboration and information exchange on sanitary and phytosanitary matters of mutual interest consistent with the provisions of this Chapter. Such opportunities include technical

assistance, capacity building and facilitation of market access for products of interest.

Chapter SEVEN. TECHNICAL BARRIERS TO TRADE

Article 7.1. Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 of the WTO TBT Agreement shall apply. In addition, the following definitions shall apply:

(a) **Designation** means the authorisation of a conformity assessment body to perform conformity assessment activities, by a body with the authority to designate, monitor, suspend or withdraw designation, or remove suspension of conformity assessment bodies within territories of the Parties;

(b) **Technical regulations** has the meaning set out in the WTO TBT Agreement and also includes standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulations; and

(c) **WTO TBT Agreement** means the WTO Agreement on Technical Barriers to Trade.

Article 7.2. Objectives

The objectives of this Chapter are to:

(a) increase and facilitate trade through furthering the implementation of the WTO TBT Agreement and building on the work of APEC on standards and conformance;

(b) promote regulatory cooperation to manage risks to health, safety and the environment as a means of supporting trade-facilitation;

(c) reduce, where possible, unnecessary transaction costs associated with trade between the Parties;

(d) eliminate unnecessary technical barriers to trade in goods between the Parties;

(e) promote mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;

(f) strengthen information exchange and cooperation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(g) strengthen cooperation among the Parties in the work of international bodies related to standardisation and conformity assessments; and

(h) provide a framework to implement supporting mechanisms to realise these objectives.

Article 7.3. Affirmation of WTO TBT Agreement

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

Article 7.4. Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may affect the trade in goods between the Parties, except as provided in paragraphs 2 and 3.

2. This Chapter does not apply to purchasing specifications prepared by governmental entities for production or consumption requirements of such entities.

3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the WTO TBT Agreement, technical regulations or standards necessary to fulfil a legitimate objective taking into account the risks non-fulfilment would create. This shall include technical regulations necessary to ensure its national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.

Article 7.5. International Standards

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate regulatory objectives.

2. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies, to ensure that international standards developed within such organisations are trade facilitating and do not create unnecessary obstacles to international trade.

Article 7.6. Conformity Assessment Procedures

1. In accordance with the objective of facilitating trade, the Parties shall seek to increase efficiency, avoid duplication and ensure cost effectiveness by the use of a range of appropriate mechanisms, including but not limited to:

(a) promoting recognition of cooperative arrangements between accreditation agencies from each other's territory;

(b) implementing unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory;

(c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective territories of the Parties;

(d) recognising accreditation procedures for qualifying conformity assessment bodies;

(e) recognising government designation of conformity assessment bodies;

(f) utilising existing regional and international multilateral recognition agreements and arrangements; and

(g) accepting suppliers' declaration of conformity.

2. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

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

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

5. A Party may accredit or otherwise recognise conformity assessment bodies in the territory of the other Party. The terms of accreditation or recognition shall be no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.

6. The Parties shall cooperate with the objectives of reducing compliance and administrative costs and the effective monitoring of compliance with their legitimate regulatory objectives.

7. Where a Party declines a request from the other Party to enter into negotiations on facilitating recognition of the results of conformity assessment procedures conducted by bodies of the other Party, it shall, on request, explain its reasons.

Article 7.7. Equivalence of Technical Regulations

1. Consistent with the WTO TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

2. A Party shall, upon the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

Article 7.8. Cooperation for Regulatory Effectiveness

1. Recognising the important relationship between good regulatory practices and trade-facilitation, the Parties shall cooperate in the areas of standards, technical regulations, and conformity assessment to:

(a) promote good regulatory practice based on risk management principles;

(b) improve the quality and effectiveness of their regulations;

(c) develop joint initiatives for managing risks to health, safety and the environment; and

(d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall seek to implement paragraph 1 by establishing work programmes under Article 7.10 (Implementation) to:

(a) exchange information on, inter alia:

(i) regulatory systems;

(ii) incident analysis;

(iii) hazard alerts;

(iv) product bans and recalls;

(v) protocols, strategies and programmes for product surveillance activities; and

(vi) related market information material; and

(b) cooperate on, inter alia:

(i) the development of technical regulations;

(ii) regulatory reviews and implementation; and

(iii) the development and implementation of risk management principles including product monitoring, safety, compliance and enforcement protocols.

3. Where goods are covered by an Annex or an Implementing Arrangement to this Chapter and a Party takes a measure to manage an immediate risk that it considers those goods may pose to health, safety or the environment, it shall immediately notify the other Party, through the Contact Points established under Article 7.10 (Implementation), of the measure and the reasons for the imposition of the measure.

Article 7.9. Transparency

1. In order to enhance the opportunity for the Parties and interested persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the WTO TBT Agreement shall:

(a) include in the notice a statement describing the objective of the proposal and the rationale for the approach that Party is proposing; and

(b) transmit the proposal electronically to the other Party through its enquiry point established under Article 10 of the WTO TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the WTO TBT Agreement.

2. Each Party shall allow at least 60 days from the transmission of the notification under paragraph 1(b) for the other Party and interested persons to make comments on the proposal in writing.

3. Where a Party makes a notification under Article 2.10 or 5.7 of the WTO TBT Agreement, it shall at the same time transmit the notification to the other Party electronically, through its enquiry point established under Article 10 of the WTO TBT Agreement.

Article 7.10. Implementation

1. Each Party shall designate a Contact Point which shall have responsibility to coordinate the implementation of this

Chapter.

2. The Parties shall provide each other with the name of the designated organisation that shall be their Contact Point and the contact details of relevant official in that organisation, including telephone, fax, e-mail and other relevant details.

3. The Parties shall notify each other promptly of any change of their Contact Points or any amendments to the details of the relevant officials.

4. The Parties shall establish a Committee on Technical Barriers to Trade ("TBT Committee") consisting of the Contact Points and any other representatives of the Parties to promote and monitor the implementation and administration of this Chapter. The TBT Committee shall meet within one year of entry into force of this Agreement and at least once a year thereafter or more frequently if the Contact Points agree. Meetings may be conducted in person, by teleconference, by video-conference or any other means mutually determined by the Parties.

5. The TBT Committee shall:

(a) identify priority sectors for enhanced cooperation, including giving favourable consideration to any sector specific proposal made by either Party;

(b) establish work programmes with clear targets, design structures and timelines in priority areas;

(c) monitor the progress of work programmes;

(d) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 7.11 (Technical Consultations);

(e) review this Chapter in light of any developments under the WTO

TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

(f) report to the Joint Commission on the implementation of this Chapter, as it considers appropriate.

6. The Parties shall ensure that the persons and organisations in the respective territories that have responsibility for accreditation or relevant regulations, shall participate in work programmes and technical consultations where the TBT Committee has:

(a) identified a priority sector for enhanced cooperation under paragraph 5(a);

(b) established a work programme under paragraph 5(b); or

(c) been requested to undertake technical consultations under Article 7.11 (Technical Consultations).

7. For the purposes of implementing this Chapter, the Contact Point of each Party shall:

(a) coordinate participation in work programmes with persons and organisations in their respective territories that have responsibility for accreditation or relevant regulations;

(b) ensure appropriate steps are taken to address any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;

(c) enhance cooperation in the development and improvement of technical regulations and conformity assessment procedures in conjunction with the Contact Point of the other Party;

(d) facilitate, where appropriate, sectoral cooperation between governmental and non-governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' territories;

(e) exchange information on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures; and

(f) take any other steps the Parties consider will assist them in implementing the WTO TBT Agreement and in facilitating trade in goods between them.

8. Both Parties recognise the need to develop cooperation in the field of technical barriers to trade for the purposes of implementing this Chapter. Such cooperation may include, but is not limited to:

(a) joint studies, seminars and symposia;

(b) where appropriate, effectively using the existing framework for mutual recognition developed by relevant regional and international bodies;

(c) exchange of information;

(d) exchange of Government officials for training purposes;

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

(f) any other form of cooperation as agreed by both Parties.

Article 7.11. Technical Consultations

1. Either Party may request technical consultations in accordance with Article 7.10(5)(d) (Implementation) and, unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations by e-mail, by teleconference, by video- conference, or through any other means, as mutually determined by the Parties.

2. Where a Party has requested technical consultations on the application of any technical regulation or the recognition of any standard or conformity assessment procedure, the other Party shall investigate the issues that gave rise to the request for consultations, shall address any irregularities in the implementation of its technical regulations or conformity assessment procedures, and shall report back to the other Party on the outcome of its investigations stating its reasons.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement).

Article 7.12. Agreements or Arrangements

1. The Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.

2. Such trade-facilitating initiatives may include agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations, conformity assessment procedures and compliance issues.

3. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.

4. The Parties may conclude Implementing Arrangements setting out:

(a) details for the implementation of the Annexes to this Chapter; and

(b) arrangements resulting from work programmes established under Article 7.10 (Implementation).

5. The Parties acknowledge that Annexes and Implementing Arrangements

concluded in accordance with this Chapter may take the form of a variety of mechanisms. This may include the use of asymmetrical approaches, where appropriate.

6. The Parties shall reflect any existing bilateral, regional and multilateral arrangements concerning technical regulations and conformity assessment procedures that both Parties participate in when developing Annexes and Implementing Arrangements.

7. Where only one Party is party to agreements or arrangements identified as trade-facilitating initiatives under paragraphs 1 and 2, that Party shall consider extending such agreements or arrangements to the other Party, at the request of the other Party. Such consideration may be subject to appropriate confidence- building processes to ensure equivalency of relevant standards, technical regulations and/or conformity assessment procedures

8. Where a Party declines a request of the other Party to consider extending the application of an existing agreement or arrangement, it shall, upon request of that Party, explain the reasons for its decision.

9. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and Implementing Arrangements.

Chapter EIGHT. TRADE IN SERVICES

Article 8.1. Definitions

For purposes of this Chapter:

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

(b) **Commercial presence** means any type of business or professional establishment, including through:

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

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purposes of supplying a service;

(c) **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;

(d) **Ground-handling services** include cargo-handling services provided for freight in special containers, non-containerised freight or for passenger baggage, including services of freight terminal facilities and baggage handling services at airports; aircraft cleaning and disinfecting services; hangar services; and aircraft towing services;

(e) **Measures adopted or maintained by a Party** means any measure of a Party, whether in the form of law, regulation, rule, procedure, decision, and administrative action or practice, adopted or maintained by:

(i) central, state or local Government and authorities; or

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

Such measures include measures affecting:

(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 a Party to be offered to the public generally; and

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

(f) **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;

(g) **Natural person** means:

(i) in respect of Malaysia, is a citizen of Malaysia or has the right of permanent residence in Malaysia; and

(ii) in respect of New Zealand, is a citizen of New Zealand or has the right of permanent residence in New Zealand;

(h) **Sector of a service** means:

(i) with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Party's Schedule in Annex 4 (Schedules of Specific Services Commitments); or

(ii) otherwise, the whole of that service sector, including all of its sub-sectors;

(i) **Selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing, such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

(j) **Service of the other Party** means a service which is supplied:

(i) from or in the territory of the other Party; 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 the other Party;

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

(l) **Service supplier of a Party** means any person of a Party that supplies a service;

(m) **State enterprise** means an enterprise that is owned or controlled by a Party;

(n) **Supply of a service** includes the production, distribution, marketing, sale and delivery of a service;

(o) **Trade in services** means the supply of a service:

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

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

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

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

(p) **Traffic rights** mean the right for scheduled and non-scheduled services to operate and/or 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. Objectives

The objectives of this Chapter are to:

(a) facilitate expansion of trade in services on a mutually advantageous basis, under conditions of transparency and progressive liberalisation, while recognising the rights of Parties to regulate services, and the role of Governments in providing and funding public services, and giving due respect to national policy objectives; and

(b) enhance cooperation amongst the service suppliers from both Parties, aimed at promoting bilateral trade in services.

Article 8.3. Scope and Coverage

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

2. Chapter 10 (Investment) shall not apply to measures adopted or maintained by a Party affecting trade in services.

3. Notwithstanding paragraph 2, the following Articles and Sections of Chapter 10 (Investment) shall apply, mutatis mutandis, to measures affecting the supply of services by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to this Chapter, but only to the extent that they relate to a covered investment and an obligation under Chapter 10 (Investment), regardless of whether or not such a service sector is scheduled in a Party's Schedule in Annex 4 (Schedules of Specific Services Commitments):

(a) Article 10.7 (Transfers);

(b) Article 10.8 (Expropriation);

(c) Article 10.9 (Compensation for Losses);

(d) Article10.10 (Minimum Standard of Treatment);

(e) Article 10.13 (Subrogation); and

(f) Section B (Investor-State Dispute Settlement).

4. This Chapter shall not apply to:

(a) services supplied in the exercise of governmental authority;

(b) any measures by a Party with respect to government procurement;

(c) subsidies or grants provided by a Party or State Enterprise thereof, including Government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers, except as provided for in Article 8.17 (Subsidies);

(d) cabotage in maritime transport services;

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

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

5. 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 for natural persons of either Party and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

6. This Chapter shall not apply to measures affecting air traffic rights, however granted, or services directly related to the exercise of traffic rights, except measures affecting:

(a) aircraft repair and maintenance services;

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

(c) computer reservation system services; and

(d) ground-handling services.

7. The Parties note the multilateral negotiations pursuant to the review of the GATS Annex on Air Transport Services. 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.

Article 8.4. Market Access

1. With respect to market access through the modes of supply defined in Article 8.1(o) (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 its Schedule in Annex 4 (Schedules of Specific Services Commitments).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 4 (Schedules of Specific Services Commitments), are defined as:

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, except measures of a Party which limit inputs for the supply of services;

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

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

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

Article 8.5. National Treatment

1. In the sectors inscribed in its Schedule in Annex 4 (Schedules of Specific Services Commitments) 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.

2. A Party may meet the requirement in 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 the Party compared to the like service or service suppliers of the other Party.

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

Article 8.6. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to Article 8.4 (Market Access) or 8.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be set out in a Party's Schedules in Annex 4 (Schedules of Specific Services Commitments) and Annex 6 (Schedules of Movement of Natural Persons Commitments).

Article 8.7. Schedule of Specific Commitments

1. Each Party's initial schedule of its specific commitments undertaken under Articles 8.4 (Market Access), 8.5 (National Treatment) and 8.6 (Additional Commitments) are set out in Annex 4 (Schedules of Specific Services Commitments). The specific commitments in respect of the supply of a service by a service supplier of one Party through presence of natural persons of that Party in the territory of the other Party are set out in Annex 6 (Schedules of Movement of Natural Persons Commitments).

2. With respect to sectors where the specific commitments are undertaken, each schedule of specific commitments in Annex 4 (Schedules of Specific Services Commitments) shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

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

3. Measures inconsistent with Articles 8.4 (Market Access) and 8.5 (National Treatment) have been inscribed in the column relating to Article 8.4 (Market Access). This inscription shall be considered to provide a condition or qualification to Article 8.5 (National Treatment) as well.

Article 8.8. Most Favoured Nation Treatment

1. In respect of the services sectors listed in Annex 5 (Most Favoured Nation Treatment Sectoral Coverage Under Article 8.8), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a third party.

2. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to third parties under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

3. For greater certainty, paragraph 2 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

4. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to third parties under

any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; and

(c) maritime matters.

Article 8.9. Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the registration, authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 5, a Party may recognise the education or experience obtained, requirements met, or licences or certification granted in the other Party.

2. Recognitionreferredtoinparagraph1,whichmaybeachievedthrough harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a third party, nothing in Article 8.8 (Most Favoured Nation Treatment) shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met, or licenses or certifications granted in the territory of the other Party.

4. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 3, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognised.

5. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the registration, authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.

6. Within two years of entry into force of this Agreement, both Parties shall encourage the development of mutual recognition arrangements among competent bodies on professional services, by facilitating discussion between these bodies and exchange of information through focal points.

7. Within one year of entry into force of this Agreement, the Parties shall establish a mechanism that allows for the recognition of the equivalency of qualifications granted within the other Party.

Article 8.10. Areas of Cooperation

The Parties shall facilitate strengthening of cooperation amongst services providers, inter alia:

(a) by promoting joint venture and marketing arrangements;

(b) through research and development; and

(c) through exchange of information.

Article 8.11. 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 the Party's commitments under this Chapter.

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

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

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

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

Article 8.12. Emergency Safeguard Measures

1. The Parties shall initiate discussions within one year from the entry into force of this Agreement to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures. These guidelines and procedures shall be annexed to and shall form part of this Agreement.

2. Notwithstanding paragraph 1, if a Party deems to be affected by the negative impact caused by its specific commitments as set out in Annex 4 (Schedules of Specific Services Commitments), that Party may request to hold a consultation with the other Party and the other Party shall respond to such a request in good faith.

3. In the consultations, the Parties shall endeavour to reach a mutually acceptable solution within a reasonable time.

Article 8.13. Payments and Transfers

1. Except under the circumstances envisaged in Article 17.3 (Measures to Safeguard Balance of Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund ("the 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 commitments under this Chapter regarding such transactions, except under Article 17.3 (Measures to Safeguard Balance of Payments) or at the request of the Fund.

Article 8.14. Denial of Benefits

1. Subject to prior notification, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that:

(a) the service is being supplied by an enterprise that is owned or controlled by persons of a third party and the enterprise has no substantive business operations in the territory of the other Party; or

(b) the service is being supplied by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of the other Party.

2. A Party that denies benefits pursuant to paragraph 1 shall enter into consultations within 30 days following notification if requested by the other Party. Such consultations shall be without prejudice to the Parties' rights under the Chapter 16 (Dispute Settlement).

Article 8.15. Review of Commitments

1. The Parties shall enter into successive rounds of negotiations, beginning no later than two years from the date of entry into force of this Agreement, and periodically thereafter as determined by the Joint Commission, with a view to further improving specific commitments under this Chapter so as to progressively liberalise trade in services between the Parties.

2. If a Party concludes an agreement on trade in services on a "negative list" basis (4) with a third party after this Agreement comes into force, that Party shall, at the request of the other Party, within three months from this request, commence re-negotiation of the specific commitments set out in Annex 4 (Schedules of Specific Services Commitments) with a view to the progressive liberalisation of trade in services between them. The re-negotiation shall proceed on a "negative list" basis. The Parties shall endeavour to conclude the re-negotiation on the specific commitments within 18 months from the date the negotiations commence.

3. Any review of commitments undertaken under this Article shall also include a review of Article 8.8 (Most Favoured Nation Treatment) with a view to progressive extension of the Most Favoured Nation Treatment to additional services sectors not listed in Annex 5 (Most Favoured Nation Treatment Sectoral Coverage Under Article 8.8).

(4) A "negative list" utilises an approach whereby a Party is required to apply certain obligations of the Chapter, such as market access and

national treatment, to all services and services suppliers, unless a reservation is made in the Party's schedule appended to the agreement. It is commonly contrasted with a "positive list" approach whereby certain obligations, such as market access and national treatment, only apply to services and service suppliers to the extent that a Party makes a specific commitment to this effect in its schedule.

Article 8.16. Modification of Schedules

1. A Party ("modifying Party") may modify or withdraw any commitment in its Schedules in Annex 4 (Schedules of Specific Services Commitments) and Annex 6 (Schedules of Movement of Natural Persons Commitments) at any time after three years have elapsed from the date on which that commitment entered into force.

2. The modifying Party shall notify the other Party ("the affected Party") of its intent to modify or withdraw a commitment pursuant to this Article no later than three months before the intended date of implementation of the modification or withdrawal.

3. The modifying Party may only modify or withdraw its commitments where the modifying Party makes compensatory adjustments to its Schedules to maintain a general level of mutually advantageous commitments that is no less favourable to trade in services than provided for in its Schedules prior to the modification.

4. Upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

5. If agreement pursuant to paragraphs 3 and 4 is not reached between the modifying Party and the affected Party within three months, the affected Party may refer the matter to arbitration in accordance with the procedures set out in Chapter 16 (Dispute Settlement).

6. The modifying Party may not modify or withdraw its commitment until it has made the necessary adjustments in conformity with the findings of the arbitration in relation to the question of whether paragraph 3 is satisfied in accordance with paragraph 5.

Article 8.17. Subsidies

1. Notwithstanding Article 8.3(4)(c) (Scope and Coverage), the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS.

2. The Parties recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Any Party which considers that it is adversely affected by a subsidy of the other Party may request consultations with that Party on such matters. Such request shall be accorded sympathetic consideration.

Article 8.18. Domestic Regulation

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

2. With a view to ensuring that any measure maintained or adopted by a Party relating to the authorisation, licensing or qualification of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall ensure that such a measure:

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

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

(c) does not constitute a disguised restriction on the supply of the services.

3. If the results of the negotiations under Article VI.4 of GATS enter into effect, the Parties shall jointly review these results with a view to their incorporation into this Agreement.

4. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.

5. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

(a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is

required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) 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;

(c) at the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and

(d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant shall have the possibility of resubmitting, at its discretion, a new application.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competency of professionals of the other Party.

Article 8.19. Committee on Trade In Services

1. For purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Trade in Services (“the Committee”) to consider any matter arising under this Chapter and Chapter 9 (Movement of Natural Persons).

2. The functions of the Committee include:

(a) conducting reviews of commitments in accordance with Article 8.15 (Review of Commitments);

(b) reviewing the implementation and operation of this Chapter and Chapter 9 (Movement of Natural Persons);

(c) reviewing and discussing issues concerning effective implementation of Mutual Recognition Arrangements under Article 8.9 (Recognition) and Emergency Safeguard Measures under Article 8.12 (Emergency Safeguard Measures);

(d) considering other trade in services issues of interest to a Party; and

(e) reporting outcomes of discussions to the Joint Commission.

3. The Committee shall:

(a) comprise of Government representatives and may invite representatives of relevant entities, other than the Governments, with the necessary expertise relevant to the issues to be discussed; and

(b) be co-chaired by officials of the Governments.

4. The Committee shall convene its first meeting within one year of entry into force of this Agreement. The subsequent meetings of the Committee shall be held at such frequency to be agreed by both Parties.

Chapter NINE. MOVEMENT OF NATURAL PERSONS

Article 9.1. Definitions

For the purposes of this Chapter:

(a) **Business visitor** means a natural person of a Party:

(i) who is seeking temporary entry to the territory of the other Party for the purpose of:

(1) attending meetings or conferences, or engaging in consultations with business colleagues;

(2) taking orders or negotiating contracts for an enterprise located in the territory of the Party, but not selling goods or providing services to the general public; or

(3) undertaking business consultations concerning the establishment, expansion or winding up of a business enterprise or investment in the other Party, or any related matter;

(ii) who is not seeking to enter the labour market of the other Party; and

(iii) whose principal place of business, actual place of remuneration, and predominant place of accrual of profits remain outside the territory of the other Party;

(b) **Immigration formality** means a visa, permit, pass or other document, or electronic authority, granting a natural person of one Party the right to enter, reside or work in the territory of the other Party;

(c) **Installer or maintainer** means a natural person who is an installer or maintainer of machinery and/or equipment, who is employed or appointed by a supplying company, where such installation and/or maintaining by the supplying company is a condition of purchase of the said machinery and/or equipment; and is not performing activities which are not related to the installing or maintaining activities which is the subject of the contract;

(d) **Intra-corporate transferee** means a senior manager or a specialist who is an employee of a service supplier or investor of a Party with a commercial presence in the territory of the other Party;

(e) **Natural person** means a natural person as defined in Article 8.1(g) (Definitions);

(f) **Senior manager** means a natural person within an organisation of a Party who is:

(i) a senior employee of that organisation with responsibility for the entire organisation's operations, or a substantial part of it, in the territory of the other Party; and

(ii) having proprietary information of the organisation and receives only general supervision or direction from higher level executives, or the board of directors or stockholders of the organisation.

(g) **Specialist** means a natural person of a Party within an organisation of a Party who possesses:

(i) knowledge at an advanced level of technical expertise; and

(ii) proprietary knowledge of the organisation's service, research equipment, techniques, or management; and

(h) **Temporary entry** means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

Article 9.2. Objectives

The objectives of this Chapter are to:

(a) facilitate the movement of natural persons of either Party engaged in the conduct of trade and investment between the Parties through streamlined and transparent immigration procedures for temporary entry; and

(b) provide for rights and obligations additional to those set out in Chapter 8 (Trade in Services) and Chapter 10 (Investment) in relation to the movement of natural persons between the Parties for business purposes;

while recognising the need to ensure border security and to protect the domestic labour force and permanent employment in the territories of the Parties.

Article 9.3. Scope

1. This Chapter shall apply, as set out in each Party's commitments in Annex6 (Schedules of Movement of Natural Persons Commitments), to measures affecting the movement of natural persons of a Party into the territory of the other Party. Such persons may include:

(a) business visitors;

(b) contractual service suppliers;

(c) independent service suppliers/professionals;

(d) intra-corporate transferees; or

(e) installers or maintainers.

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

3. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 10 (Investment) 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 for natural persons of either Party and not for those of others shall not be regarded as nullifying or impairing benefits under this Chapter.

Article 9.4. Application Procedures

1. Where an application for an immigration formality is required by a Party, the Party shall process expeditiously complete applications for immigration formalities, or extensions thereof, received from natural persons of the other Party covered by Article 9.3(1) (Scope).

2. A Party shall within 15 working days of receipt of an application for temporary entry that has been completed and submitted in accordance with its laws and regulations either:

(a) make a decision on the application and inform the applicant of the decision; or

(b) if a decision cannot be made in that time period, inform the applicant accordingly.

In the case of subparagraph (b), the decision shall in any case be made and the applicant informed of the decision within 40 working days from the date of receipt of the application.

3. At the request of an applicant, a Party in receipt of a completed application for temporary entry shall provide, without undue delay, information concerning the status of the application.

Article 9.5. Grant of Temporary Entry

1. Each Party shall, in accordance with that Party's commitments in Annex 6 (Schedules of Movement of Natural Persons Commitments), grant temporary entry or extension of temporary stay in accordance with this Chapter to natural persons of the other Party, provided those natural persons:

(a) follow prescribed application procedures for the immigration formality sought; and

(b) meet all relevant eligibility requirements for entry to the granting Party.

2. Temporary entry granted pursuant to this Chapter does not replace the requirements needed to carry out a profession or activity according to the specific laws and regulations in force in the territory of the Party authorising the temporary entry.

3. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

Article 9.6. Schedules of Commitments for the Entry and Temporary Stay of Natural Persons

Each Party shall set out in Annex 6 (Schedules of Movement of Natural Persons Commitments) a schedule containing its commitments for the temporary entry and stay in its territory of natural persons of the other Party covered by Article 9.3 (Scope). These schedules shall specify the conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included in each Party's schedule of commitments.

Article 9.7. Transparency

Each Party shall:

(a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;

(b) no later than 45 working days after the date of entry into force of this Agreement publish, such as on its immigration website, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable business persons of the other Party to become acquainted with its requirements; and

(c) upon modifying or amending an immigration measure that affects the temporary entry of business persons, ensure that the information published pursuant to subparagraph (b) is updated within 30 working days.

Article 9.8. Contact Points

Each Party shall designate a Contact Point to facilitate communication and the effective implementation of this Chapter, and respond to inquiries from the other Party regarding regulations affecting the movement of natural persons between the Parties or on any matters covered in this Chapter, and shall provide details of this Contact Point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their Contact Point.

Article 9.9. Dispute Settlement

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 16 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice on the part of the granting Party; and

(b) the natural persons affected have exhausted all available domestic remedies regarding the particular matters.

Chapter TEN. Investment

Article 10.1. Definitions

For the purposes of this Chapter:
(a) **Appointing Authority** means in the case of arbitration or conciliation under ICSID, the Secretary-General of ICSID; in the case of arbitration under UNCITRAL, the Secretary-General of the Permanent Court of Arbitration; or any person as agreed between the disputing parties;
(b) **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 or expanded thereafter, and which, where applicable, has been admitted by the former Party, subject to its relevant laws, regulations and policies;
(c) **Disputing investor** means an investor of a Party that makes a claim against the other Party under Section B;
(d) **Disputing parties** means a disputing investor and a disputing Party;
(e) **Disputing Party** means a Party against which a claim is made under Section B;
(f) **Disputing party** means a disputing investor or a disputing Party;
(g) **Freely useable currency** means a freely useable currency as determined by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;
(h) **Investment** means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the other Party, and in particular, though not exclusively, includes:
(i) shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
(ii) bonds, including Government issued bonds, debentures, loans and other forms of debt, and rights derived therefrom;
(iii) futures, options and other derivatives;
(iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
(v) claims to money or to any contractual performance related to a business and having a financial value;
(vi) intellectual property rights which are recognised pursuant to the laws and regulations of each Party and goodwill;
(vii) rights conferred pursuant to law or contract such as concessions, licences, authorisations, and permits; and
(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges; For the purposes of this definition, investment also includes 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. Such 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;
(i) **Investor of a Party** means –
(i) an enterprise of a Party; or
(ii) a natural person who is a national or a citizen or permanent resident of a Party; that has made, is in the process of making, or is seeking to make (5) an investment in the territory of the other Party;
(j) **Measure adopted or maintained by a Party** means any measure of a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, practice, or other form, adopted or maintained by:
(i) central, regional or local Governments or authorities; or
(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local Governments or authorities; In fulfilling its obligations under this Chapter, each Party is obliged to 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 territories;

(k) **New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958; and
(l) **Non-disputing Party** means the Party of the disputing investor.

(5) For greater certainty, the Parties understand that an investor that "is seeking 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 "is seeking to make" an investment refers to an investor of the other Party that has initiated such notification or approval processes.

Article 10.2. Objectives

The objectives of this Chapter are to:
(a) encourage and promote the open flow of investment between the Parties on investment-related matters;
(b) to create a favourable environment for investors of the other Party and their investments; and
(c) provide for protection of investors of the other Party and their investments within each Party's territory.

Article 10.3. Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to:
(a) investors of the other Party; and
(b) covered investments.
2. This Chapter does not apply to measures adopted or maintained by a Party affecting trade in services.
3. Notwithstanding paragraph 2, the following Articles and Sections of this Chapter shall apply mutatis mutandis, to measures affecting the supply of services by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to Chapter 8 (Trade in Services), but only to the extent that they relate to a covered investment and an obligation under this Chapter, regardless of whether or not such a service sector is scheduled in a Party's Schedule in Annex 4 (Schedules of Specific Services Commitments):
(a) Article 10.7 (Transfers);
(b) Article 10.8 (Expropriation);
(c) Article 10.9 (Compensation for Losses);
(d) Article10.10 (Minimum Standard of Treatment);
(e) Article 10.13 (Subrogation); and
(f) Section B (Investor-State Dispute Settlement).
4. This Chapter shall not apply to:
(a) subsidies or grants provided by a Party;
(b) government procurement; or
(c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.
5. For greater certainty, this Chapter does not apply to claims or disputes in relation to events which occurred, or any situation that ceased to exist, before the date of entry into force of this Agreement.

Article 10.4. National Treatment (6)

Each Party shall accord to investors of the other Party and to covered investments in relation to establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer, or other disposition of investments, treatment no less favourable than it accords, in like circumstances, to its own investors and their investments.

(6) The application of this Article is subject to Article 10.17 (Work Programme).

Article 10.5. Most Favoured Nation Treatment (7)

1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to investors of a third party and to their investments, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. For greater certainty, the obligation in this Article does not encompass a requirement to extend to the other Party dispute resolution procedures other than those set out in this Chapter.
3. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential

treatment to third parties under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
4. For greater certainty, paragraph 3 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

(7) The application of this Article is subject to Article 10.17 (Work Programme).

Article 10.6. Performance Requirements

1. For the purposes of this Chapter, the Parties reaffirm their commitments to the WTO Agreement on Trade-Related Investment Measures ("TRIMS") and hereby incorporate TRIMS, as may be amended, as part of this Chapter, *mutatis mutandis*.
2. The Parties shall undertake joint assessment of performance requirements no later than five years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article. 7 The application of this Article is subject to Article 10.17 (Work Programme).

Article 10.7. Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital, including the initial contribution;
(b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interest 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, including a loan agreement;
(e) payments made pursuant to Articles 10.8 (Expropriation) and 10.9 (Compensation for Losses);
(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 that investment.
2. Each Party shall allow 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; and
(g) social security, public retirement or compulsory savings schemes.
4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the International Monetary Fund ("the 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 under this Chapter regarding such transactions, except under Article 17.3 (Measures to Safeguard the Balance of Payments) or at the request of the Fund.

Article 10.8. Expropriation (8)

1. Neither Party shall nationalise, expropriate or subject to measures equivalent to nationalisation or expropriation a covered investment of an investor of the other Party ("expropriation") except:
(a) for a public purpose; (9)
(b) in a non-discriminatory manner;
(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
(d) in accordance with due process of law.
2. Compensation shall:

(a) be paid without delay; (10)
(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");
(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
(d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment, unless such rate is prescribed by law. (11) Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, where appropriate, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the WTO TRIPS Agreement.

(8) This Article shall be interpreted in accordance with Annex 7 (Expropriation).

(9) For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in the Land Acquisition Act 1960, Land Acquisition Ordinance 1950 of the State of Sabah and the Land Code 1958 of the State of Sarawak.

(10) The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(11) In the case of Malaysia, the interest rates prescribed by law are as set out in the Land Acquisition Act 1960, Land Acquisition Ordinance 1950 of the State of Sabah and the Land Code 1958 of the State of Sarawak.

Article 10.9. Compensation for Losses

Each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:
(a) its own investors and their investments; and
(b) investors of a third party and their investments.

Article 10.10. Minimum Standard of Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security.
2. For greater certainty:
(a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
(b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment; and
(c) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, 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.

Article 10.11. Non-conforming Measures (12)

1. Articles 10.4 (National treatment) and 10.5 (Most Favoured Nation Treatment), shall not apply to:
(a) any existing non-conforming measure maintained by a Party at:

(i) the central and regional level of Government, as set out by that Party in its Schedule to Annex I; or
(ii) 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 measures referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as it existed at the date of entry into force of the Party's Schedule to Annex I with Articles 10.4 12 The application of this Article is subject to Article 10.17 (Work Programme). (National Treatment) and 10.5 (Most Favoured Nation Treatment).
2. Articles 10.4 (National Treatment) and 10.5 (Most Favoured Nation Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.
3. The Parties will endeavour to progressively remove the non-conforming measures.
4. Neither Party may, under any measure adopted after the date of entry into force of the Schedules referred to in Article 10.17 (Work Programme) and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

(12) The application of this Article is subject to Article 10.17 (Work Programme).

Article 10.12. Special Formalities and Disclosure of Information

1. Nothing in Article 10.4 (National Treatment) or 10.5 (Most Favoured Nation Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Article 10.4 (National Treatment) or 10.5 (Most Favoured Nation Treatment) a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party receiving such information shall protect, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.13. 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 against non-commercial risks or other form of indemnity it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title 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 the designated agency of the Party making the payment, pursue those rights and claims against the other Party.
3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the 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.

Article 10.14. Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:
(a) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of a third party and the enterprise has no substantive business operations in the territory of the other Party; or
(b) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the territory of the other Party.

Article 10.15. Investment and Environment

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.16. Promotion and Facilitation of Investment

The Parties shall seek to strengthen and build on existing cooperative arrangements in the promotion and facilitation of investment where this is of mutual benefit, including through:
(a) supporting joint investment promotion activities, including collaboration in third markets;
(b) facilitating the provision and exchange of investment information including laws, regulations and policies to increase awareness of investment opportunities; and
(c) fostering technical cooperation in mutually agreed sectors.

Article 10.17. Work Programme

1. The Parties shall enter into negotiations on Schedules of non-conforming measures within three months of entry into force of this Agreement, unless the Parties otherwise agree.
2. The Parties shall conclude the negotiations referred to in paragraph 1, no later than six months from the date of entry into force of this Agreement, unless the Parties otherwise agree. These discussions shall be overseen by the Committee on Investment established under Article 10.18 (Committee on Investment).
3. Schedules of non-conforming measures referred to in paragraph 1 shall enter into force by exchange of notes on a date agreed to by the Parties.
4. Articles 10.4 (National Treatment), 10.5 (Most Favoured Nation Treatment) and 10.11 (Non-Conforming Measures) shall not apply until the Parties' Schedules of non-conforming measures have entered into force in accordance with paragraph 3.

Article 10.18. Committee on Investment

1. For the purposes of effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Investment. The functions of the Committee on Investment shall be to:
(a) exchange information on and discuss issues related to this Chapter;
(b) review and monitor the implementation and operation of this Chapter;
(c) undertake consultations to review the issues pertaining to the prohibition of performance requirements;
(d) oversee the negotiations referred to in Article 10.17(1) (Work Programme);
(e) report the findings and the outcome of discussions of this Committee to the Joint Commission; and (f) carry out other functions as may be delegated by the Joint Commission in accordance with Article 15.1 (Institutional Provisions).
2. The Committee on Investment shall meet at such venues and times as may be agreed by the Parties.

Section B. Investor-State Dispute Settlement

Article 10.19. Scope

1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter directly concerning a covered investment of the investor of that other Party.
2. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

Article 10.20. Consultations and Negotiations

1. Any investment dispute referred to in Article 10.19(1) (Scope) shall, as far as possible, be settled amicably through consultations and negotiations between the investor and that other Party, which may include the use of non-binding third party procedures.
2. A request for consultations and negotiations shall be made in writing and shall state the legal and factual basis of the investment dispute.

Article 10.21. Submission of a Claim to Arbitration

1. If the dispute cannot be resolved as provided for in Article 10.20 (Consultations and Negotiations) within 180 days from the date of the request for consultations and negotiations then, unless the parties to the dispute agree otherwise, the dispute shall, at the choice of the disputing investor, be submitted to:
(a) conciliation or arbitration by the International Centre for the Settlement of Investment Disputes ("ICSID") under the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington on 18 March 1965;

(b) arbitration under the rules of the United Nations Commission on International Trade Law ("UNCITRAL") adopted by the United Nations General Assembly on 15 December 1976; or
(c) if the disputing parties agree, any other arbitration institution, including conciliation or arbitration at the Regional Centre for Arbitration, Kuala Lumpur ("RCAKL"); provided that resort to one of the fora under subparagraphs (a) to (c) shall exclude resort to the others.
2. The arbitration rules applicable under paragraph 1, and in effect on the date the claim was submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section. 3. The disputing investor shall provide written notice, at least three months before the claim is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:
(a) provides the name and address of the disputing investor and, if any, its legal representative;
(b) nominates the forum for dispute settlement from paragraph 1; and
(c) briefly summarises the alleged breach of the disputing Party under this Chapter (including the Articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.
4. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of arbitration made in accordance with this Article is received under the applicable arbitral rules.
5. 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.
6. Upon the receipt of a notice referred to in paragraph 3, the disputing Party may require the disputing investor to go through any applicable domestic administrative review procedures specified by the laws and regulations of the disputing Party, which may not exceed three months from the receipt of such notice, before the submission of the claim to arbitration under paragraph 1. 7. Once a dispute has been submitted to international arbitration in accordance with this Section, the disputing investor waives its right to initiate or continue before any competent court or tribunal of a Party, or other dispute settlement procedures, any further proceedings with respect to the same dispute.

Article 10.22. Admissibility of Claims

1. No claim may be submitted to arbitration under this Chapter if more than three years have elapsed from the time at which the disputing investor became aware, or should reasonably have become aware, whichever is the earlier, of a breach of obligation under this Chapter causing loss or damage to the investor or its investments.
2. Notwithstanding Article 10.21(7) (Submission of a Claim to Arbitration), 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 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.
3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party have submitted to conciliation or arbitration under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.
4. A dispute arising between a Party and an investor of the other Party on any right or obligation conferred or created by Article 10.6 (Performance Requirements) may not be submitted for arbitration but may be subject to consultations or negotiations in accordance with Article 10.20 (Consultations and Negotiations).

Article 10.23. Location

Unless the disputing parties otherwise agree, the Tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

Article 10.24. Preliminary Objections

1. A disputing Party may, no later than 30 days after the constitution of the Tribunal, file an objection that a claim is manifestly without merit or is otherwise outside the jurisdiction or competence of the Tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.
2. 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.
3. 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.
4. Where an investor claims that the disputing Party has breached Article 10.8 (Expropriation) 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 determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any Tribunal that may be established under this Section shall accord serious consideration to the decision of both Parties under this paragraph.
5. If both Parties fail either to initiate such consultations, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultation referred to in Article 10.21(1) (Submission of a Claim to Arbitration), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

Article 10.25. Submissions and Reports

1. On written notice to the disputing parties, the non-disputing Party may make a submission to the Arbitral Tribunal on a question of interpretation of this Agreement.
2. Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue raised by a disputing party in a proceeding, subject to such terms and conditions, including the cost of such appointments, as the disputing parties may agree.

Article 10.26. Interpretation of Agreement

1. The Tribunal shall, on its own account or at the request of the disputing investor or the disputing Party, request a joint interpretation of the Parties of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the Tribunal within 60 days of delivery of the request.
2. A joint decision issued under paragraph 1 by the Parties declaring their interpretation of any provision of this Agreement shall be binding on the Tribunal, and any award must be consistent with that joint decision. If the Parties fail to issue such a decision within 60 days, the Tribunal shall decide the issue on its own account.

Article 10.27. Consolidation of Claims

Where two or more investors notify an intention to submit claims, or have submitted claims, separately to arbitration under Article 10.21 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate, including with respect to the forum chosen.

Article 10.28. Transparency of Arbitral Proceedings

1. Subject to paragraph 2, the disputing Party may make publicly available the tribunal awards and decisions as well as its written submissions to the Tribunal.
2. Any information that is submitted to the Tribunal and that is designated as confidential information by either disputing party shall be protected from disclosure.

Article 10.29. Awards

1. 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.
2. A Tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
3. A Tribunal may not award punitive damages.
4. An award made by a Tribunal shall be final and binding on the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.
5. A disputing party may not seek enforcement of a final award until all applicable review procedures have been completed.
6. Subject to paragraph 5, the disputing parties shall abide by and comply with the award without undue or unreasonable delay.

Chapter ELEVEN. INTELLECTUAL PROPERTY

Article 11.11. Definitions

For the purposes of this Chapter, intellectual property rights refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and rights in plant varieties as defined and described in the WTO TRIPS Agreement.

Article 11.12. Intellectual Property Principles

1. The Parties recognise the importance of intellectual property rights in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.

2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

3. Each Party is committed to the maintenance of transparent intellectual property rights regimes and systems that:

(a) provide for the protection and enforcement of intellectual property rights; and

(b) facilitate international trade through the dissemination of ideas, technology and creative works.

Article 11.13. General Provisions

1. Each Party reaffirms its commitment to the provisions of the WTO TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both are party.

2. For the purposes of this Chapter, the WTO TRIPS Agreement is incorporated into and made part of this Agreement, mutatis mutandis.

Article 11.14. Cooperation on Notification and Exchange of Information

1. Each Party shall designate a Contact Point to facilitate communications between the Parties on any matter covered by this Chapter, and 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.

2. Each Party shall:

(a) promptly notify the other Party of any new laws that enter into effect in relation to intellectual property and, in particular, any new laws concerning the enforcement of intellectual property rights;

(b) inform the other Party of changes to, and developments in, the implementation of intellectual property systems, aimed at promoting effective and efficient registration or grant of intellectual property rights;

(c) encourage and facilitate the development of contacts and cooperation between their respective Government agencies, educational institutions, and other organisations with an interest in the field of intellectual property rights;

(d) share information and cooperate on appropriate initiatives to promote awareness of intellectual property rights and systems; and

(e) share information and cooperate on appropriate initiatives to promote measures to protect traditional knowledge.

3. Any information or notification provided under this Article shall be conveyed through the Contact Points referred to in paragraph 1.

Article 11.15. Cooperation on Enforcement

The Parties agree to cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives or policies. Such cooperation shall include:

(a) provision for each Party’s designated Contact Point to exchange information concerning enforcement of intellectual property rights;

(b) policy dialogue on initiatives for the improvement of enforcement of intellectual property rights in multilateral and regional fora; and

(c) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually agreed between the Parties.

Article 11.16. Traditional Knowledge

Subject to each Party's international obligations, the Parties may establish appropriate measures to protect traditional knowledge.

Article 11.17. Consumer Protection

1. The Parties affirm their concern to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade.

2. Each Party shall provide the legal means to ensure that products that are sold within its territory are not labelled in a manner which is false, deceptive or misleading or is likely to create an erroneous impression about the character, composition, quality, or origin, including the country of origin, of the product.

Article 11.18. Consultations

A Party may, at any time, request consultations with the other Party's Contact Point with a view to seeking information or clarification on intellectual property issues arising between the Parties. Such consultations will commence within 60 days of the request, unless the Parties mutually determine otherwise. In the event that consultations fail to resolve any such issues, the requesting Party may refer the issues to the Joint Commission for consideration.

Chapter TWELVE. COMPETITION

Article 12.1. Objectives

The Parties recognise the strategic importance of promoting and maintaining competition that enhances economic efficiency and consumer welfare.

Article 12.2. Competition Law

1. To the extent that a Party has adopted and applied measures (including competition law or sector-specific regulations) to address anti-competitive practices and arrangements, those measures shall be consistent with competition principles.

2. Where generic or relevant sectoral competition laws are in force in the Parties' respective territories, the Parties shall ensure that all commercial activities are subject to such laws.

3. Notwithstanding paragraph 2, where generic or relevant sectoral competition laws are in force, either Party may exempt specific measures or sectors from the application of its general competition laws, provided that such exemptions are transparent and undertaken on the grounds of national policy or public interest.

4. Nothing in this Chapter requires a Party to adopt specific measures to address anti-competitive practices or prevents it from withdrawing such measures, nor does this Chapter prevent a Party from adopting policies in other fields, for example to promote economic development.

Article 12.3. Cooperation

1. The Parties shall endeavour to exchange information and explore the scope for further cooperation between them on competition matters with a particular emphasis on issues or matters that adversely affect their economies.

2. The Parties agree that it is in their common interest to work together on technical cooperation activities in controlling anti-competitive activities. Such technical cooperation activities may include:

(a) exchange of experience regarding the best approach in formulating and enforcing competition law and policy;

(b) exchange of publicly available information about competition law and policy;

(c) exchange of officials for training purposes;

(d) assistance from consultants and experts from New Zealand to the Malaysian Ministry of Domestic Trade, Co-operatives and Consumerism in information sharing on competition policy and law; and

(e) participation of officials as lecturers, consultants or participants at training courses on competition laws and policy.

Article 12.4. Discussions between the Parties

1. A Party may at any time request discussions with the other Party on the development of any new measures related to controlling anti-competitive practices that may affect their economic development, whether these are specific or of general application.

2. A Party may request discussions with the other Party on anti-competitive practices adversely affecting economic development of either Party within the scope of this Chapter.

3. The other Party shall respond promptly to any request for discussions.

Article 12.5. Non-Application of Dispute Settlement

1. No Party shall have recourse to the dispute settlement procedures under Chapter 16 (Dispute Settlement) in respect of this Chapter.

2. Nothing in this Chapter permits a Party to challenge any decision made by a competition authority of the other Party in enforcing applicable competition laws.

Chapter THIRTEEN. ECONOMIC COOPERATION

Article 13.1. Objectives

1. The Parties agree to establish a framework for cooperation as a means to expand and enhance the benefits of this Agreement and to promote capacity building activities in areas of mutual interest taking into account existing economic cooperation between them.

2. The Parties will establish close cooperation aimed inter alia at:

(a) promoting and enhancing economic cooperation between them to further development objectives in accordance with the applicable laws and regulations of each Party;

(b) complementing existing, and building new, cooperative relationships between the Parties;

(c) advancing human resource development, creating new opportunities for trade and investment, promoting competitiveness and innovation including the involvement, where appropriate, of the private sector;

(d) contributing to the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(e) encouraging through this cooperative process the presence of the Parties and their goods and services in each others' respective markets; and

(f) increasing and deepening the level of cooperation activities between the Parties in areas of mutual interest.

Article 13.2. Scope

1. The Parties affirm the importance of all forms of cooperation with particular attention given initially to the areas identified in Annex 8 (Areas of Cooperation). Annex 8 (Areas of Cooperation) is an open-ended, illustrative list of areas for cooperation. Other areas of cooperation for possible implementation can be identified and discussed by the Economic Cooperation Committee including, but not limited to:

(a) education;

(b) agriculture;

(c) forestry;

(d) science and technology;

(e) health;

(f) manufacturing industry;

(g) small and medium scale industries; and

(h) other areas to be mutually agreed upon by the Parties.

Cooperation in the areas identified in Annex 8 (Areas of Cooperation) will commence upon the entry into force of this Agreement, in which some of the identified projects could be implemented as soon as possible thereafter.

2. Cooperation between the Parties should contribute to achieving the objectives of this Agreement and in particular the objectives in Article 13.1 (Objectives), taking into account the different levels of development, through the identification and development of innovative cooperation programmes capable of providing added value to the Parties' relationship.

3. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in this Agreement.

Article 13.3. Resources

Cooperation will be undertaken subject to the availability of resources of each Party and the applicable laws and regulations of each Party.

Article 13.4. Functions of the Economic Cooperation Committee

1. The Parties shall establish an Economic Cooperation Committee ("the Committee") for the purpose of implementation and operation of this Chapter. The functions of the Committee shall be to:

(a) establish an agreed work programme of cooperative activities;

(b) exchange information in the field of cooperation;

(c) identify new areas of cooperation and new ways to further cooperation between the Parties;

(d) serve as a channel for dialogue on matters of mutual interest;

(e) oversee the implementation and coordination of the economic cooperation framework and activities as agreed by the Parties; and

(f) regularly report to the Joint Commission on the outcomes of the economic cooperation activities undertaken.

2. The Committee shall be co-chaired by officials of the Governments; its members shall have the necessary and relevant expertise related to the issues, and decisions shall be taken by consensus between the Parties.

Article 13.5. Mechanisms for Implementation of Cooperation

1. The Parties agree that the mechanisms for cooperation will take the form of:

(a) meetings of the Committee;

(b) meetings, as required between the relevant institutions of the Parties (including, but not limited to, relevant Government agencies and universities), to further the implementation of cooperation activities with a view to ensuring the successful implementation of economic cooperation under this Chapter; and

(c) maximum use of diplomatic channels to promote dialogue and cooperation consistent with this Agreement.

2. In accordance with Article 15.1 (Joint Commission), in the area of economic cooperation the Joint Commission shall:

(a) receive and deliberate on the reports of the Committee;

(b) make decisions on issues referred to it by the Committee;

(c) encourage undertaking of cooperation activities under the framework as well as new initiatives as agreed by the Parties; and

(d) make recommendations on the cooperation activities under this Chapter for implementation through the Committee, in accordance with the strategic priorities of the Parties.

3. Each Party will designate a Contact Point to facilitate communication on cooperation activities undertaken by the Committee. The Contact Points will work with their respective Government agencies, private sector representatives and educational and research institutions in the operation of this Chapter.

4. The Committee shall meet within one year of entry into force of this Agreement and then each year, or as otherwise mutually determined by the Parties.

5. To the greatest extent possible, the work of the Committee shall be conducted using electronic means, including e-mail, teleconference and video- conference. Where a physical meeting is required, it shall, unless otherwise agreed by the Parties, take place contiguous to a meeting of the Joint Commission.

Article 13.6. Non-Application of Dispute Settlement

No Party shall have recourse to the dispute settlement procedures under Chapter 16 (Dispute Settlement) in respect of this Chapter.

Chapter FOURTEEN . TRANSPARENCY

Article 14.1. Definitions

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 and that is relevant to the implementation of this Agreement but does not include:

(a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

Article 14.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available (13) in such a manner as to enable interested persons of the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide, where appropriate, interested persons and the other Party with a reasonable opportunity to comment on such proposed measures.

(13) Including through the Internet or in print form.

Article 14.3. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 14.2(1) (Publication) to particular persons, goods, or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issues in question;

(b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with domestic law.

Article 14.4. Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi- judicial, or administrative tribunals, or procedures for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

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

Article 14.5. Notification and Provision of Information

1. Where a Party considers that any proposed or actual measure might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, that Party shall, where possible, notify the other Party of the proposed or actual measure.

2. On request of the other Party, a Party shall, where possible, provide information and respond to questions pertaining to any actual or proposed measure, whether or not that other Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be conveyed to the other Party through its Contact Point.

4. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Chapter FIFTEEN. INSTITUTIONAL PROVISIONS

Article 15.1. Joint Commission

1. The Parties hereby establish the Malaysia – New Zealand Free Trade Agreement Joint Commission ("Joint Commission") which may meet at the level of Ministers or senior officials, as mutually determined by the Parties. The Joint Commission shall be co-chaired by senior Government officials of the Parties, unless the Parties agree to convene the meeting at ministerial level. Each Party shall be responsible for the composition of its delegation.

2. The functions of the Joint Commission shall be to:

(a) review the implementation and operation of this Agreement;

(b) consider any matters relating to the implementation of this Agreement;

(c) supervise and coordinate the work of all Committees established under this Agreement;

(d) adopt any decisions and recommendations of the Committees if necessary; and

(e) carry out any other functions as the Parties may agree.

3. The Joint Commission may:

(a) refer matters to a Committee for advice, and consider matters raised by any committee established under this Agreement,

(b) establish ad hoc Working Groups to address specific issues where these are not more appropriately dealt with by an

existing Committee or Working Group;

(c) further the implementation of the Agreement's objectives through Implementing Arrangements;

(d) explore measures for the further expansion of trade and investment among the Parties and identify appropriate areas of commercial, industrial and technical cooperation between relevant enterprises and organisations of the Parties;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement including matters referred to it pursuant to Article 16.7 (Referral to the Joint Commission); and

(f) consult third parties on any matter falling within its responsibilities where this would help it make an informed decision.

4. The Joint Commission may establish its rules and procedures and financial arrangements, if necessary.

5. The Joint Commission shall convene its inaugural meeting within one year after the entry into force of this Agreement. Its subsequent meetings shall be held at such frequency as the Parties may agree. The Joint Commission shall convene alternately in Malaysia and New Zealand, unless the Parties agree otherwise. Special meetings of the Joint Commission may be convened, as mutually agreed by both Parties, within 30 days upon the request of either Party.

Article 15.2. Committees

1. The following Committees shall be established on the date of entry into force of this Agreement:

(a) Committee on Trade in Goods;

(b) Committee on Technical Barriers to Trade;

(c) Committee on Sanitary and Phytosanitary Measures;

(d) Committee on Investment;

(e) Committee on Trade in Services; and

(f) Committee on Economic Cooperation.

2. Committees may set up Working Groups to deal with specific issues referred to them by the Joint Commission. Other procedures and functions of the Committees are to be specified in the Chapters where they are established.

Article 15.3. Communications

1. Communications between the Parties on any matter relating to this Agreement shall be facilitated through the following Contact Points:

(a) in the case of Malaysia, the Ministry of International Trade and Industry of Malaysia; and

(b) in the case of New Zealand, the Ministry of Foreign Affairs and Trade of New Zealand.

2. On the request of one Party, the Contact Point of the other Party shall identify the office or official responsible for the matter at issue and assist, as necessary, in facilitating communications with the requesting Party.

Article 15.3. General Reviews

1. The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, at ministerial level, within five years of the entry into force of this Agreement and at least every three years thereafter.

2. The conduct of general reviews shall normally coincide with regular meetings of the Joint Commission.

Chapter SIXTEEN . DISPUTE SETTLEMENT

Article 16.1. Definitions

For the purposes of this Chapter:

(a) **Complaining Party** means any Party that requests consultations under Article 16.5 (Consultations);

(b) **Disputing Party or Parties** means the Party or Parties to the dispute; and

(c) **Party complained against** means any Party to which a request for consultations is made under Article 16.5 (Consultations).

Article 16.2. Objective

The objective of this Chapter is to provide an effective and efficient process for consultations and settlement of disputes arising under this Agreement.

Article 16.3. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the settlement of disputes between the Parties regarding the interpretation, implementation or application of this Agreement.

2. Subject to Article 16.4 (Choice of Forum), this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are parties.

3. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

Article 16.4. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another agreement to which the disputing Parties are party, the complaining Party may select the forum in which to address that matter.

2. The complaining Party shall notify the other Party in writing of its intention to select a particular forum before doing so.

3. Once the complaining Party has selected a particular forum for addressing a matter, that forum shall be used to the exclusion of other possible fora in respect of that matter.

4. For the purposes of this Article, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel or Arbitral Tribunal.

Article 16.5. Consultations

1. Each Party shall accord adequate opportunity for consultations with the other Party with respect to any matter affecting the interpretation, implementation, or application of this Agreement. Such matters shall as far as possible be settled through consultations between the Parties.

2. A request for consultations shall be in writing. The Party to which the request is made shall reply to the request in writing within ten days after the date of its receipt, and shall enter into consultations within a period of no more than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the matter might affect the operation and application of this Agreement; and

(b) treat as confidential any information designated as such by the other Party providing the information.

4. The complaining Party may request the Party complained against to make available for the consultations personnel of its Government agencies or other regulatory bodies who have expertise in the matter under consultations.

5. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 16.6. Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be

terminated at any time.

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an Arbitral Tribunal convened under Article 16.8 (Request for the Establishment of an Arbitral Tribunal).

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

Article 16.7. Referral to the Joint Commission

1. If a Party considers that any benefit that could have reasonably been expected to accrue to it under any provision of this Agreement is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, that Party may, in accordance with paragraph 2, have recourse to the dispute settlement procedures under this Chapter.

2. If consultations undertaken pursuant to Article 16.5 (Consultations) fail to resolve such a nullification or impairment complaint under the timeframes and circumstances set out in Article 16.8(1)(a-c) (Request for the Establishment of an Arbitral Tribunal) the complaining Party shall, by delivery of written notification to the other Party, refer the dispute to the Joint Commission in accordance with Article 15.1(3)(e) (Joint Commission) for its consideration.

Article 16.8. Request for the Establishment of an Arbitral Tribunal

1. The complaining Party may request in writing for the establishment of an Arbitral Tribunal if:

(a) the Party complained against does not enter into consultations within 30 days after the date of its receipt of the request for consultations under Article 16.5 (Consultations);

(b) the Parties fail to resolve a dispute 30 days after the date of receipt of the request for consultations regarding a matter concerning perishable goods;

(c) the Parties fail to resolve a dispute 60 days after the date of receipt of the request for consultations regarding any other matter; or

(d) the Joint Commission fails to resolve the matter within 60 days after the delivery of the notification described in Article 16.7 (Referral to the Joint Commission) of the request for its consideration of the dispute.

2. The request to establish an Arbitral Tribunal shall identify:

(a) the specific measures at issue;

(b) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached or any other relevant provisions; and

(c) the factual basis for the complaint.

Article 16.9. Composition and Establishment of an Arbitral Tribunal

1. The Arbitral Tribunal shall consist of three members. The complaining Party and the Party complained against shall each appoint one arbitrator within 45 days of the receipt of the request to establish an Arbitral Tribunal.

2. If either Party fails to appoint an arbitrator within such period, then the arbitrator appointed by the other Party shall act as the sole arbitrator of the Tribunal.

3. Where two arbitrators are appointed in accordance with paragraph 1, the Parties shall designate by common agreement the third arbitrator who shall chair the Arbitral Tribunal. If the chair of the Arbitral Tribunal has not been designated by the Parties within 15 days of the appointment of the second arbitrator, the two arbitrators appointed in accordance with paragraph 1 shall designate by common agreement the third arbitrator who shall chair the tribunal. If the chair of the Arbitral Tribunal has not been designated by the arbitrators within 30 days of the appointment of the second arbitrator, either Party may request the Director- General of the WTO to appoint the third arbitrator to chair the Arbitral Tribunal. The appointment shall take place within 30 days of the request.

4. The date of establishment of the Arbitral Tribunal shall be the date on which the last arbitrator is appointed.

5. All arbitrators should be objective, reliable and of sound judgement. In particular, all arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be independent of, and not be affiliated with or take instructions from, any Party to the dispute; and

(c) comply with the code of conduct for panellists established under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

6. The chair of the Arbitral Tribunal shall:

(a) not be a national of a Party;

(b) not have his or her usual place of residence in the territory of a Party; and

(c) not have dealt with the matter in any capacity.

7. If an arbitrator appointed under this Article resigns or becomes unable to

act, a successor arbitrator 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.

8. Where an Arbitral Tribunal is reconvened under Articles 16.14(1) and (2) (Implementation) and 16.16(2) (Review), the reconvened Arbitral Tribunal shall, where possible, have the same arbitrator as the original Arbitral Tribunal. Where it is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s) and the successor(s) shall have all the powers and duties of the original arbitrator(s).

Article 16.10. Functions of an Arbitral Tribunal

1. The function of an Arbitral Tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement, and make such other findings and rulings necessary for the resolution of the dispute referred to as it thinks fit.

2. Where an Arbitral Tribunal finds that a measure is inconsistent with this Agreement, it shall include in its findings and rulings a requirement to bring the measure into conformity with this Agreement. Where an Arbitral Tribunal finds that a measure nullifies or impairs benefits, it shall include in its findings and rulings a requirement to address the nullification or impairment through a mutually satisfactory adjustment or other mutually agreed solution.

3. The findings and rulings of the Arbitral Tribunal shall be binding on the Parties.

4. The Arbitral Tribunal shall, apart from the matters set out in Article 16.11 (Rules of Procedure), regulate its own procedures in relation to the rights of Parties to be heard and its deliberations in consultation with the Parties.

5. An Arbitral Tribunal shall take its decisions by consensus, provided that where an Arbitral Tribunal is unable to reach consensus it may take its decisions by majority vote.

Article 16.11. Rules of Procedure

1. Within 14 days of its establishment, the Arbitral Tribunal shall establish rules of procedure, which shall, inter alia, ensure:

(a) a right to at least one, but no more than two, hearings before the Tribunal;

(b) an opportunity for the complaining and responding Parties to provide initial and rebuttal submissions;

(c) that each Party's written submissions, written versions of its oral statements and written responses to requests or questions from the Tribunal may be made public by that Party, subject to paragraph 2; and

(d) that any other procedural elements referred to in this Chapter, or mutually agreed by the Parties to the dispute are provided for.

2. Information designated as confidential by a Party shall be treated as such by the other Party and by the Arbitral Tribunal.

3. The Arbitral Tribunal may at any time put questions to the Parties and ask them for explanations or further information, either in the course of a meeting or in writing. A Party shall respond promptly and fully to any request by an Arbitral Tribunal for such information as the Arbitral Tribunal considers necessary and appropriate. There shall be no ex parte

communications with the Arbitral Tribunal concerning matters under consideration by it.

4. The Arbitral Tribunal shall have the right to seek information and technical advice from any individual or body which it deems appropriate. The Arbitral Tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the Arbitral Tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

5. The reports of the Arbitral Tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made to the Arbitral Tribunal.

6. In order to enable the Parties to have an opportunity for review and comment, the Arbitral Tribunal shall present the Parties its initial report within 90 days of the Tribunal's establishment setting out its findings of fact and its determination as to whether a disputing Party has conformed with its obligations under this Agreement or caused nullification or impairment. In exceptional cases, if the Arbitral Tribunal considers it cannot release its initial report within 90 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report.

7. The Arbitral Tribunal shall present the Parties its final report within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree. The final report of the Arbitral Tribunal may be made available as a public document after the elapse of ten days from the date of its release.

Article 16.12. Expenses

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the chair of the Arbitral Tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

Article 16.13. Suspension or Termination of Proceedings

1. The Parties may agree that the Arbitral Tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the Arbitral Tribunal has been suspended for more than 12 months, the authority for establishment of the Tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an Arbitral Tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the Arbitral Tribunal presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

Article 16.4. Implementation

1. The Party complained against shall promptly comply with the findings and rulings of the Arbitral Tribunal. Where it is not practicable to comply immediately, the Party complained against shall comply with the findings and rulings within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within 45 days of the release of the Arbitral Tribunal's final report, either Party to the dispute may refer the matter to the Tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the findings and rulings of the Arbitral Tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original Arbitral Tribunal. (14) The Arbitral Tribunal shall provide its initial report to the Parties within 60 days, and its final report 20 days thereafter. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

(14) Consultations under Article 16.5 (Consultations) are not required for these procedures.

Article 16.5. Compensation and Suspension of Benefits

1. If the Party complained against fails to bring the measure found to be inconsistent with the Agreement or to have caused nullification or impairment into compliance with the findings and rulings of the Arbitral Tribunal within the reasonable period of time, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. The complaining Party may suspend the application of benefits of equivalent effect to the Party complained against 30 days after the end of the reasonable period of time established in accordance with Article 16.14 (Implementation). Benefits shall not be suspended while the complaining Party is pursuing negotiations under paragraph 1.

3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

4. In considering what benefits to suspend under paragraph 2, the complaining Party:

(a) shall first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the Arbitral Tribunal has found to be inconsistent with this Agreement or caused nullification or impairment; and

(b) may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as it has been determined, in accordance with these procedures, that the measure found to be inconsistent with this Agreement has been brought into conformity, or the Party that must implement the Arbitral Tribunal's findings and rulings has done so, or a mutually satisfactory solution is reached.

Article 16.16. Review

1. Without prejudice to the procedures in Article 16.15 (Compensation and Suspension of Concessions), the Party complained against may request an Arbitral Tribunal to determine whether:

(a) it has eliminated the non-conformity or nullification or impairment in accordance with the findings and rulings of the original Arbitral Tribunal; and/or

(b) the level of benefits suspended by the complaining Party pursuant to Article 16.15(2) (Compensation and Suspension of Concessions) is excessive, taking into account any matters considered pursuant to Article 16.15(4) (Compensation and Suspension of Concessions).

2. Such matters shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original Arbitral Tribunal.15 The Arbitral Tribunal shall provide its initial report to the Parties within 60 days, and its final report 20 days thereafter. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

3. If the Arbitral Tribunal decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party shall promptly reinstate any benefits it has suspended under Article 16.15 (Compensation and Suspension of Benefits). If the Arbitral Tribunal decides that the level of benefits suspended by the complaining Party is excessive, the complaining Party shall modify the level of suspension of concessions accordingly.

(15) Consultations under Article 16.5 (Consultations) are not required for these procedures.

Article 16.17. Language

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Agreement shall be in the English language. If any original document is not in the English language, the Party submitting it for use in the proceedings shall provide an English translation of that document.

Article 16.18. Computation of Time

Where a time period specified in this Chapter would expire on a Saturday or a Sunday, it shall be deemed to expire on the following Monday.

Article 16.19. Contact Points and Service of Documents

1. The Parties shall designate a Contact Point for this Chapter. Any request, acknowledgement, written submission or other document relating to the dispute settlement procedures in this Chapter shall be delivered to the relevant Party through its designated Contact Point.

2. Any request, written submission or other document shall be delivered by a Party or by the Arbitral Tribunal by delivery against an acknowledgement of receipt.

Chapter SEVENTEEN. GENERAL EXCEPTIONS

Article 17.1. General Exceptions

1. For the purposes of Chapters 2 through 10, (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, Article XX of GATT 1994 and its interpretive notes and Article XIV of GATS (including its footnotes) are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 and Article XIV(b) of GATS include measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapters 2 through 10, (Trade in Goods, Rules of Origin, Customs Procedures and Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, 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 where like conditions prevail, or a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national works or specific sites of historical or archaeological value, or to support creative arts of national value. (16)

(16) "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

Article 17.2. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

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

(i) 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;

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

(iii) relating to fissionable and fusionable materials or the materials from which they are derived; 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. The Joint Commission shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 17.3. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures;

(b) in the case of services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments;

(c) in the case of investments, adopt or maintain restrictions with regard to payments relating to the transfer of proceeds from investment.

2. Restrictions adopted or maintained under paragraph 1(b) or (c) shall:

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

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

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

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

(e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any third party.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.

5. The Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

Article 17.4. Prudential Measures

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures affecting the supply of financial services for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

Article 17.5. 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:

(a) where corresponding rights or obligations are also granted or imposed under the WTO Agreement; or

(b) under Article 10.8 (Expropriation).

3. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties.

4. If there is a dispute described in Article 10.19(1) (Scope) that may relate to a taxation measure, then the Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established under Article 10.21 (Submission of a Claim to Arbitration) shall accept a decision of the Parties as to whether the measure in question is a taxation measure.

5. In the event of any inconsistency relating to a taxation measure between this Agreement and the Agreement between the Government of New Zealand and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, done at Kuala Lumpur on 19 March 1976, with Protocols, the latter shall prevail. Any consultations between the Parties about whether an inconsistency relates to a taxation measure shall include representatives of the tax administration of each Party. (17)

(17) Nothing in this Agreement shall be regarded as obliging a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement on the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 17.6. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 16 (Dispute Settlement) shall otherwise apply to this Article. An Arbitral Tribunal established under Article 16.8 (Request for the Establishment of an Arbitral Tribunal) may be requested by Malaysia to determine only whether any measure referred to in paragraph 1 is inconsistent with their rights under this Agreement.

Chapter EIGHTEEN . Final Provisions

Article 18.1. Annexes, Appendices and Footnotes

The annexes, appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 18.2. Relation to other Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under the WTO Agreement or any other multilateral or bilateral agreement to which it is a party. In the event of any inconsistency between this Agreement and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law.

Article 18.3. Succession of Treaties or International Agreements

Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which a Party is party.

Article 18.4. Application

Each Party is fully responsible for the observance of all provisions in this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by local Government and authorities.

Article 18.5. Disclosure of Information

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

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

(b) is contrary to any of its legislation, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) would impede law enforcement; or

(d) would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 18.6. Confidentiality

Where a Party provides information to the other Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the

information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 18.7. Financial Provisions

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

Article 18.8. Termination of 1997 Trade and Economic Cooperation Agreement

The Agreement on Trade and Economic Cooperation between the Government of Malaysia and the Government of New Zealand, done at Kuala Lumpur on 17 October 1997, shall terminate on the day of entry into force of this Agreement.

Article 18.9. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed between them.

Article 18.10. Entry Into Force, Duration and Termination

1. This Agreement shall be subject to ratification. Ratification shall be effected by an exchange of notes between the Parties. The Agreement shall enter into force on the date specified in such exchange of notes.

2. This Agreement shall remain in force until one Party gives written notice of its intention to terminate it, in which case this Agreement shall terminate 180 days after the date of the notice of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at _____ this _____ day of _____.

For the Government of New Zealand For the Government of Malaysia