COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE UNITED ARAB EMIRATES

PREAMBLE

The Governments of the United Arab Emirates (hereinafter referred to as the "UAE") and the Republic of Kenya (hereinafter referred to as "Kenya");

hereinafter being referred to individually as a "Party" and collectively as "the Parties";

RECOGNISING the strong economic and political ties between the UAE and Kenya, and wishing to strengthen these links. The Parties further wish to pursue the establishment of a free trade area with the East African Community, thus establishing close and lasting relations;

DETERMINED to build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

CONSCIOUS of the dynamic and rapidly changing global environment brought about by globalisation and technological progress that presents various economic and strategic challenges and opportunities for the Parties;

DETERMINED to develop and strengthen their trade and economic relations through the liberalisation and expansion of trade in goods and services in their common interest and for their mutual benefit;

AIMING to promote transfer of technology and expand trade;

AIMING to facilitate trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

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

AIMING to establish a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment;

RECOGNIZING their inherent right to regulate and resolved to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement;

HAVE AGREED, in pursuit of the above, to conclude the following Agreement:

Chapter I. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1. Establishment of a Comprehensive Economic Partnership Agreement

The Parties hereby establish a Comprehensive Economic Partnership Agreement between the UAE and Kenya, in accordance with the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause") and Article V of General Agreement on Trade in Services ("GATS"); and agree to deepen economic cooperation between the Parties. The Parties further will use their best endeavours towards negotiating a Comprehensive Economic Partnership Agreement between the UAE and the East African Community.

Article 1.2. Objectives

The objectives of this Agreement are to liberalise and facilitate trade in goods and services, stimulate investment between

the Parties, promote opportunities for trade liberalisation of goods and services, and strengthen development of the digital economy, infrastructure and MSMEs, in accordance with the provisions of this Agreement.

Article 1.3. General Definitions

For the purposes of this Agreement:

Agreement means this Comprehensive Economic Partnership Agreement ("CEPA") between the UAE and the Republic of Kenya;

Agreement on Agriculture means the Agreement on Agriculture in Annex lA to the WTO Agreement;

Anti-Dumping Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex lA to the WTO Agreement;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and holidays;

GATS means the General Agreement on Trade in Services in Annex lB to the WTO Agreement;

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

GPA means the Agreement on Government Procurement in Annex 4 to the WTO Agreement;

Harmonized System or HS means the Harmonized Commodity Description and Coding System, including its General Rules for the Interpretation, Section Notes, Chapter Notes and Subheading Notes;

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

Joint Committee means the Joint Committee established pursuant to Article 14.1 (Joint Committee);

measure means any measure, whether in form of a law, regulation, rnle, procedure, decision, practice, administrative action, or any other form;

Safeguards Agreement means the Agreement on Safeguards in Annex 1 A to the WTO Agreement;

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

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex lA to the WTO Agreement;

TBT Agreement means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

WTO means the World Trade Organization; and

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

Article 1.4. Geographical Scope

This Agreement shall apply:

(a) For the UAE, its land territories, internal waters, including its Free Zones, territorial sea, including, the seabed, and subsoil thereof, and airspace over such territories and waters, as well as the contiguous zone, the continental. shelf and exclusive economic zone, over which UAE has sovereignty, sovereign rights or jurisdiction as defined in its laws, and in accordance with international law;

(b) For the Republic of Kenya, all territory of Kenya in state boundaries, including internal territory and territorial waters and also the exclusive economic zone, maritime zones, and all installations erected thereon, as defined in its national law, in accordance with international law, over which Kenya exercises its sovereign rights with respect to exploration, exploitation, conservation and management of natural resources of the seabed, its subsoil and the superjacent waters.

Article 1.5. Relation to other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Parties are party.

2. In the event of any inconsistency between this Agreement and other agreements to which the Parties may be party to either jointly or otherwise, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

Article 1.6. Regional and Local Government

1. Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities and by non-governmental bodies in the exercise of governmental powers delegated by central, regional and local governments and authorities within its territories. 2. This provision is to be interpreted and applied in accordance with the principles set out in paragraph 12 of Article XXIV of the GA TT 1994 and paragraph 3 of Article I of the GATS.

Article 1.7. Transparency

1. Each Party shall publish or otherwise make publicly available their laws, regulations, as well as their respective international agreements which may affect the operation of this Agreement.

2. Without prejudice to Article 1.8, each Party shall respond within a reasonable period of time to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

Article 1.8. Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by tbe other Party.

2. Nothing in this Agreement shall require a Party to disclose confidential information, the djsclosure of which would impede law enforcement of the Party, or othetwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.

Chapter 2. TRADE IN GOODS

Article 2.1. Definitions

For the purposes of this Chapter:

Customs Administration means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of customs laws and regulations of the Party. In the case of the UAE, it shall be the Federal Authority for Identity, Citizenship, Customs & Port Security and each of the individual Emirates Customs Authorities. In the case of Kenya, it shall be the Customs and Border Control Department; and

customs duty refers to any duty or charge of any kind imposed in connection with the importation of a product, including any form of surtax or surcharge in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed in conformity with Article III of the GATT 1994;

(b) anti-dumping or countervailing or safeguard duty that is applied consistently with the provisions of Article VI of the GA TT 1994, the Anti-Dumping Agreement, the SCM Agreement, or Safeguards Agreement; or

(c) fee or other charge in connection with importation commensurate with the cost of services rendered and which does not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes.

Article 2.2. Objectives

1. The principal objective of this Chapter is to create a liberalised market for trade in goods in accordance with Article 1.2 (Objectives).

2. The specific objective of this Chapter is to promote each Party's trade in goods through:

(a) progressive elimination of tariffs;

(b) elimination of non-tariff barriers;

(c) enhanced efficiency of customs procedures, trade facilitation and transit;

(d) enhanced cooperation in the areas of technical barriers to trade and sanitary and pbytosanitary measures;

(e) development and promotion of value chains;

(f) enhanced socio-economic development, diversification and industrialization in the Parties; and

(g) promotion of regional integration.

Article 2.3. Scope and Coverage

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

Article 2.4. National Treatment

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

Article 2.5. Classification of Goods and Transposition of Schedules

1. The classification of goods in trade between the Parties shall be that set out in the respective tariff nomenclature of each Party in conformity with the Harmonized System ("HS") and its legal notes and amendments.

2. Each Party shall ensure that the transposition of its Schedule of Tariff Commitments does not afford less favourable treatment to an originating good of the other Party. If the process of transposition results in a disagreement on the applicable tariff, then this matter shall be referred to the Joint Committee.

3. A Party may introduce new tariff splits, provided that the preferential conditions applied in the new tariff splits are not less preferential than those applied originally.

Article 2.6. Import and Export Restrictions

Except as otbeiwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GA TT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

Article 2.7. Export Duties

1. The Parties may regulate export duties on goods originating from their territories.

2. Any export duties imposed on, or in connection with, the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations on a non-discriminatory basis.

3. A Party that introduces export duties on, or in connection with, the exportation of goods in accordance with paragraph 2, shall notify the Joint Committee within 90 days of the introduction of said export duties.

Article 2.8. Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement (1), which is hereby incorporated into and made part of this Agreement, mutatis mutandis.

(1) For the purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing

2. Before applying any new or modified import licensing procedure, a Party shall publish it in such a manner as to enable Governments and traders to become acquainted with it, including through publication on an official Government internet site. Upon request of the other Party, the Party shaJJ exchange information concerning its implementation in a reasonable period.

Article 2.9. Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the Customs Valuation Agreement, mutatis mutandis.

Article 2.10. Export Subsidies

1. Neither Party shall adopt or maintain any export subsidy on any good destined for the territory of the other Party in accordance with the SCM Agreement and the Agreement on Agriculture.

2. The Parties reaffirm their commitments made in the WTO Ministerial Conference Decision on Export Competition adopted in Nairobi on 19 December 2015, including the elimination of scheduled export subsidy entitlements for agricultural goods.

Article 2.11. Restrictions to Safeguard the Balance-of-Payments

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

2. Any such measures taken for trade in goods shall be in accordance with Article XII of the GA TT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, the provisions of which are incorporated into and made part of this Agreement, mutatis mutandis.

Article 2.12. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII: 1 of GATT 1994 and its interpretive notes and Article 6 of the WTO Agreement on Trade Facilitation, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and measures applied in accordance with the provisions of Articles VI or XIX of the GA TT 1994, the Anti-Dumping Agreement, the SCM Agreement, the Safeguards Agreement, or Article 22 of the DSU) imposed on, or in connection with, importation or exportation of goods are limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Each Party shall promptly publish details and shall make such information available on the internet regarding the fees and charges it imposes in connection with importation or exportation.

Article 2.13. Non-Tariff Measures

1. Unless otherwise provided, neither Party shall adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good 9estined for the territory of the other Party, except in accordance with its WTO rights and obligations or this Agreement.

2. Each Party shall ensure that its laws, regulations, procedures and administrative rulings relating to non-tariff measures are not prepared, adopted or applied with a view to, or with the effect of, resulting in non-tariff barriers, consequently creating unnecessary obstacles in trade with the other Party.

3. If a Party considers that a non-tariff measure of the other Party is an unnecessary obstacle to trade, that Party may nominate such a non-tariff measure for review by the Subcommittee on Trade in Goods by notifying the other Party at least 30 days before the date of the next scheduled meeting of the Subcommittee on Trade in Goods. A nomination of a non-tariff measure for review shall include the reasons for its nomination, a description of how the measure adversely affects trade between the Parties, and if possible, suggested solutions. The Subcommittee on Trade in Goods shall immediately review the measure with a view to securing a mutually agreed solution to the matter. Review by the Subcommittee on Trade in Goods is without prejudice to the Parties' rights under Chapter 16 (Dispute Settlement).

Article 2.14. State Trading Enterprises

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GA TT 1994 and the Understanding on the Interpretation of Article XVII of the GAIT 1994, mutatis mutandis.

Article 2.15. Temporary Admission of Goods

1. Each Party shall, in accordance with its respective domestic law, grant temporary admission free of customs duties for the following goods imported from the other Party, regardless of their origin:

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

(b) goods intended for display, demonstration or use at theatres, exhibitions, fairs, or other similar events;

(c) commercial samples and advertising films and recordings;

(d) goods admitted for sports purposes;

(e) containers and pallets that are used for the transportation of equipment or used for refilling; and

(f) goods entered for completion of processing.

2. Each Party shall, on request of the importer and for reasons deemed valid by its Customs Authority, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the temporary admission of a good referred to in paragraph 1, other than to require that the good:

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

(b) be accompanied by a security in an amount no greater than the custom duties and any other tax imposed on imports that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(c) be capable of identification when exported;

(d) be exported in accordance with the time period granted for temporary admission in accordance with its domestic law related to the purpose of the temporary admission;

(e) not be admitted in a quantity greater than is reasonable for its intended use; or

(f) be otherwise admissible into the importing Party's territory under its law.

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

5. Each Party through its Customs Authority shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted in accordance with its customs procedures.

7. Each Party shall provide that the importer of a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension. A Party may condition relief of liability under this paragraph by requiring the importer to receive prior approval from the Customs Authority of the importing Party before the good can be so destroyed.

Article 2.16. Goods Re-Entered after Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory in accordance with its laws and procedures after that good bas been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory from which the good was exported, except that a customs duty or other taxes may be applied to the addition resulting from the repair or alteration that was performed in the territory of the other Party.

2. Neither Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

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

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

(b) transforms an unfinished good into a finished good; or

(c) results in a change of the classification at a six-digit level of the Harmonized System (HS).

Article 2.17. Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party, in accordance with its respective domestic legislation, shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

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

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

Article 2.18. Subcommittee on Trade In Goods

1. The Parties hereby establish a Subcommittee on Trade in Goods under the Joint Committee comprising representatives of each Party.

2. The Subcommittee shall meet once a year or as often as the Parties consider necessary to consider any matter arising under this Chapter.

3. The functions of the Subcommittee shall include, inter alia:

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

(b) promoting trade in goods between the Parties, including through consultations on accelerating and broadening the scope of preferential treatment or tariff elimination under this Agreement and other issues as appropriate;

(c) addressing barriers to trade in goods between the Parties, including those related to non-tariff measures, including import and export restrictions, which may restrict trade in goods between the Parties and, if appropriate, referring such matters to the Joint Committee for its consideration;

(d) providing advice and recommendations to the Joint Committee on cooperation needs regarding trade in goods matters;

(e) consulting on and endeavouring to resolve any differences that may arise among the Parties on matters related to the classification of goods under the HS;

(f) reviewing data on trade in goods in relation the implementation of this Chapter;

(g) assessing matters that relate to trade in goods and undertaking any additional work that the Joint Committee may assign to it; and

(h) reviewing and monitoring any other matter related to the implementation of this Chapter.

Article 2.19. Rendez-vous Clause

1. The Parties agree to enter into negotiations on market access for goods, to eliminate or reduce customs duties on

originating goods of the Parties within the institutional structures of the East African Community.

2. On the basis of entering into negotiations as set out in paragraph 1, the Parties agree to review this Chapter with the view to introduce new articles on tariff reduction or eUmination, acceleration or improvement of Schedule of Tariff Commitments or any related matter that may arise from the outcomes of the negotiations on market access for goods, as indicated in paragraph 1.

3. The results of negotiations pursuant to paragraphs 1 and 2 shall come into force in accordance with Article 17.3 (Amendments) of this Agreement.

Chapter 3. RULES OF ORIGIN

Article 3.1. Definitions

For the purposes of this Chapter:

aquaculture refers to 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, inter a/ia, regular stocking, feeding, protection from predators;

competent authority refers to

(a) in the case of the UAE, the Ministry of Economy or any other agency notified from time to time; and

(b) in the case of Kenya, the Customs and Border Control Department or any other agency notified from time to time.

consignment means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

customs authority refers to:

(a) in the case of the UAE, the Federal Authority for Identity, Citizenship, Customs and Port Security;

(b) in the case of Kenya, the Customs and Border Control Department.

Ex-Works price is the price paid for the good ex-works to the manufacturer in the Party in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the good obtained is exported;

generally accepted accounting principles refers to the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

good refers to any article of trade including materials and products;

manufacture refers to any kind of working or processing, including assembly or specific operations;

material refers to any ingredient, raw material, compound or part, etc., used in the production of a good;

non-originating materials or non-originating goods refers to any materials or goods whose country of origin is a country other than the Parties (imported non-originating), any materials or goods whose origin cannot be determined (undetermined origin) or a materials or goods that does not qualify as originating under this Chapter;

originating goods or originating material refers to goods or materials that qualify as originating under this Chapter;

product refers to that which is obtained by growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, extracting or manufacturing, even if it is intended for later use in another manufacturing operation;

production refers to growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, manufacturing, processing, assembling a good; and

value of non-originating materials is the customs value as determined in accordance with the WTO Agreement on Customs Valuation inclusive of the cost of insurance and freight up to the port of importation of the non-originating materials at the

time of importation or the earliest ascertained price paid or payable in the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. When 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 incurred in transporting the material from the supplier's warehouse to the producer's location.

Section A. Origin Determination

Article 3.2. Originating Goods

For the purpose of implementing this Agreement, goods shall be considered as originating in territory of a Party, if:

(a) goods are wholly obtained there according to Article 3.3;

(b) goods are not wholly obtained or produced entirely there, provided that the good has undergone sufficient working or processing according to Article 3.4; or

(c) goods produced entirely there exclusively from originating materials. and the goods satisfied all other applicable requirements of this Chapter.

Article 3.3. Wholly Obtained Goods

For the purposes of Article 3.2.(a), the following goods shall be deemed to be wholly obtained in the territory of a Party:

(a) plant and plant products grown, collected and harvested there;

(b) Live animals born and raised there;

(c) products obtained from live animals there;

(d) products from slaughtered animals born and raised there;

(e) mineral product and natural resources extracted or taken from that Party's soil, subsoil, waters, seabed or beneath tbe seabed;

(f) product obtajned from bunting, trapping, collecting, capturing, fishing or aquaculture conducted there;

(g) product of sea fishing and other marine products taken from outside the territorial waters of the Parties by a vessel and/or produced or obtained by a factory ship registered, recorded, listed or licensed with a Party and flying its flag;

(h) product, other than products of sea fishing and other marine products, taken or extracted from the seabed, ocean floor or the subsoil of the continental shelf or the exclusive economic zone of either of the Parties, by a Party or a person of a Party provided that the Party or Person of a Party bas the right to exploit such seabed, ocean floor, or subsoil in accordance to international law;

(i) raw materials recovered from used goods collected there;

(j) waste or scrap resulting from utilization, consumption or manufacturing operations conducted there, fit only for recovery of raw materials;

(k) product produced or obtained there exclusively from product referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production.

Article 3.4. Sufficient Working or Processing

For the purposes of Article 3.2. (b), a good shall be deemed to have undergone sufficient working or processing transformation if the good satisfies the applicable rule set out in the Product Specific Rules (PSRs) in Annex 3A (Product Specific Rules). (1)

(1) The rules in the PSR are based on the following criteria: (a) a Change in Tariff (Classification) (CTC); or(b) Maximum percentage of the value of non-originating materials (NOM); or (c) Special Operations (SO); or (d)any combination of the above.

Article 3.5. Intermediate Goods

If a good which has acquired originating status in a Party in accordance with Article 3.4 is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

Article 3.6. Cumulation

1. For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered to be an originating material of the former Party.

2. The Joint Committee may agree to review this Article with a view to providing for other forms of cumulation for the purpose of qualifying goods as originating goods under this agreement.

Article 3.7. Tolerance

Notwithstanding Article 3.4, a good will be considered to have undergone a change in tariff classification if:

(a) the value of all non-originating materials that are used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 15% of the Ex-Works price of the good;

(b) paragraph (a) shall not allow to exceed any of the percentages given in Annex 3A (Product Specific Rules) for the maximum value of non-originating materials; and

(c) the good meets all other applicable requirements of this Chapter for quaLifying as an originating product.

Article 3.8. Insufficient Operations

1. Whether or not the reqwrements of Article 3.4 are satisfied, a good shall not be considered to be originating in the territory ofa Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

(a) slaughter of animals;

(b) operations to ensure the preservation of products in good condition during transport and storage such as drying, freezing, ventilation, chilling and like operations;

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

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

(e) simple painting and polishing operations;

(f) testing or calibration;

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

(h) simple mixing of goods, whether or not of different kinds;

(i) simple assembly of parts of products to constitute a complete good or disassembly of products into parts;

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

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

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

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

2. For the purposes of paragraph 1, the term "simple" will be defined as following:

(a) "Simple" generally describes an activity which does not need special skills, machines, apparatus or equipment especially

produced or installed for carrying out the activity.

(b) "Simple mixing" generally describes an activity which does not need special skills, machine, apparatus or equipment especially produce or install for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

Article 3.9. Indirect Materials

1. In determining whether a good is an originating good, any indirect mate.rial as defined in paragraph 2 shall be disregarded.

2. For the purpose of paragraph 1, the term "indirect materials" 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 another good, including:

(a) fuel and energy;

(b) tools, dies, and molds;

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

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

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

(f) equipment, devices, supplies used for testing or inspecting the goods;

(g) catalysts and solvents; and

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

Article 3.10. Unit of Qualification

The unit of qualification for the application of the provisions of this Chapter shall be the particular good which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. It follows that:

(a) when a good composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single beading, the whole constitutes the unit of qualification;

(b) when a consignment consists of a number of identical goods classified under the same heading of the Harmonized System, each good must be taken individually when applying the provisions of this Chapter.

2. Where, under General Rule 5 for the Interpretation of tbe Harmonized System, packaging is included with the good for classification purposes, it shall be included for the purposes of determining origin.

Article 3.11. Accessories, Spare Parts, Tools

Accessories, spare parts, tools, and instructional or other information materials delivered with a good that form part of the goad's standard accessories, spare parts, tools, and instructional or other information materials shall be regarded as a part of the good, and shall be disregarded in determining the origin of the good, provided that:

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

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

Article 3.12. Packaging Materials and Containers for Retail Sale

Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with

the good, according to General Rule 5 for the Interpretation of the Harmonized System, shall be disregarded in determining the origin of the good.

Article 3.13. Packaging Materials and Containers for Shipment

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

Article 3.14. Fungible Goods and Materials

1. Each Party shall provide that the determination of whether fungible goods or materials are originating shall be made through physical segregation of each good or material, or, in case of any difficulty, through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first out, recognised in the generally accepted accounting principles of the Party in which the production is performed, or otherwise accepted by the Party in which the production is performed.

2. Each Party shall provide that an inventory management method selected under paragraph 1 for a particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the Party that selected the inventory management method.

Article 3.15. Sets of Goods

Sets, as defined in General Rule 3 for the Interpretation of the Harmonized System, shall be regarded as originating when all component goods are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of non-originating products does not exceed 15% of the Ex-Works price of the set.

Section B. Territoriality and Transit

Article 3.16. Principle of Territoriality

1. The conditions for acquiring originating status set out in Article 3.2 should be fulfilled without interruption in the territory of one or both of the Parties.

2. Where originating goods exported from the territory of a Party to a non-Party, return to the exporting Party, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those exported; and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that non-Party or while being exported.

Article 3.17. Outward Processing

1. Notwithstanding Article 3.16, the acquisition of originating status set out in Article 3.2 shall not be affected by working or processing done outside a Party on materials exported from a Party and subsequently re-imported there, provided:

(a) the said materials are wholly obtained in any of the Parties or have undergone working or processing beyond the operations referred to in Article 3.8 prior to being exported; and

(b) it can be demonstrated to the satisfaction of the customs authorities that:

(i) the re-imported goods have been obtained by working or processing the exported materials;

(ii) the total added value acquired outside a Party by applying the provisions of this Article does not exceed 15% of the Ex-Works price of the end product for wh.ich originating status is claimed.

(c) The conditions set out in Article 3. 7 shall not apply to the said material as referred to in subparagraph (a);

(d) factual information relevant to this Aiticle will be indicated in the Certificate of Origin, in accordance with Annex 3B (Certificate of Origin) or, in the case of an origin declaration made out by an approved exporter as per Article 3.25 (Origin Declaration), on the same document where the origin declaration is made out.

2. For the purposes of applying the provisions of paragraph 1, 'total added value' shall be taken to mean all costs arising outside the Parties, including the value of the materials incorporated there.

Article 3.18. Transit and Transshipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported directly to the importing Party without passing through the territory of a non-Party and constjtuting one single consignment which is not to be split up.

2. Notwithstanding paragraph 1, each Party shall provide that an originating good retains its originating status if transited or is stored in a temporary warehousing through one or more intermediate non-Parties, provided that the good:

(a) transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(b) remained under customs control in the territory of a non-Party;

(c) has not entered into trade or consumption there; and

(d) has not undergone any operation there other than unloading, reloading, repackaging, labelling or any operation required to keep them in good condition.

3. An importer shall upon request supply appropriate evidence to the customs authorities of the importing Party that the conditions set out in paragraph 2 have been fulfilled.

Article 3.19. Special Economic Zones or Free Zones

1. Both Parties shall take all necessary steps to ensure that originating goods traded under cover of a proof of origin which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.

2. Goods produced or manufactured in a free zone situated within a Party, shall be considered as originating goods in that Party when exported to the other Party provided that the treatment or processing is in conformity with the provisions of this chapter and supported by a proof or origin.

Article 3.20. Third Party Invoicing

1. The customs authority in the importing Party shall not reject a certificate of origin only for the reason that the invoice was not issued by the exporter or producer of a good provided that the good meets the requirements in this Chapter.

2. The exporter of the goods shall indicate "third party invoicing" and such information as name and country of the company issuing the invoice shall appear in the appropriate field as detailed in Annex 3B (Certificate of Origin). or, in the case of an origin declaration made out by an approved exporter as per Article 3.25 (Origin Declaration), on the document where the origin declaration is made out.

Section C. Origin Certification

Article 3.21. Proof of Origin

1. Goods originating in a Party shall, on importation into the other Party, benefit from preferential tariff treatment under this Agreement on the basis of a Proof of Origin.

2. Any of the following shall be considered as a Proof of Origin:

(a) a paper format Certificate of Origin in soft or bard copy issued by a competent authority as per Article 3 .23;

(b) an Electronic Certificate of Origin (E-Certificate) issued by a competent authority and exchanged by a mutually developed electronic system as per Article 3.24;

(c) an origin declaration made out by an approved exporter as per Article 3.25. 3. Each Party shall provide that a Proof of Origin shall be completed in the English language and shall remain valid for one year from the date on which it is issued.

Article 3.22. Exemptions from Proof of Origin

1. The following goods shall be admitted as originating products without requiring submission of a Proof of Origin:

(a) originating products sent as small packages from private persons in a Party to private persons in another Party or forming part of traveller's personal luggage; and

(b) imports which are occasional and consist of originating products for the personal use of the recipient or travellers or their families shall not be considered as commercial imports by way of trade.

2. The total value of the products referred to in paragraph 1, may not exceed five hundred United States Dollars (USD 500) in the case of small packages or one thousand two hundred Unites States Dollars (USD 1,200) in the case of products fanning part of traveller's personal luggage as the case may be.

Article 3.23. Certificate of Origin In Paper Format

1. A Certificate of Origin in paper format shall:

(a) be in standard A4 white paper as per the attached Form set out in Annex 3B (Certificate of Origin).

(b) comprise one original and two copies. The original shall be forwarded by the producer or exporter to the importer for submission to the customs authority of the importing Party. The duplicate shall be retained by the competent authority of the exporting Party. The triplicate shall be retained by the producer or exporter;

(c) may cover one or more goods under one consignment; and (d) be in a printed format or such other medium including electronic fomat.

2. Each Certificate of Origin shall bear a unique serial reference number separately given by each place or office of issuance.
3. A Certificate of Origin shall bear an official seal of the competent authority. The official seal may be applied electronically.

4. In case the official seal is applied electronically, an authentication mechanism, such as QR code or a secured website, shall be included in the certificate for the certificate to be considered as an original copy.

Article 3.24. Electronic Data Origin Exchange System

For the purposes of Article 3.21.2. (b), the Parties shall endeavour to develop an electronic system for origin information exchange to ensure the effective and efficient implementation of this Chapter particularly on transmission of E-Certificate.

Article 3.25. Origin Declaration

1. For the purposes of Article 3.21.2. (c), the Parties shall, within six months from the date of entry into force of this Agreement, implement provisions allowing each competent authority to recognize an origin declaration made by an approved exporter.

2. The competent authority or customs authority of the exporting Party may authorise any exporter, (hereinafter referred to as "approved exporter"), who exports goods under this Agreement, to make out Origin Declarations, a specimen of which appears in Annex 3C (Origin Declaration Pursuant to Article 3.25), irrespective of the value of the goods concerned.

3. An exporter seeking such authorisation must offer to the satisfaction of the customs or competent authorities all guarantees necessary to verify the originating status of the goods as well as the fulfilment of the other requirements of this Chapter.

4. The customs or competent authorities of the exporting patty may grant the status of approved exporter, subject to any conditions which they consider appropriate.

5. The customs or competent authorities of the exporting party shall share or publish th.e list of approved exporters and periodically update it.

6. An Origin Declaration (the text of which appears in Annex 3C (Origin Declaration Pursuant to Article 3.25) shall be made out by the approved exporter by typing, stamping or printing the declaration on the invoice, the delivery note or another commercial document which describes the products concerned in sufficient detail to enable them to be identified. The declaration may also be hand-written; if the declaration is band-written, it shall be written in permanent ink in legible printed characters.

7. The approved exporter making out an Origin Declaration shall be prepared to submit at any time, at the request of the

customs authorities of the exporting Party, all appropriate documents proving the originating status of the goods concerned, as well as the fulfilment of the other requirements of this Chapter.

Article 3.26. Application and Examination of Application for a Certificate of Origin

1. Certificates of Origin shall be issued by the competent authority of the exporting Party, either upon an electronic application or an application in paper form, having been made by the exporter or under the exporter's responsibility by his or her authorized representative, in accordance with the domestic regulations of the exporting Party.

2. The exporter applying for the issuance of a Certificate of Origin shall be prepared to submit at any time, at the request of the competent authority of the exporting Party, all appropriate documents proving the originating status of the goods concerned, as well as the fulfilment of the other requirements of this Chapter.

3. The competent authority shall, to the best of its competence and ability, carry out a proper examination to ensure that: (a) the application and the Certificate of Origin is duly completed and signed by the authorised signatory; (b) the origin of the good is in conformity with the provisions of this Chapter; and (c) HS Code, description, gross weight or other quantity and value conform to the good to be exported.

Article 3.27. Certificate of Origin Issued Retrospectively

1. The Certificate of Origin shall be issued by the competent authority of the exporting Party prior to or at the time of shipment.

2. In exceptional cases where a Certificate of Origin has not been issued prior to or at the time of shipment, due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively but with a validity ofno longer than one (1) year from the date of shipment, in which case it is necessary to indicate "ISSUED RETROACTIVELY" in the appropriate field as detailed in Annex 3B (Certificate of Origin).

3. The provisions of this Article shall be applied to goods which comply with the provisions of this Agreement, and which on the date of its entry into force, are either in transit or are in the territory of the Parties in temporary storage under customs control. This shall be subject to the submission to the customs authorities of the importing Party, witrun six months from the said date, of a Certificate of Origin issued retrospectively by the Competent Authority of the exporting Party together with documents, showing that the goods have been transported directly in accordance with the provisions of Article 3.18.

Article 3.28. Loss of the Certificate of Origin

1. In the event of theft, loss or destruction of a Certificate of Origin, the manufacturer, producer, exporter, or its authorized representative may apply to the Competent Authority, which issued it, for a certified true copy of the original Certificate of Origin to be made out on the basis of the export documents in possession of the Competent authority.

2. The certified true copy of the original Certificate of Origin shall be endorsed with an official signature and seal and bear the words "DUPLICATE" and the date of issuance of the original Certificate of Origin in appropriate field as detailed in Annex 3B (Certificate of Origin). The certified true copy of a Certificate of Origin shall be issued within the same validity period of the original Certificate of Origin.

3. The exporter shall immediately notify the loss to the competent authority, and undertake not to use the original Certificate of Origin for exports under this Agreement.

Article 3.29. Importation by Instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System are imported by instalments, a single Proof of Origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

Article 3.30. Treatment of Erroneous Declaration In the Certificate of Origin

Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Any alterations shall be made by issuing a new Certificate of Origin to replace the erroneous one. The reference number of the corrected Certificate of Origin should be indicated in the appropriate field on the newly issued Certificate of Origin as detailed in Annex 3B (Certificate of Origin).

The validity of the replacement certificate will be the same as the original.

Article 3.31. Treatment of Minor Discrepancies

1. The discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the customs authority of the importing Party for the purpose of carrying out the formalities for importing the goods shall not ipso-facto invalidate the Certificate of Origin, if it does in fact correspond to the goods submitted.

2. Obvious formal errors, such as typing errors, on a Proof of Origin should not cause such document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Section D. Cooperation and Origin Verification

Article 3.32. Denial of Preferential Tariff Treatment

1. Except as otherwise provided in this Chapter, the customs authority of the importing Party may deny a claim for preferential tariff treatment or recover unpaid duties, in accordance with its laws and regulations, where:

(a) the good does not meet the requirements of this Chapter; or

(b) the importer, exporter, or producer of the good fails or has failed to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment; or

(c) the customs authority of the importing Party bas not received sufficient information to detennioe that the good is originating; or

(d) the exporter, producer, or competent authority or customs authority of the exporting Party does not comply with the requirements of veri.fication in accordance with Article 3.33 or Article 3.34.

2. Where the customs authority of the importing Party denies a claim for preferential tariff treatment, it shall provide the decision in writing to the importer that includes the reasons for the decision.

3. Upon being communicated the grounds for denial of preferential tariff treatment, the exporter/producer/manufacturer in the exporting Party may, within the period provided for in the custom laws of the importing Party, file an appeal against such decision with the appropriate authority under the customs laws and regulations of the importing Party.

Article 3.33. Retroactive Check

1. The customs authority of the importing Party may request a retroactive check at random or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof.

2. For the purpose of paragraph 1, the customs or competent authority of the importing Party may conduct the checking process by issuing a written request for additional information from the competent authority or customs authority of the exporting party.

3. The request shall be accompanied with the copy of Proof of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Proof of Origin may be inaccurate, unless the retroactive check is requested on a random basis.

4. The customs authority of the importing Party may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

5. Pursuant to paragraph 2, the concerned party receiving a request for retroactive check shall respond to the request promptly and reply not later than 90 (ninety) days after the receipt of the request.

6. When a reply from the concerned party is not obtained within 90 (ninety) days after the receipt of the request pursuant to paragraph 5, the customs authority of the importing Party may deny preferential tariff treatment to the good referred to in the said Proof of Origin that would have been subject to the retroactive check.

Article 3.34. Verification Visits

1. Pursuant to Article 3.33.2, if the customs or competent authority of the importing Party is not satisfied with the outcome of the retroactive check, it may, under exceptional circumstances for justifiable reasons, request the competent authority or customs authority of the exporting party to conduct a verification visit to the producer or exporter premises including inspection of the exporter's or producer's accounts, records or any other check considered appropriate. However, the verification visit can be carried out jointly by the Parties, ifrequested by the importing Party.

2. Prior to conducting a verification visit pursuant to paragraph 1, the customs or competent authority of the importing party shall deliver a written notification to the competent or customs authority of the exporting party to conduct the verification visit.

3. The written notification mentioned in paragraph 2 shall be as comprehensive as possible and shall include, among others:

(a) the producer or exporter whose premises are to be visited;

(b) justification for the unsatisfactory outcome of the retroactive check conducted by the competent or customs authority of the exporting Party; and

(c) the coverage of the proposed verification visit, including reference to the good subject to the verification, and evidence of fulfilling the requirements of this Chapter.

4. The competent or customs authority of the exporting Party shall obtain the written consent of the producer or exporter whose premises are to be visited.

5. When a written consent from the producer or exporter is not obtained within 30 (thirty) days from the date of receipt of the verification visit notification, the customs authority of the importing Party may deny preferential tariff treatment to the good referred to in the said Certificate of Origin that would have been subject to the verification visit.

6. The competent or customs authority of the exporting Party conducting the verification visit shall provide the producer or exporter, whose good is subject to such verification, with a written determination of whether or not the good subject to such verification qualifies as an originating good.

7. Upon the issuance of the written determination referred to in paragraph 6 that the good qualifies as an originating good, the customs authority of the importing party shall immediately restore preferential benefits and promptly refund the duties paid in excess of the preferential duty or release guarantees obtained in accordance with the domestic legislation of the Parties.

8. Upon the issuance of the written determination referred to in paragraph 6 that the good does not qualifies as an originating good, the producer or exporter shaU be allowed 30 (thirty) days from the date of receipt of the written determination to provide in writing comments or additional information regarding the eligibility of the good for preferential tariff treatment. The final written determination shall be communicated to the producer or exporter within 30 (thirty) days from the date of receipt of the comments or additional information.

9. The verification visit process, including the actual visit and the determination under paragraph 6, shall be carried out and its results communicated to the competent or customs authority of the importing party within a maximum period of 6 (six) months from the first day the initial verification visit was requested. While the process of verification is being undertaken, Article 3.33.4 shall be applied.

Article 3.35. Record Keeping Requirement

1. For the purposes of the verification process pursuant to Article 3.33 and 3.34, each Party shall require that:

(a) The manufacturer, producer or exporter retain, for a period not less than 5 (five) years from the date of issuance of the Proof of Origin, or a longer period in accordance with its domestic laws and regulations, all supporting records necessary to prove that the good for which the Proof of Origin was issued was originating;

(b) The importers shall retain, for a period not less than 5 (five) years from the date of importation of the good, or a longer period in accordance with its domestic laws and regulations, all records to prove that the good for which preferential tariff treatment was claimed was originating; and

(c) The competent authority retains, for a period not less than 5 (five) years from the date of issuance of the Proof of Origin, or a longer period in accordance with its domestic laws and regulations, all supporting records of the application for the

Proof of Origin.

2. The records referred to in paragraph l may be maintained in any medium that allows for prompt retrieval, including but not limited to, digital, electronic, optical, magnetic, or written form.

Article 3.36. Confidentiality

All information related to the application of this Chapter communicated between the Parties shall be treated as confidential. It shall not be disclosed by the Parties' authorities without express permission of the person or authority providing it.

Article 3.37. Contact Points

Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points within its competent authority for the implementation of this Chapter and notify the other Party of the contact details of that contact point or those contact points. Each Party shall promptly notify the other Party of any change to those contact details.

Section E. Consultation and Modification

Article 3.38. Consultation and Modifications

The Parties shall consult and cooperate as appropriate through the Joint Committee to:

(a) ensure that this Chapter is applied m an effective and uniform manner; and

(b) discuss necessary amendments to this Chapter, taking into account developments in technology, production processes, and other related matters.

Article 3.39. Notification

The competent authorities of both Parties shall provide each other the following within one month from the date of signing of the Agreement:

(a) a specimen impression of the official stamps and signatures used in their offices for the issue of Certificate of Origin;

(b) name and Address of the competent authorities responsible for verifying the Proof of Origin; and

(c) secured web address for the QR codes and electronic certificates authentications.

Chapter 4. CUSTOMS PROCEDURES & TRADE FACILITATION

Article 4.1. Definitions

For the purpose of this Chapter, the following definitions shall mean:

Customs Administration: the Federal Authority of Identity, Citizenship, Customs and Port Security for the UAE and the Customs & Border Control Department for Kenya;

customs laws: provisions implemented by legislations and regulations concerning the importation, exportation, transit of goods, or any other customs procedures whether relating to customs duties, taxes or any other charges collected by the Customs Administrations, or to measures for prohibition, restriction, or control enforced by the Customs Administrations;

customs procedure: the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws and regulations;

persons: both natural and legal persons, unless the context otherwise requires;

Customs Mutual Assistance Agreement (CMAA): the agreement that further enhances customs cooperation and exchange of information between the Parties to secure and facilitate lawful trade, to be negotiated between the Parties;

Authorized Economic Operator(s) (AEO): the program which recognizes an operator involved in the international movement of goods in whatever function that has been approved by the national Customs Administration as complying with the World

Customs Organization (WCO) or equivalent supply chain security standards; and

Mutual Recognition Arrangement (MRA): the arrangement between the Parties that mutually recognize AEO authorizations that has been properly granted by one of the Customs Administrations.

Article 4.2. Scope

This Chapter shall apply, in accordance with the Parties' respective national laws, rules and regulations, to customs procedures required for clearance of goods traded between the Parties.

Article 4.3. General Provisions

1. The Parties agree that their customs law and procedures shall be transparent, non-discriminatory, consistent and avoid unnecessary procedural obstacles to trade.

2. Customs procedures of the Parties shall conform where possible, to the standards and recommended practices of the World Customs Organization.

3. The Customs Administration of each Party shall periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

4. This chapter shall be in conformity with the provisions and obligations of the Parties to the WTO Trade Facilitation Agreement.

Article 4.4. Publication and Availability of Information

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the Internet or in print form in the English language, to the extent possible.

2. Each Party shall designate, establish, and maintain one or more enquiry points to address enquiries or complaints from interested persons pertaining to customs matters, and shall endeavour to make available publicly through electronic means, information concerning procedures for making such enquiries. Such inquiries or complaints shall be dealt with in a timely manner in accordance with its laws and procedures.

3. The Parties in accordance with their domestic laws and procedures are encouraged not to require a payment of a fee for answering enquiries and providing required forms and documents. If any, the Parties shall limit the amount of their fees and charges to the approximate cost of services rendered.

4. Nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines, including those related to conducting risk analysis and targeting methodologies.

5. Each Party shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, so that interested parties have the opportunity to become acquainted with the new or amended laws and regulations. Such information and publications shall be available in the English language, to the extent possible.

Article 4.5. Risk Management

The Parties shall adopt a risk management approach in its customs activities, based on its identified risk of goods, in order to facilitate the clearance of low risk consignments, while focusing its inspection activities on high-risk goods.

Article 4.6. Post-Clearance Audit

With a view to expediting the release of goods, each party shall adopt or maintain post-clearance audit to ensure compliance with its laws and procedures in applying its customs risk management system and in accordance with international best practices and obligations.

Article 4.7. Paperless Communications

1. For the purposes of facilitating bilateral exchange of international trade data and expediting procedures for the release of goods trade facilitation, the Parties shall endeavour to provide an electronic environment that supports business transactions between their respective Customs Administration and their trading entities.

2. Each Party shall endeavour to establish or maintain a single window system that enables the electronic submission through a single-entry point of the documentation and data that the Party requires for importation into its territory.

3. The Parties shall endeavour to review the operations of its single window system with a view to expanding its functionality to cover all its import, export, and transit transactions.

4. The Parties shall exchange views and information on reabsing and promoting paperless communications between their respective Customs Administration and their trading entities.

5. The respective Customs Administration of the Parties, in implementing initiatives which provide for the use of paperless communications, shall take into account the methodologies agreed at the WCO as well as those stated in the CMAA to be negotiated between the two Parties.

Article 4.8. Advance Rulings

1. In accordance with its commitments under the WTO Trade Facilitation Agreement (TF A), each Party shall provide for the issuance of an advance ruling, prior to the importation of a good into its territory, to an importer of the good in its territory or to an exporter or producer of the good in the territory of another Party.

2. For the purposes of paragraph 1, each Party shall issue rulings as to whether the good qualifies as an originating good or to assess the good's tariff classification. In addition, each Party may issue rulings that cover additional trade matters as specified in the TFA. Each Party shall issue its determination regarding the origin or classification of the good within a reasonable, time-bound manner from the date of receipt of a complete application for an advance ruling.

3. The Party shall apply an advance ruling issued by it under paragraph I on the date that the ruling is issued or on a later date specified in the ruling and remain in effect for a reasonable period of time and in accordance with the national procedures on advanced ruling unless the advance ruling is modified or revoked.

4. The advance ruling issued by the Party shall be binding in accordance with its laws and procedures.

5. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative, judicial, or quasi-judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the ruling, setting out the relevant facts and circumstances and the basis for its decision.

6. A Party may modify or revoke an advance ruling:

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

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

(c) to conform with a modification of this Chapter; or

(d) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide written notice to the applicant explaining the Party's decision to revoke or modify the advance ruling issued to the applicant.

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

9. Notwithstanding paragraph 4, the issuing Party shall postpone the effective date of the modification or revocation of an advance ruling for a reasonable period of time and in accordance with each Party's national procedures on advance rulings, where the person to whom the advance ruling was issued demonstrates that be has relied in good faith to his detriment on that ruling.

Article 4.9. Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties, whether solely or in combination, for violations of the Party's customs laws, regulations or procedural requirements.

2. Each Party shall ensure that penalties issued for a breach of a customs law, regulations or procedural requirements are imposed only on the person(s) responsible for the breach under its laws.

3. Each Party shall ensure that the penalty imposed by its Customs Administration is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

4. If a person voluntarily discloses to a Party's customs administration the circumstances of a breach of a customs law, regulation or procedural requirement prior to the discovery of the breach by the customs administration, the Party's customs administration shall, if appropriate, consider this fact as a potential mitigating factor when a penalty is established for that person.

5. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

6. Each Party shall ensure that if a penalty is imposed by its Customs Administration for a breach of a customs law, regulation or procedural requirement, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

Article 4.10. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade.

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the immediate release of goods upon receipt of the customs declaration and fulfilment of all applicable requirements and procedures;

(b) provide for the electronic submission and processing of documentation and data, including manifests, prior to the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without requiring temporary transfer to warehouses or other facilities; and

(d) require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the customs administration, has withheld release of the goods.

3. Each Party may, in accordance with its laws and procedures, provide for the release of goods prior to a final determination and payment of any customs duties, taxes, fees, and charges imposed on or in connection with importation of the goods.

4. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from liquidating a security deposit in accordance with its law.

5. Each Party may allow, to the extent practicable and in accordance with its customs laws, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

Article 4.11. Authorized Economic Operators

In order to facilitate trade and enhance compliance and risk management between them, the Parties shall endeavour to conclude an AEO MRA between their Customs Administrations.

Article 4.12. Border Agency Cooperation

Each Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade pursuant to this chapter.

Article 4.13. Expedited Shipments

Each Party shall adopt or maintain expedited customs procedures for goods entered through air cargo facilities while maintaining appropriate customs control and selection. These procedures shall:

(a) Provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

(b) Allow a single submission of information covering all goods contained in an express shipment, such as a manifest through, if possible, electronic means; (1)

(1) Additional documents may be required as a condition for release.

(c) To the extent possible, provide for the release of certain goods with a minimum of documentation;

(d) Under normal circumstances, provide for express shipments to be released as soon as possible after submission of the necessary customs documents, provided the shipment has arrived;

(e) Apply to shipments of any weight or value recognizing that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) Provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law. (2)

(2) Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

Article 4.14. Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination on a customs matter has access to:

(a) at least one level of administrative review of determinations by its Customs Administration independent (3) of either the official or office responsible for the decision under review; and

(b) judicial or quasi-judicial review of decisions taken at the final level of administrative review.

2. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.

3. Each Party shall ensure than an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.

(3) The level of administrative review for the UAE may include the competent authority supervising the Customs Administration.

Article 4.15. Customs Cooperation

1. With a view to further enhancing customs cooperation through the exchange of information and the sharing of best practices between the Customs Administration to secure and facilitate lawful trade, the Customs Administrations of the Parties will endeavour to conclude and sign a CMAA.

2. The Parties shall, for the purposes of applying their customs laws and to give effect to the provisions of the CMAA endeavour to:

(a) cooperate and assist each other in the prevention and investigation of offences against Customs legislations;

(b) upon request, provide each other information to be used in the enforcement of their customs laws; and

(c) cooperate in the research, development and application of new customs procedures, in the training and exchange of personnel, sharing of best practices, and in other matters of mutual interest.

3. Assistance under this Chapter shall be provided in accordance with the domestic law of the requested party.

4. The Parties shall exchange official contact points with a view to facilitating the effective implementation of this Chapter.

Article 4.16. Confidentiality

1. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private. Any information received under this Agreement shall be treated as confidential pursuant to the terms of the CMAA.

2. Each Party shall maintain, in accordance with its domestic laws, the confidentiality of information obtained pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

Article 4.17. Subcommittee on Customs Procedures and Trade Facilitation

The Parties agree to establish a Subcommittee on Customs Procedures and Trade Facilitation (CPTF Subcommittee) in accordance with Article 14.1.3 (Joint Committee).

Chapter 5. SANITARY AND PHYTOSANITARY MEASURES

Article 5.1. Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form part of this Chapter, mutatis mutandis.

2. In addition, for the purposes of this Chapter: competent authority means a government institution, body or organization responsible for measures and matters referred to in this Chapter; emergency measure means a sanitary or phytosanitary measure that is applied by an importing Party to the other Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure; and contact point mean the government body of a Party that is responsible for the implementation of this Chapter and the coordination of that Party's participation in Subcommittee activities under Article 5.11.

Article 5.2. Objectives

The objectives of this Chapter are to:

(a) protect human, animal, or plant Life or health in the territories of the Parties while facilitating trade between them;

(b) enhance collaboration on the implementation of the WTO SPS Agreement;

(c) strengthen communication, consultation, and cooperation between the Parties, and particularly between the Parties' competent authorities;

(d) ensure that sanitary and phytosanitary measures implemented by a Party do not create unjustified barriers to trade;

(e) enhance transparency in and understanding of the application of each Party's sanitary and phytosanitary measures;

(f) encourage the development and adoption of science-based international standards, guidelines, and recommendations, and promote their implementation by the Parties; and

(g) enhance the sanitary and phytosanitary measures through risk-based approach in decision-making.

Article 5.3. Scope

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

Article 5.4. General Provisions

1. The Parties reaffirm their rights and obligations under the WTO SPS Agreement 2. Nothing in this Agreement shall limit the rights and obligations that each Party has under the WTO SPS Agreement.

Article 5.5. Equivalence

1. The Parties recognize that the principle of equivalence, as provided for under Article 4 of the SPS Agreement, has mutual benefits for both exporting and importing countries.

2. The Parties shall follow the procedures for determining the equivalence of SPS measures and standards developed by the WTO SPS Committee and relevant international standard setting bodies in accordance with Annex A of the SPS Agreement, mutatis mutandis.

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

Article 5.6. Risk Assessment

1. The Parties shall ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles, and is not maintained without scientific evidence.

2. Notwithstanding paragraph 1, where relevant scientific evidence is insufficient, a Party may provisionally adopt SPS measures on the basis of available pertinent information, including from relevant international organizations as well as from SPS measures applied by non-parties. In such circumstances the importing Party shall seek to obtain the additional information necessary for a more objective assessment of risk and review the SPS measure within a reasonable period of time. To this end, the importing Party may request scientific and other relevant information from the exporting Party.

3. To the extent possible, the Parties shall endeavour to expedite risk assessments, including when undertaking, inter alia, pest and disease risk assessments.

Article 5.7. Emergency Measures

If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the Party shall promptly notify the measure by using the WTO SPS notification submission system as a means of emergency notification. If a Party adopts an emergency measure, it shall review that measure periodically and make available the results of that review to the other Party upon request.

Article 5.8. Transparency

1. The Parties recognize the value of transparency in the adoption and application of sanitary and phytosanitary measures and the importance of sharing information about such measures on an ongoing basis.

2. In implementing this Article, each Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. Each Party agrees to notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of the other Party, by using the WTO SPS notification submission system as a means of notification.

4. A Party shall provide to the other Party, on request, information on sanitary and phytosanitary measures related to the importation of a good into that Party's territory.

Article 5.9. Cooperation

1. The Parties shall encourage enhancing technical capacity for the implementation and monitoring of SPS measures.

2. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter. The Parties shall cooperate to facilitate the implementation of this Chapter.

3. The Parties shall cooperate and may jointly identify work on sanitary and phytosanitary matters with the goal of eliminating unnecessary barriers to trade between them.

Article 5.10. Adaptation to Regional Conditions (Regionalization and Compartmentalization)

Each Party shall ensure that its sanitary and phytosanitary measures take into account relevant factors, including different geographic conditions, consistent with Article 6 of the WTO SPS Agreement.

Article 5.11. Subcommittee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Subcommittee on Sanitary and Phytosanitary Measures ("Subcommittee on SPS Measures").

2. The Subcommittee shall be composed of government representatives of each Party responsible for sanitary and phytosanitary matters.

3. The Subcommittee on SPS Measures shall report to the Joint Committee established under Chapter 14 (Administration of the Agreement and Institutional Provisions).

4. The Subcommittee on SPS Measures shall serve as a forum to:

(a) improve the Parties' understanding of sanitary and phytosanitary issues that relate to the implementation of the SPS Agreement and this Chapter;

(b) exchange information on the implementation of this Chapter;

(c) share information on a sanitary or phytosanitary issue that has arisen between them;

(d) monitor the implementation and operation of this Chapter; and

(e) enhance communication and cooperation on sanitary and phytosanitary matters.

5. The Subcommittee on SPS Measures shall establish its terms of reference at its first meeting and may revise those terms as needed, and shall thereafter meet as needed at its own discretion or at the direction of the Joint Committee.

6. If a Party considers that there is a disruption to trade on sanitary or phytosanitary grounds, it may request technical consultations through the Subcommittee on SPS Measures with a view to facilitating trade. On receiving a request under this paragraph, the other Party shall respond to such a request, and shall endeavour to provide any requested information and respond to questions pertaining to the matter, and if requested, enter into consultations within a reasonable period of time after receiving such a request. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations within a period of time agreed upon by the Parties.

Article 5.12. Competent Authorities and Contact Points

1. To facilitate communication on matters covered by this Chapter, each Party shall notify the other Party of its contact point within 30 days of the entry into force of this Agreement.

2. For the purpose of implementing this Chapter, the competent authorities of the Parties shall be those listed in Annex 5A (Competent Authorities).

3. Each Party shall inform the other Party of any change in competent authority or in its contact point within a reasonable period of time.

Chapter 6. TECHNICAL BARRIERS TO TRADE

Article 6.1. Objectives

The objective of this Chapter is to facilitate trade, by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practices.

Article 6.2. Scope

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central level government bodies that may affect trade in goods between the Parties.

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

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

(b) sanitary or phytosaoitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).

Article 6.3. Rights and Obligations

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

Article 6.4. Standards

1. Each Party shall use relevant international standards, guides, and recommendations, to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in the "Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement", adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (Annex 2 to PART 1 of GffBT/1/Revl3), and any subsequent version thereof.

3. The Parties shall encourage cooperation between their respective national standardising organisations in areas of mutual interest, 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 6.5. Technical Regulations

1. The Parties shall use international standards as a basis for preparing their technical regulations, unless those international standards are ineffective or inappropriate for achieving the legitimate objective pursued. Each Party shall, upon request of the other Party, provide its reasons for not having used international standards as a basis for preparing its technical regulations.

2. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements for achieving the equivalence of technical regulations.

3. Each Party shall, upon request of the other Party, explain the reasons why it has not accepted a request by the other Party to negotiate such arrangements.

4. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on the equivalence of technical regulations and related issues in international fora, such as the WTO Committee on Technical Barriers to Trade.

Article 6.6. Conformity Assessment Procedures

1. The Parties recognise that, depending on the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Such mechanisms may include:

(a) recogniying existing international multilateral arrangements and mutual recognition agreements among conformity assessment bodies;

(b) promoting mutual recognition of conformity assessment results by the other Party, through recognizing the other Party's designation of conformity assessment bodies;

(c) encouraging voluntary arrangements between conformity assessment bodies in the territory of each Party;

(d) accepting a supplier's declaration of conformity where appropriate;

(e) harmonizing criteria for the designation of conformity assessment bodies, or

(f) other mechanisms as mutually agreed by the Parties.

2. Each Party shall ensure, whenever possible, that the results of conformity assessment procedures conducted in the

territory of the other Party are accepted, even when those procedures differ from its own, provided that those procedures offer a satisfactory assurance of applicable technical regulations or standards equivalent to its own procedures. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

3. In order to enhance confidence in the consistent reliability of conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved.

4. Each Party shall give positive consideration to a request by the other Party to negotiate agreements or arrangements for the mutual recogniti.on of the results of their respective conformity assessment procedures. The Parties shall consider the possibility of negotiating agreements or arrangements for mutual recognition of the results of their respective conformity assessment procedures in areas mutually agreed upon.

5. The Parties shall endeavour to intensify their exchange of information on acceptance mechanisms with a view to facilitating the acceptance of conformity assessment results.

6. Each Party is encouraged to permit participation of conformity assessment bodies located in the territory of the other Party in its conformity assessment procedures under conditions no less favourable than those accorded to bodies located within the territory of the other Party.

Article 6.7. Cooperation

1. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation, and metrology, witb the view to:

(a) increasing the mutual understanding of their respective systems;

(b) enhancing cooperation between the Parties' regulatory agencies on matters of mutual interests including health, safety and environmental protection;

(c) facilitating trade by implementing good regulatory practices; and avoiding unnecessary obstacles to trade between the Parties; and

(d) enhancing cooperation, as appropriate, to ensure that technical regulations and conformity assessment procedures are based on international standards or the relevant parts of them and do not create unnecessary obstacles to trade between the Parties.

2. In order to achieve the objectives set out in paragraph 1, the Parties shall, as mutually agreed and to the extent possible, cooperate on regulatory issues, which may include the:

(a) promotion of good regulatory practices based on risk management principles;

(b) exchange of information with a view to improving the quality and effectiveness of their technical regulations;

(c) development of joint initiatives for managing risks to health, safety, or the environment, and preventing deceptive practices; and

(d) exchange of market surveillance information where appropriate.

3. Exchange information in the field of standardization, conformity assessment, accreditation in the field of halal certification including procedures, guidelines, to facilitate trade between both the Parties.

Article 6.8. Transparency

1. Each Party shall, upon request of the other Party, provide information, including the objective of, and rationale for, a technical regulation or conformity assessment procedure which the Party has adopted or proposes to adopt and may affect the trade between the Parties, within a reasonable period of time as agreed between the Parties.

2. When a proposed technical regulation or conformity assessment procedures is notified to the WTO, a Party shall give appropriate consideration to the comments received from the other Party, and, upon request of the other Party, provide written answers to the comments made by the other Party.

3. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are publicly available.

Article 6.9. Contact Points

1. For the purposes of this Chapter, the Contact Points are: (a) For Kenya: the Ministry of Investment, Trade and Industry, State Department for Trade or its successor; and (b) For the UAE: the Standards and Regulation Sector, the Ministry of Industry and Advanced Technology, or its successor.

2. Each Party shall promptly notify the other Party of any change to its Contact Point.

Article 6.10. Information Exchange and Technical Discussions

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time. Each Party shall endeavour to respond to such a request within sixty (60) days of the request.

2. All communication between the Parties on any matter covered by this Chapter shall be conducted through the Contact Points designated under Article 6.9. 3. On request of a Party for technical discussions on any matter arising under this Chapter, the Parties shall endeavour, to the extent practicable, to enter into technical discussions through the Contact Points designated under Article 6.9.

Article 6.11. Subcommittee on Technical Barriers to Trade

The Parties shall establish a Subcommittee on Technical Barriers to Trade in accordance with Article 14.1.3 (Joint Committee).

Chapter 7. TRADE REMEDIES

Article 7.1. Scope

1. With respect to the UAE, this Chapter shall apply to investigations and measures that are taken under the authority of the Ministry of Economy or its successor pursuant to Federal Law No. (1) of 2017 on Anti-dumping, Countervailing and Safeguard Measures, including its subsequent amendments and replacements.

2. With respect to Kenya, this Chapter shall apply to investigations and measures that are taken under the authority of the Kenya Trade Remedies Agency or its successor, pursuant to Trade Remedies Act, 2017, including its subsequent amendments and replacements.

Article 7.2. Anti-Dumping and Countervailing Measures

1. The Parties reaffirm their rights and obligations under the provisions of Articles VI and XVI of GATT 1994; the Anti-Dumping Agreement; and the SCM Agreement.

2. The Parties recognize the right to apply measures consistent with Article VI of the GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement, and the importance of promoting transparency in anti-dumping and countervailing duty proceedings and of ensuring the opportunity of all interested parties to participate meaningfully in such proceedings.

3. Except otherwise stipulated in this Article, this Agreement does not confer any additional rights or obligations on the Parties with regard to anti-dumping and countervailing measures including the initiation and conduct of anti-dumping and anti-subsidy investigations as well as the application of anti-dumping and/or countervailing measures.

4. When the investigating authority of a Party receives a written application by or on behalf of its domestic industry for the initiation of an anti-dumping investigation in respect of a good from the other Party, the former Party shall notify the other Party of the application as far in advance of the initiation of such investigation as possible.

5. As soon as possible after accepting an application of an anti-subsidy investigation, and in any event before initiating an investigation, the Party shall provide written notification of its receipt of the application to the other Party and invite the other Party for consultations with the aim of clarifying the situation as to the matters referred to in the application and arriving at a mutually agreed solution.

6. The investigation authority of a Party shall ensure, before a final determination is made, disclosure of all essential facts under consideration which form the basis for the decision whether to apply definitive measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and

allow interested parties sufficient time to make their comments. The investigating authority shall give due consideration to the comments submitted by the interested parties.

7. The Parties agree, when imposing measures covered by this Chapter, to give priority, to the extent possible, to measures that cause minimal economic injury and do not create serious obstacles to the implementation of this Agreement.

Article 7.3. Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GA TT 1994 and the Safeguards Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards Agreement.

2. A Party taking a global safeguard measure shall exclude imports of an originating good of the other Party as long as its share of imports of the product concerned in the importing Party does not exceed three (3) per cent of total imports of the concerned product, provided that developing country Members with less than three (3) per cent import share collectively account for not more than nine (9) per cent of total imports of the product concerned.

3. Where, as a result of a global safeguard measure, a safeguard duty is imposed, the margin of preference shall be maintained.

Article 7.4. Cooperation and Institutional Arrangement

1. The Parties are encouraged to cooperate in the area of trade remedies, specifically in the dissemination of information to all relevant stakeholders and private parties.

2. The Parties shall establish a Subcommittee on Trade Remedies m accordance with Article 14.1.3 (Joint Committee).

Article 7.5. Bilateral Safeguards

Definitions

1. For the purposes of this Article: domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good; serious injury means a significant overall impairment in the position of a domestic industry; threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent; and bilateral safeguard measure means a measure described in paragraph 2.

General

2. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party causes serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good, the Party may: (a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; (b) increase the rate of customs duty on the good to a level not to exceed the lesser of: (i) the most-favoured nation ("MFN") applied rate of duty on the good in effect at the time the action is taken; and (ii) the MFN applied rate of duty on the good in effect on the day immediately preceding the date this Agreement enters into force.

3. The Parties agree that neither tariff rate quotas nor quantitative restrictions are permissible forms of bilateral safeguard measures.

Notification and Consultation

4. A Party shall notify the other Party m writing or by electronic communication: (a) within seven days of initiation of an investigation described m paragraph 7, (b) immediately upon making a finding of serious injury or threat thereof caused by increased imports; and (c) immediately upon application of provisional or a definitive bilateral safeguard measure or extending the measure.

5. In making the notifications referred to in paragraphs 4(b) and 4(c), the Party proposing to apply a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, precise description of the good involved and the proposed measure and expected duration.

6. A Party proposing to apply a definitive safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance, of taking any such measure, with a view to reviewing the information arising from the investigation, exchanging views on the measure and reaching an agreement on the compensation set out in paragraph 20. The Parties shall in such consultations, review, inter alia, the information provided under paragraph 5, to determine:

(a) compliance with this Article;

(b) whether any proposed measure should be ta.ken; and

(c) the appropriateness of the proposed measure, including consideration of alternative measures.

Conditions and Limitations

7. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards Agreement, and to this end, Articles 3 and 4.2(c) of the Safeguards Agreement are incorporated into and form part of this Agreement, mutatis mutandis.

8. In the investigation described in paragraph 7, the Party shall comply with the requirements of Article 4.2(a) of the Safeguards Agreement, and to this end, Article 4.2(a) of the Safeguards Agreement is incorporated into and form part of this Agreement, mutatis mutandis.

9. Each Party shall ensure that its competent authorities complete any such .investigation within eight (8) months of its date of initiation which may be extended up to one year by the competent authority.

10. Neither Party may apply a bilateral safeguard measure:

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

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

11. No bilateral safeguard measure shall be applied to the import of an originating good for a period of one year from the date of commencement of tariff reduction or tariff elimination for that originating good provided for under this Agreement.

12. When a Party terminates a bilateral safeguard measure, the rate of customs duty for the originating good subject to that bilateral safeguard measure shall be the rate that would have been in effect but for that bilateral safeguard measure.

13. No bilateral safeguard measure shall be applied again to the import of a product that has been previously subject to such measure for a period of time equal to the period during which the previous measure was applied or one year since the expiry of such measure, whichever is longer.

14. Notwithstanding the provisions of paragraph 13, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the four year period immediately preceding the date of introduction of the measure.

15. Where the expected duration of the bilateral safeguard measures is over one year, the Party applying the bilateral safeguard measure shall progressively liberalise it at regular intervals during its period of application.

Provisional Measures

16. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports have caused serious injury, or threat thereof, to the domestic industry.

17. If a Party's competent authorities make a preliminary determination, the Party shall make such determination available to interested parties, and shall provide interested parties at least 15 days to comment and submit their arguments with

respect to such determinations.

18. The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of paragraphs 4, 5, 7 and 8.

19. The Party shall promptly refund any tariff increases if the investigation described in paragraph 7 does not result in a finding that the requirements of paragraph 2 are met. The duration of any provisional measure shall be counted as part of the period described in paragraph 10(b).

Compensation

20. No later than 30 days after it applies a bilateral safeguard measure, a Party shall afford an opportunity for the other Party to consult regarding appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.

21. If the Parties are unable to agree on compensation within 30 days of the consultations, the Party against whose originating good the measure is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions only for the minimum period necessary to achieve the substantially equivalent effects.

22. A Party against whose good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 21.

23. The right to talce action to suspend the application of concessions referred to in paragraph 21 shall not be exercised for: (a) The first two years that the measure is in effect; and (b) The first three years during which the bilateral safeguard measure is in effect, where it has been extended beyond two years, provided that the measure bas been taken as a result of an absolute increase in imports and that such measure conforms to the provisions of this Section.

24. The applying Party's obligation to provide compensation under paragraph 21 and the other Party's right to suspend concessions under paragraph 21 shall cease on the termination of the bilateral safeguard measure.

Article 7.6. Dispute Settlement

The Parties shall have recourse to the dispute settlement mechanism set by this agreement for any dispute under Article 5.

Chapter 8. INVESTMENT

Article 8.1. UAE-Kenya Bilateral Investment Agreement

1. The Parties note the existence of and reaffirm the Agreement Between the Government of the Republic of Kenya and the Government of the United Arab Emirates on the Promotion and Protection of Investments, signed at Abu Dhabi on 23 November 2014 ("UAE-Kenya Bilateral Investment Agreement").

2. The Parties agree to revise the existing UAE-Kenya Bilateral Investment Agreement with a view to making it more comprehensive in coverage.

Article 8.2. Promotion and Facilitation of Investments

The Parties affirm their desire to promote an attractive investment climate and expand trade in products and services. The Parties shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favorable conditions for long-term economic development and diversification of trade and investment between the two countries.

Article 8.3. Subcommittee on Investment

The Parties shall establish a Subcommittee on Investment, which shall be composed of representatives of both Parties, in accordance with Article 14.1 (Joint Committee).

Article 8.4. Non-Application of Dispute Settlement

The Parties agree that nothing m this Chapter shall be subject to any dispute settlement mechanism.

Chapter 9. TRADE IN SERVICES

Article 9.1. Definitions

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;

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

airport operation and management services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

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

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

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

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

computer reservation system services mean 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;

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

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

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

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

(i) that Party; or

(ii) is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (a)(i); or

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

(i) natural persons of that Party; or

(ii) juridical persons of that other Party identified under subparagraph (a);

a juridical person is:

(a) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;

(b) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; or

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

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

measures by Parties means measures taken by:

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

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

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

measures by Parties affecting trade in services include measures in respect of:

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

(b) 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

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

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;

natural person of the other Party means a national or a permanent resident (1) of the UAE or Kenya;

(1) The term "pennanent resident" shall mean any natural person who is in possession of a valid residency permit under the laws and regulations of each Party.

person means either a natural person or a juridical person;

sector of a service means:

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

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

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

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

service consumer means any person that receives or uses a service;

service of the other Party means a service which is supplied:

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

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

service supplier means any natural or juridical person that seeks to supply or supplies a service; (2)

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

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

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

(i) Mode 1 -from the territory of a Party into the territory of the other Party;

(ii) Mode 2 -in the territory of a Party to the service consumer of the other Party;

(iii) Mode 3-by a service supplier of a Party, through commercial presence in the territory of the other Party;

(iv) Mode 4 -by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party;

Air traffic rights mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hfre 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 9.2. Objectives

Recognising the importance of trade in services for the growth and development of the Parties' economies, the objectives of this chapter are to:

(a) progressively liberalise trade in services to provide market access for services and service suppliers of the Parties; and

(b) pursue services trade liberalisation in line with Article V of the GATS by expanding the depth and scope ofliberalisation and increasing and developing the export of services, while fully preserving the right of the Parties to regulate and to introduce new regulations.

Article 9.3. Scope and Coverage

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

2. This Chapter shall not app1y to:

(a) laws, regulations, or requirements governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;

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

(c) subsidies or grants provided by a Party, including govemment-supported loans, guarantees, and insurance; and

(d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Chapter or its Annexes shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provi.ded that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment. (3)

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

(e) measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(iv) ground-handling services; or

(v) airport operation services.

3. The rights and obligations of the Parties in respect of Financial Services shall be governed by the Annex on Financial Services of the GATS, which is hereby incorporated into and made part of this Agreement.

4. The rights and obligations of the Parties in respect of Telecommunications Services shall be governed by the Annex on Telecommunications Services of the GATS, which is hereby incorporated into and made part of this Agreement.

Article 9.4. Progressive Liberalisation

1. In pursuance of the objectives of this Agreement, the Parties shall enter into successive rounds of negotiations, beginning not later than one year from the date of entry into force of the Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalisation.

2. The process of liberalisation shall take place with due respect for national policy objectives and the level of development of each Party. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

3. The process of progressive liberalisation will be directed towards increasing the general level of specific commitments undertaken by the Parties under this Agreement.

Article 9.5. Schedules of Specific Commitments

1. Each Party shall set out in a schedule, called its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 9.7, 9.8, and 9.9.

2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

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

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

3. Measures inconsistent with both Article 9.7 and Article 9.8 shall be inscribed .in the column relating to Article 9.7. In this case the inscription will be considered to provide a condition or qualification to Article 9.8 as well.

4. The Parties' Schedules of Specific Commitments are set forth in Annexes 9A (UAE Schedule of Specific Commitments) and 9B (Kenya Schedule of Specific Commitments).

Article 9.6. Most-Favoured Nation Treatment

If, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by other Party for incorporation herein of treatment no less favourable than that provided under the aforementioned agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

Article 9.7. Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in services" contained in Article 9 .1, 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 of Specific Commitments. (4)

(4) If a Party undertakes a market-access commitment in relation to the supply of a service th.rough the mode of supply referred 10 in paragraph (a) of the definition of "trade in services" in Article 9.1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in paragraph (c) of the definition of "trade in services" in Article 9.1 (Definitions), it is

thereby committed to allow related transfers of capital into its territory.

2. In sectors where market access commitments are undertaken, the measures wbjcb a Party shaU 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 of Specific 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; (5)

(5) This subparagraph does not cover 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 9.8. National Treatment

1. With respect to the services sectors inscribed in its Schedule of Specific 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. (6)

(6) Specific 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.

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 by a Party shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of that Party compared to the like service or service suppliers of the other Party.

Article 9.9. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 9.7 and 9.8, including those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in that Party's Schedule of Specific Commitments.

Article 9.10. Modification of Schedules

Upon written request by a Party, the Parties shall hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months of the requesting Party making its request. lo the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules are subject to any procedures adopted by the Joint Committee established in Article 14.1 (Joint Committee).

Article 9.11. Domestic Regulation

1. Each Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, in so far as such regulations do not impair any rights and obligations arising from this Agreement.

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

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

(b) The provision of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service on which a specific commitment under this Agreement has been made, the competent authorities of each Party shall:

(a) 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;

(b) in the case of an incomplete application, on 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;

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

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

5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, in sectors where specific commitments are undertaken, the Parties shall aim to ensure that such requirements are:

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

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

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

6. In determining whether a Party is in conformity with the obligation under paragraph 5, account shall be taken of international standards of relevant international organisations applied by that Party.

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

8. The Parties shall jointly review the results of the negotiations on disciplines on domestic regulation, pursuant to Article VI:4 of the GATS, with a view to incorporating them into this Chapter.

(7) The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

Article 9.12. Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to paragraph 3, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or

licenses or certifications granted in the territory of a non-party, that Party shall afford the other Party adequate opportunity to negotiate comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party's territory should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

4. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to:

(a) strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications; and

(b) pursue mutually acceptable standards and criteria for licensing and certification with respect to service sectors of mutual importance to the Parties.

Article 9.13. Payments and Transfers

1. Except under the circumstances envisaged in Article 9.16, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 9.16 or at the request of the International Monetary Fund.

Article 9.14. Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2, and 5, of Article VIII of the GATS, which are hereby incorporated into and made part of this Agreement.

Article 9.15. Business Practices

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

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

Article 9.16. Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. Where either of the Parties to this Agreement is in serious balance of payments difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to trade in services, including on payments and transfers.

3. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GA TS, which are hereby incorporated into and made part of this Agreement. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee thereof.

Article 9.17. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier that is a juridical person, if persons of a non-Party own or control that juridical person and the denying Party:

(a) does not maintain diplomatic relations with the non-Party and that non-Party is not a Member of the WTO; or

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. In the case of the supply of a maritime transport service, if it establishes that the service is supplied:

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

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

3. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to services and service suppliers of the other Party where the service is being supplied by a juridical person of a non-party, or a person of the other Party without real and continuous links with the economy of the other Party or with negligible or no business operations in the territory of the other Party.

Article 9.18. Monitoring and Evaluation

1. The Joint Committee in accordance with Article 14 (Joint Committee) shall establish the Subcommittee on Trade in Services, which shall carry out such functions as may be assigned to it by the Joint Committee to facilitate the operation of this chapter and further its objectives, including considering additional Annexes that may be proposed by the Parties.

2. The Subcommittee on Trade in Services shall meet regularly to monitor and evaluate the implementation of this chapter.

3. With the objective of further liberalising trade in services between them, the Parties agree to jointly review, their Schedules of Specific Commitments, taking into account any services liberalisation developments as a result of on-going work under the auspices of the WTO. A

Article 9.19. Annexes

The following Annexes form an integral part of this Chapter:

- Annex 9A -UAE Schedule of Specific Commitments

- Annex 9B -Kenya Schedule of Specific Commitments

Chapter 10. DIGITAL TRADE

Article 10.1. Definitions

For the purposes of this Chapter:

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

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with paragraph 2 of Article ID of the GA TT 1994;

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

(c) antidumping or countervailing duty; digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically; (1)(2)

(1) For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

(2) The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

digital or electronic signature means data in digital or electronic form that is in, affixed to, or logically or cryptographically associated with, a digital or electronic document, and that may be used to identify or verify the signatory in relation to the digitaJ or electronic document and indicate the signatory's approval of the information contained in the digital or electronic document;

electronic transmission or transmitted electronically means a transmission made using any electromagnetic means, including by photonic means;

open data means non-proprietary information, including data, made freely available to the public by the central level of government;

personal data means any information, including data, about an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service. ?

Article 10.2. Objectives

The objectives of this Chapter are to:

(a) foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy;

(b) facilitate, strengthen, expand and diversify Information Communication Technology and digital trade within the framework of this Agreement subject to the laws, regulations, and rules enforced in each Party;

(c) encourage trusted, safe, ethical and responsible adoption and use of emerging technologies to support and promote digital trade; and

(d) promote and facilitate digital trade between the Parties by, inter alia, reducing barriers to digital trade.

Article 10.3. Scope

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

2. This Chapter shall not apply to:

(a) government procurement; or

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

3. For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the relevant provisions of Chapter 9 (Trade in Services) and its Annexes, including any exceptions or limitations set out in this Agreement that are applicable to such provisions.

Article 10.4. Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on digital or electronic transmissions, between a person of a Party and a person of the other Party in accordance with the WTO Ministerial Decision in relation to Electronic Commerce

2. The moratorium under paragraph 1 shall depend on further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmission within the framework of the Work Programme on Electronic Commerce.

3. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted digitally or electronically, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

Article 10.5. Non-Discriminatory Treatment of Digital Products

1. A Party shall not accord less favourable treatment to certain digital products than it accords to other like iligital products:

(a) on the basis that

(i) the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in the territory of the other Party; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in its territory.

2. A Party shall not accord less favourable treatment to digital products:

(a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor of such digital products is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor of such digital products is a person of a non-Party.

3. Paragraphs 1 and 2 of this Article are subject to relevant exceptions, limitations or reservations set out in this Agreement or its Annexes, if any.

4. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

Article 10.6. Domestic Electronic Transactions Framework

1. Each Party shall endeavour to maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996) ("UNCITRAL Model Law").

2. Each Party shall endeavour to: (a) avoid any unnecessary regulatory burden on electronic transactions; and (b) facilitate input by interested persons in the development and review of its legal framework for electronic transactions, including in relation to trade documentation.

Article 10.7. Authentication

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in digital or electronic form.

2. Neither Party shall adopt or maintain measures regarding authentication that would:

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

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

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

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

Article 10.8. Paperless Trading

Each Party shall endeavour to:

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

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

Article 10.9. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive, and fraudulent commercial practices when they engage in digital trade.

2. Each Party shall endeavour to adopt or maintain consumer protection laws to proscribe misleading, deceptive, and fraudulent commercial activities that cause harm or potential harm to consumers engaged in digital trade. (3)

(3) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as generally applicable consumer protection laws or regulations or sector-or medium-specific laws or regulations regarding consumer protection.

Article 10.10. Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of persons who conduct or engage in electronic transactions and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall endeavour to adopt or maintain a legal framework that provides for the protection of the personal data of the users of digital trade. (4) In the development of any legal framework for the protection of personal data, each Party should endeavour to take into account principles and guidelines of relevant international organisations. To this end, each Party shall endeavour to adopt or maintain a legal framework that provides for safeguards to ensure the protection of the personal data of the users of digital trade. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards.

3. The Parties shall endeavour to develop collaboration mechanisms and frameworks for cross-border complaints resolution, investigations, enforcement on personal data protection for digital trade.

(4) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information, or personal data protection law, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 10.11. Principles on Access to and Use of the Internet for Digital Trade

To support the development and growth of digital trade, each Party recognizes that consumers in its territory should be able to:

(a) access and use services and applications of their choice, unless prohibited by the Party's law;

(b) run services and applications of their choice, subject to the Party's law, including the needs of legal and regulatory enforcement activities; and

(c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not otherwise prohibited by the Party's law.

Article 10.12. Cross-Border Flow of Information

1. Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal data, the Parties shall endeavour to refrain from imposing or maintaining unjustifiable barriers to electronic information flows across borders.

2. For greater certainty, either Party may adopt or maintain measures inconsistent with paragraph l to achieve a legitimate public policy objective or protect security interests, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on digital trade.

Article 10.13. Open Data

1. The Parties recognise that facilitating public access to and use of open data contributes to stimulating economic and

social benefit, competitiveness, productivity improvements and innovation. To the extent that a Party chooses to make available open data, it shall endeavour to ensure:

(a) that the information is appropriately anonymised, contains descriptive metadata and is in a machine readable and open format that allows it to be searched, retrieved, used, reused and redistributed freely by the public; and

(b) to the extent practicable, that the information is made available in a spatially enabled format with reliable, easy to use and freely available APIs and is regularly updated.

2. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to and use of open data, with a view to enhancing and generating business and research opportunities.

Article 10.14. Digital Government

1. The Parties recognise that technology can enable more efficient and agile government operations, improve the quality and reliability of government services, and enable governments to better serve the needs of their citizens and other stakeholders.

2. To this end, the Parties shall endeavour to develop and implement strategies to digitally transform their respective government operations and services, which may include:

(a) adopting open and inclusive government processes focusing on accessibility, transparency, and accountability in a manner that overcomes digital divides;

(b) promoting cross-sectoral and cross-governmental coordination and collaboration on digital agenda issues;

(c) shaping government processes, services and policies with digital inclusivity in mind;

(d) providing a unified digital platform and common digital enables for government service delivery;

(e) leveraging emerging technologies to build capabilities in anticipation of disasters and crises and facilitating proactive responses;

(f) generating public value from government data by applying it in the planning, delivering and monitoring of public policies, and adopting rules and ethical principles for the trustworthy and safe use of data;

(g) making government data and policy-making processes available for the public, in accordance to each Party's laws and policies; and

(h) promoting initiatives to raise the level of digital capabilities and skills of both the populace and the government workforce.

3. Recognising that the Parties can benefit by sharing their experiences with digital government initiatives, the Parties shall endeavour to cooperate on activities relating to the digital transformation of government and government services, which may include:

(a) exchanging information and experiences on digital government strategies and policies;

(b) sharing best practices on digital government and the digital delivery of government services; and

(c) providing advice or training, including through exchange of officials, to assist the other Party in building digital government capacity.

Article 10.15. Digital and Electronic Invoicing

1. The Parties recognise the importance of digital and electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for digital and electronic invoicing within its territory are interoperable with the systems used in the other Party's territory.

2. Each Party shall endeavour to ensure that the implementation of measures related to digital and electronic invoicing in its territory supports cross-border interoperability between the Parties' digital and electronic invoicing frameworks. To this end, each Party shall endeavour to base its measures relating to digital and electronic invoicing on international frameworks.

3. The Parties recognise the economic importance of promoting the global adoption of digital and electronic invoicing systems, including interoperable international frameworks. To this end, the Parties shall endeavour to:

(a) promote, encourage, support or facilitate the adoption of digital and electronic invoicing by enterprises;

(b) promote the existence of policies, infrastructure and processes that support digital and electronic invoicing;

(c) generate awareness of, and build capacity for, digital and electronic invoicing; and

(d) share best practices and promote the adoption of interoperable international digital and electronic invoicing systems.

Article 10.16. Digital and Electronic Payments

1. Recognising the rapid growth of digital and electronic payments, in particular those provided by non-bank, non-financial institutions and financial technology enterprises, the Parties shall endeavour to support the development of efficient, safe and secure cross-border digital and electronic payments by:

(a) fostering the adoption and use of internationally accepted standards for digital and electronic payments;

(b) promoting interoperability and the interlinking of digital electronic payment infrastructures; and

(c) encouraging innovation and competition m digital and electronic payments services.

2. To this end, each Party shall endeavour to:

(a) make publicly available its laws and regulations of general applicability relating to digital and electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards;

(b) finalise decisions on regulatory or licensing approvals relating to digital and electronic payments in a timely manner;

(c) not arbitrarily or unjustifiably discriminate between financial institutions and non-financial institutions in relation to access to services and infrastructure necessary for the operation of digital and electronic payment systems;

(d) adopt or utilize international standards for electronic data exchange between financial institutions and services suppliers, in accordance with each Party's laws and regulations, to enable greater interoperability between digital and electronic payment systems;

(e) facilitate the use of open platforms and architectures such as tools and protocols provided for through Application Programming Interfaces ("APIs") and encourage payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation and competition in electronic payments; and

(f) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner, such as through adopting regulatory and industry sandboxes.

Article 10.17. Digital Identities

Recognising that cooperation between the Parties on digital identities for natural persons and enterprises will promote connectivity and further growth of digital trade, and recognizing that each Party may take different legal and technical approaches to digital identities, the Parties shall endeavour to pursue mechanisms to promote compatibility between their respective digital identity regimes. This may include:

(a) developing appropriate frameworks and common standards to foster technical interoperability between each Party's implementation of digital identities;

(b) developing comparable protection of digital identities under each Party's respective legal frameworks, or the recognition of their legal effects, whether accorded autonomously or by agreement;

(c) supporting the development of international frameworks on digital identity regimes; and

(d) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and the promotion of the use of digital identities.

Article 10.18. Cooperation

1. Recognising the importance of digital trade to their collective economies, the Parties shall endeavour to maintain a dialogue on regulatory matters relating to digital trade with a view to sharing information and experiences, as appropriate,

including on related laws, regulations, and their implementation, and best practices with respect to digital trade, includmg in relation to:

(a) online consumer protection;

(b) personal data protection;

(c) anti-money laundering and sanctions compliance for digital trade;

(d) unsolicited commercial electronic messages;

(e) authentication;

(f) intellectual property concerns with respect to digital trade;

(g) challenges for small and medium-sized enterprises in digital trade; and

(h) digital government.

2. The Parties have a shared vision to promote secure digital trade and recognise that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties recognise the importance of:

(a) Building the capabilities of their government agencies responsible for computer security incident response;

(b) Using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties; and

(c) Promoting the development of a strong public and private workforce in the area of cybersecurity, including possible initiatives relating to mutual recognition of qualifications.

Chapter 11. MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES

Article 11.1. General Principles

1. The Parties, recognizing the fundamental role of "micro, small and medium-sized enterprises ("MSMEs") in maintaining dynamism and enhancing competitiveness of their respective economies, shall foster close cooperation between their MSMEs and cooperate in promoting jobs and growth in MSMEs.

2. The Parties recognize the integral role of the private sector in the MSME cooperation to be implemented under this Chapter.

3. The definition of MSME and its application will be subject to the eristing laws and regulations of each Party.

Article 11.2. Cooperation to Increase Trade and Investment Opportunities for MSMEs

With a view to more robust cooperation between the Parties to enhance commercial opportunities for MSMEs, each Party shall seek to increase trade and investment opportunities, and in particular shall:

(a) identify and promote priority sectors and value chains that will enhance MSMEs participation in international trade;

(b) promote cooperation between the Parties' small business support infrastructure, including dedicated MSMEs centres, incubators and accelerators, export assistance centres (production centres, aggregation (1), value addition, information and export logistics), and other centres as appropriate;

(1) Aggregation centers are points where entrepreneurs collect their products for purpose of storage to prolong freshness of the produce. In addition, the collection centers facilitate bulking of products from MSMEs in order to achieve appropriate quantities for the market.

(c) create an international network for sharing best practices, exchanging market research, and promoting MSME participation in international trade, as well as business growth in local markets;

(d) promote linkages between the Parties' MSMEs with large corporates in order to enhance MSMEs participation in international trade through sub-contracting;

(e) strengthen collaboration with the other Party on activities to promote MSMEs owned by women and youth, as well as

start-ups, and promote partnership among these MSMEs and their participation in international trade;

(f) enhance cooperation with the other Party to exchange information and best practices in areas including improving MSME access to capital and credit, MSME participation in covered government procurement opportunities, and helping MSMEs adapt to changing market conditions; and

(g) encourage participation in purpose-built mobile or web-based platforms, for business entrepreneurs and counselors to share information and best practices to help MSMEs link with international suppliers, buyers, and other potential business partners.

Article 11.3. Information Sharing

1. Each Party shall establish or maintain its own free, publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement;

(b) a summary of this Agreement; and

(c) information designed for MSMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to MSMEs; and

(ii) any additional information that would be useful for MSMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website links or information through automated electronic transfer to:

(a) the equivalent websites of the other Party; and

(b) the websites of its own government agencies and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing, or doing business in that Party's territory.

3. Subject to each Party's laws and regulations, the information described in paragraph 2(b) may include:

(a) customs regulations, procedures, or enquiry points;

(b) regulations or procedures concerning intellectual property, trade secrets, and patent protection rights;

(c) technical regulations, standards, quality or conformity assessment procedures;

(d) sanitary or phytosanitary measures relating to importation or exportation;

(e) foreign investment regulations;

(f) business registration;

(g) trade promotion programs;

(h) competitiveness programs;

(i) SME investment and financing programs;

(j) taxation, accounting;

(k) government procurement opportunities; or (I) other information which the Party considers to be useful for MSMEs.

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure the information and links are up-to-date and accurate.

5. To the extent possible, each Party shall make the information in this Article available in English. If this information is available in another authentic language of this Agreement, the Party shall endeavour to make this information available, as appropriate.

Article 11.4. Subcommittee on MSME Issues

1. The Parties hereby establish the Subcommittee on MSME Issues ("MSME Subcommittee"), comprising national and local

government, as well as private sector, representatives of each Party.

2. The MSME Subcommittee shall:

(a) identify ways to assist MSME in the Parties' territories to take advantage of the commercial opportunities resulting from this Agreement and to strengthen MSME competitiveness;

(b) identify and recommend ways for further cooperation between the Parties to develop and enhance partnerships betwen MSMEs of the Parties;

(c) exchange and discuss each Party's experiences and best practices in supporting and assisting MSME exporters with respect to, among other things, training programs, trade education, trade finance, trade missions, trade facilitation, digital trade, identifying commercial partners in the territories of the Parties, and establishing good business credentials;

(d) promote seminars, workshops, webinars, mentorship sessions, or other activities to inform MSME of the benefits available to them under this Agreement;

(e) explore opportunities for capacity building to facilitate each Party's work in developing and enhancing MSME export counselling, assistance, and training programs;

(f) recommend additional information that a Party may include on the website referred to in Article 11.3;

(g) review and coordinate its work program with the work of other subcommittees, working groups, and other subsidiary bodies established under this Agreement, as well as of other relevant international bodies, to avoid duplication of work programs and to identify appropriate opportunities for cooperation to improve the ability of MSMEs to engage in trade and investment opportunities resulting from this Agreement;

(h) collaborate with and encourage subcommittees, working groups and other subsidiary bodies established under this Agreement to consider MSME-related commitments and activities into their work;

(i) review the implementation and operation of this Chapter and MSME-related provisions within this Agreement and report findings and make recommendations to the Joint Committee that can be included in future work and MSME assistance programs as appropriate;

(j) facilitate the development of programs to assist MSMEs to participate and integrate effectively into the Parties' regional and global supply chains;

(k) promote the participation of MSMEs in digital trade in order to take advantage of the opportunities resulting from this Agreement and rapidly access new markets;

(l) facilitate the exchange of information on entrepreneurship education and awareness programs for youth and women to promote the entrepreneurial environment in the territories of the Parties;

(m) submit on an annual basis, unless the Parties decide otherwise, a report of its activities and make appropriate recommendations to the Joint Committee; and

(n) consider any other matter pertammg to MSMEs as the MSMEs Subcommittee may decide, including issues raised by MSMEs regarding their ability to benefit from this Agreement.

3. The MSMEs Subcommittee shall convene within one year of the date of entry into force of this Agreement.

4. The MSME Subcommittee may seek to collaborate with appropriate experts and international donor organizations in carrying out its programs and activities.

5. The MSME Subcommittee shall report to the Joint Committee established under Chapter 14 (Administration of the Agreement).

6. The MSME Subcommittee shall establish its terms of reference at its first meeting and may revise those terms as needed, and shall thereafter meet as needed at its own discretion or at the discretion of the Joint Committee.

Article 11.5. Non-Application of Dispute Settlement

Chapter 16 (Dispute Settlement) shall not apply to any matter or dispute arising from this Chapter. Any disagreement arising out of the implementation of this Chapter shall be settled amicably within the framework of the Joint Committee.

Chapter 12. ECONOMIC AND DEVELOPMENT COOPERATION

Article 12.1. General Provision

1. The Parties undertake to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty, raise living standards, and create new employment opportunities in support of development.

2. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity.

3. The Parties acknowledge that economic growth and development contribute to achieving the objectives of this Agreement of promoting economic integration.

4. The Parties also acknowledge that effective domestic coordination of trade, investment and development policies can contribute to sustainable economic growth.

5. The Parties recognize the potential for joint development activities between the Parties to reinforce efforts to achieve sustainable development goals.

6. The Parties reaffirm that development cooperation is a core element of their partnership and an essential factor for the realisation of the objectives of this Agreement.

7. The Parties agree to consider their respective developmental needs and how they can increase production and supply capacity, foster the structural transformation and competitiveness of their economies, enhance economic diversification, and add value, in order to promote sustainable development and enhanced trade between the Parties.

8. The Parties commit to cooperate in order to facilitate the implementation of this Agreement and to support related development strategies.

9. For the purposes of the implementation of this Agreement, the Parties shall endeavour to jointly and individually mobilize resources m accordance with Article 12.6.2.

Article 12.2. Objectives

1. The Parties shall promote cooperation under this Agreement for their mutual benefit in order to liberalize and facilitate trade and investment between them and foster economic growth.

2. Economic and development cooperation under this Chapter shall be built upon a common understanding between the Parties to support the implementation of this Agreement, with the objective of maximising its benefits, supporting pathways to trade and investment facilitation and openness to contribute to the sustainable inclusive economic growth and prosperity of the Parties.

3. The economic and development cooperation shall endeavour to:

(a) enhance the competitiveness of the Parties' economies;

(b) contribute to transforming the structure of the Parties' economies by establishing a strong, competitive and diversified economic base through enhancing production, distribution, transport, marketing, value addition and post-harvest technology;

(c) develop trade capacity as well as capacity to attract investment;

(d) enhance trade and investment policies;

(e) build supply capacity and enabling the smooth implementation of this Agreement;

(f) enhance technical cooperation between the Parties; and

(g) promote collaboration and mutual support on economic and development matters at multilateral levels.

Article 12.3. Scope

1. Economic and development cooperation under this Chapter shall support the effectiveness and efficiency of the implementation and utilisation of this Agreement through activities that relate to trade and investment.

2. Economic and development cooperation under this Chapter shall focus on, inter alia, the following areas:

(a) manufacturing industry;

(b) trade and investment promotion;

(c) tourism;

(d) human resource development;

(e) ICT and the digital economy;

(f) financial services;

(g) infrastructure and logistics enhancement;

(h) agriculture and livestock;

(i) private sector development;

(j) fisheries and blue economy;

(k) water, environment and the green economy;

(l) health;

(m) energy;

(n) SPS;

(o) TBT;

(p) customs and trade facilitation;

(q) transport;

(r) shipping and maritime;

(s) export market and product development; and

(t) structured commodities tracling.

3. The Parties may agree in the Annual Work Program on Economic and Development Cooperation Activities to modify the above list, including by adding other areas for economic and development cooperation.

Article 12.4. Means of Cooperation

The Parties shall endeavour to encourage technical, technological and scientific, economic and development cooperation, through the following:

(a) joint organization of conferences, seminars, workshops, meetings, training sessions and outreach and education programs;

(b) exchange of delegations, professionals, technicians and specialists from the academic sector, institutions dedicated to research, private sector and govern.mental agencies, including study visits and internship programs for professional training;

(c) dialogue and exchange of experiences between the Parties' private sector and agencies involved in trade promotion;

(d) initiation of the knowledge-sharing platform aiming to transfer experience and best practices in the field of government development and modernization to other countries through UAE's Government Experience Exchange Programme;

(e) promoting joint business initiatives between entrepreneurs of the Parties;

(f) exchanges on technical matters including through the uses of expertise from academic institutions and other similar entities; and

(g) any other form of cooperation that may be agreed by the Parties.

Article 12.5. Competition Policy

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties may cooperate to exchange information relating to the development of competition policy, subject to their domestic laws and regulations and available resources. The Parties may conduct such cooperation through their competent authorities.

2. The Parties may consult on matters related to anti-competitive practices and their adverse effects to trade and investment. The consultations shall be without prejudice to the autonomy of each Party to develop, maintain and enforce its domestic competition laws and regulations.

Article 12.6. Resources

1. Resources for economic and development cooperation under this Chapter shall be provided in a manner as agreed by the Parties and in accordance with the laws and regulations of the Parties.

2. The Parties, on the basis of mutual benefit, may consider cooperation with, and contributions from, external parties to support the implementation of the Annual Work Program.

Article 12.7. Committee on Economic and Development Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Economic and Development Cooperation in accordance with Article 14.1.3 (Joint Committee).

2. The Subcommittee on Economic and Development Cooperation shall undertake the following functions:

(a) monitor and assess the implementation of this Chapter;

(b) identify new opportunities and agree on new ideas for prospective cooperation or capacity building activities;

(c) formulate and develop Annual Work Programme proposals and their implementation mechanisms;

(d) coordinate, monitor and review progress of the Annual Work Programme to assess its overall effectiveness and contribution to the implementation and operation of this Chapter;

(e) suggest amendments to the Annual Work Programme through periodic evaluations;

(f) cooperate with other subcommittees and/or subsidiary bodies established under this Agreement to perform stocktaking, monitoring, and benchmarking on any issues related to the implementation of this Agreement, as well as to provide feedback and assistance in the implementation and operation of this Chapter; and

(g) report to and, if deemed necessary, consult with the Joint Committee in relation to the implementation and operation of this Chapter.

Article 12.8. Annual Work Program on Economic and Development Cooperation Activities

1. The Committee on Economic and Development Cooperation shall prepare and adopt an Annual Work Program on Economic and Development Cooperation Activities ("Annual Work Program") based on proposals submitted by the Parties.

2. Each activity in an Annual Work Program developed under this Chapter shall: (i) be guided by the objectives agreed in Article 12.2; (ii) be related to trade or investment and support the implementation of this Agreement; (iii) involve both the Parties; (iv) address the mutual priorities of the Parties; (v) and avoid duplicating existing economic cooperation activities.

Article 12.9. Non-application of Chapter 16 (Dispute Settlement)

Chapter 16 (Dispute Settlement) shall not apply to any matter or dispute arising from this Chapter. Any differences arising out of the implementation of this Chapter, shall be settled amicably within the framework of the Joint Committee.

Chapter 13. INTELLECTUAL PROPERTY

Section A. General Provisions

Article 13.1. Definitions

For the purposes of this Chapter:

intellectual property refers to all categories of intellectual property that are the subject of Sections one through seven of Part II of the TRIPS Agreement;

national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 13.5 of this agreement or the TRIPS Agreement; and

WIPO means the World Intellectual Property Organization.

Article 13.2. Objectives

The Parties shall endeavour to promote, support, protect and enforce intellectual property rights so as to contribute to the promotion of trade, investment, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 13.3. Principles

The Parties may adopt appropriate measures to prevent the abuse of intellectual property rights by right holders or resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology provided that such measures are consistent with this Agreement.

Article 13.4. Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter and the TRIPS agreement, provided that such protection or enforcement does not contravene the provisions of this Chapter and the TRIPS Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter and the TRIPS Agreement within its own legal system and practice.

Article 13.5. International Agreements

The Parties reaffirm their obligations set out m the following multilateral agreements:

(a) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;

(b) Paris Convention for the Protection of Industrial Property, done on 20 March 1883, as revised by the Stockholm Act of 1967 ("Paris Convention");

(c) Berne Convention for the Protection of Literary and Artistic Works, done on 9 September 1886, as revised by the Paris Act of 1971 ("Berne Convention");

(d) Madrid Protocol relating to the Madrid Agreement concerning the International Registration of Marks, done on 27 June 1989;

(e) WIPO Performances and Phonograrn Treaty, done on 20 December 1996;

(f) International Convention for the Protection of Pe,formers, Producers of Phonograms and Broadcasting Organizations, done on 26 October 1961;

(g) WIPO Copyright Treaty, done on 20 December 1996;

(h) Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done on 27 June 2013; and

(i) International Convention for the Protection of New Varieties of Plants, done on 19 March 1991.

Article 13.6. Intellectual Property and Public Health

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter and TRIPS Agreement.

2. The Parties recognise the principles established in the Declaration on The TRIPS Agreement and Public Health, done on 14 November 2001 (the "Doha Declaration") by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

Article 13.7. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights subject to the exceptions applicable under international treaties to which the Parties are member.

2. With respect to secondary uses of phonograms by means of analogue communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter and TRIPS Agreement, and;

(b) not applied in a manner that would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 13.8. Transparency

1. Each Party shall endeavour, subject to its legal system and practice, to make available infonnation concerning application and registration of trademarks, geographical indications, industrial designs, patents and plant variety rights accessible for the general public.

2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

3. Each Party shall endeavour to make available such information in the English language.

Article 13.9. Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter e)cisting at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless otherwise provided in this Chapter, a Party shalJ not be required to restore protection to subject matter that on the date of entry into force of th is Agreement for that Party has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Article 13.10. Exhaustion of Lntellectual Property Rights

Without prejudice to any prov1s1ons addressing the exhaustion of intellectual property rights in international agreements to which a Party is a member, nothing in this Chapter prevents a Party from detennining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

Section B. Cooperation

Article 13.11. Cooperation Activities and Initiatives

1. The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed upon between the Parties. Cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) intellectual property issues relevant to:

(i) SMEs; and

(ii) empowering women and youth.

(e) policies involving the use of intellectual property for research, innovation and economic growth;

(f) implementation of multilateral intellectual property agreements;

(g) technical assistance and capacity-building;

(h) enforcement of intellectual property rights; and

(i) other activities and initiatives as may be mutually determined between the Parties.

2. The Parties may establish a Subcommittee on Intellectual Property m accordance with Article 14.1.3 (Joint Committee).

Article 13.12. Patent Cooperation

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work with the other Party. This may include:

(a) making search and examination results available to the patent office of the other Party; and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. The Parties shall endeavour to share patent information on science, technology, innovation activities, and the generation, transfer and dissemination of technology, subject to any confidentiality requirements in their domestic laws and regulations.

4. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

Section C. Trademarks

Article 13.13. Types of Signs Registrable as Trademarks

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs whether rendered in two-dimensional or three-dimensional form, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, a Party may make registrability depend on distinctiveness acquired through use. A Party may in addition include the registration of the sound marks in accordance with the national laws and regulations of the Party.

Article 13.14. Collective and Certification Marks

Each Party shall provide that trademarks may include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party may also provide that signs that may serve as geographical indications are capable of protection under its trademark system.(1)

(1) For the purpose of clarity "rights management information" shall be interpreted to be as provided under Article 12 of the WCT.

Article 13.15. Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark bas the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including geographical indications, (2) (3) for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

(2) For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

(3) For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

Article 13.16. Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

Article 13.17. Well-Known Trademarks

1. Neither Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction.

2. Article 6 bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark, (4) whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

(4) In determining whether a trademark is well-known in a Party, that Pany need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WlPO on 20 to 29 September 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, (5) for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.

(5) The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.

Article 13.18. Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which includes, among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;

(c) providing an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

Article 13.19. Electronic Trademarks System

Each Party shall endeavour to provide:

(a) a system for the electronic application for, and maintenance of, trademarks; and

(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article 13.20. Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done on 15 June 1957, as revised and amended ("Nice Classification"). Each Party shall provide that:

(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;(6) and

(6) A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

Article 13.21. Term of Protection for Trademarks

Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years. The registration of a trademark shall be renewable indefinitely.

Article 13.22. Non-Recordal of a License

Neither Party may demand the registration of trademark licenses as a prerequisite for establishing the Ucense's authenticity according to national laws and regulations of each Party.

Article 13.23. Domain Names

In connection with each Party's system for the management of its country-code top-level domain ("ccTLD") domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes, preferably, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:

(i) is designed to resolve disputes expeditiously;

(ii) is fair and equitable;

(iii) is not overly burdensome; and

(iv) does not preclude resort to judicial proceedings.

Section D. Country Names

Article 13.24. Country Names

Each Party may provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E. Geographical Indications

Article 13.25. Recognition of Geographical Indications

1. Geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.

2. The Parties recognise that geographical indications may be protected through a trademark or sui generis system or other legal means.

3. The Parties may recognise the geographical indications protected and originating in the territories of the Parties according to national laws and regulations.

Article 13.26. Administrative Procedures for the Protection of Geographical Indications

Each Party shall provide administrative procedures for the protection or recognition of geographical indications through a trademark, a sui generis system or other legal means. Each Party shall, with respect to applications for protection or requests for recognition, ensure that its laws and regulations governing the filing of those applications or requests for recognition are readily available to the public and clearly sets out the procedures for these actions.

Article 13.27. Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication, that protection or recognition shall commence no earlier than the filing date (7) or date of request for recognition in the Party or the registration date in the Party, as applicable.

(7) For greater certainty, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

Section F. Patents and Industrial Design

Article 13.28. Grace Period

Each Party shall disregard information contained in public disclosures of an invention related to an application to register a patent (8) if the public disclosure:

(a) was made by the inventor, applicant or a person that obtained the information from the inventor or applicant inside or outside the territory of each Party; and

(b) occurred within at least 12 months prior to the date of filing of the application.

(8) For greater certainty, patent may include utility model in accordance with national law and regulations.

Article 13.29. Procedural Aspects of Examination, Opposition and Invalidation of Registered Patent and Industrial Design

1. Each Party shall provide a system for the examination and registration of patents or industrial designs which includes:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register patent or industrial design; and

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to appeal for any final refusal to register patent or industrial design.

2. Each Party shall provide opportunity for interested parties to seek cancellation or invalidation of a registered patent. A Party may, in addition, provide an opportunity for interested parties to oppose the registration of patent.

3. Each Party shall provide opportunity for interested parties to oppose the registration of an industrial design, and in addition may provide an opportunity to seek cancellation or invalidation of the registration of industrial design.

4. Each Party shall ensure that making decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing, which may be delivered by electronic means.

Article 13.30. Amendments, Corrections, and Observations

1. Each Party shall provide an applicant for patent with at least one opportunity to make amendments, corrections or observations in connection with its application.

2. Each Party shall provide a right holder of patent with at least one opportunity to make amendments or corrections after registration provided that such amendments or corrections do not change or expand the scope of the patent right as a whole. (9)

3. Each Party may apply paragraphs 1 and 2, subject to any necessary modifications, with respect to amendments, corrections or observations to applications for industrial design registration, and registered industrial designs.

(9) It is understood that the amendments or corrections which do not change or expand the scope of the right means that the scope of the patent or industrial design right stays same as before or reduced.

Article 13.31. Industrial Design Protection

1. Each Party shall ensure that requirements for securing or enforcing registered industrial design protection do not unreasonably impair the opportunity to obtain or enforce such protection.

2. The duration of protection available for registered industrial designs shall amount to at least 10 years.

Article 13.32. Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent or an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent or an industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

Section G. Protection of Undisclosed Test or other Data

Article 13.33. Protection of Undisclosed Test or other Data for Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning either or both the safety and efficacy of the product, that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar (10) product on the basis of:

(10) For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

(a) that infomiation; or

(b) the marketing approval granted to the person that submitted such information, for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of the Party.

2. A Party shall adopt or maintain a system other than judicial proceedings that precludes, based upon patent information submitted to the regulatory authority by a patent holder or the applicant for marketing approval, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

3. Notwithstanding paragraph 1, a Party may taJce measures to protect public health in accordance with:

(a) the Declaration on TRIPS and Public Health;

(b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or

(c) any amendment of the TRJPS Agreement to implement the Declaration on TRJPS and Public Health that enters into force with respect to the Parties.

4. For the purposes of paragraph 1, a new pharmaceutical product means a pharmaceutical product that contains an active ingredient for which no other pharmaceutical product containing the same active ingredient has previously obtained marketing approval in the country.

Section H. Copyright and Related Rights

Article 13.34. Definitions

For the purposes of Article 13.35 and 13.37 through 13.44, the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of smmds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performance means a performance fixed in a phonogram unless othetwise specified;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

right to authorise or prohibit means that with respect to copyright and related rights, the term right to authorise or prohibit refers to exclusive rights.

Article 13.35. Right of Reproduction

Each Party shall provide (11) to authors, performers, and producers of phonograms (12) the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

(11) nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 13.7 shall preclude

that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

(12) References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

Article 13.36. Right of Communication to the Public

Without prejudice to Articles 11 (1)(ii), 11bis(I)(i) and (ii), 11 ter(I)(ii), 14(I)(ii), and 14bis(I) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them (13)

(13) The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11 bis(2) of the Berne Convention.

Article 13.37. Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies (14) of their works, performances and phonograms through sale or other transfer of ownership.

(14) The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Article 13.38. Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals (15) of another Party; and to performances or phonograms first published or first fixed (16) in the territory of another Party. (17) A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

(15) For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

(16) For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

(17) For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 13.7 of this agreement, each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

2. Each Party shall provide to performers the exclusive right to authorise or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3. Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or pbonograms, by wire or wireless means, (18) (19) and the making available to the public of those performances or phonograrns in such a way that members of the public may

access them from a place and at a time individually chosen by them.

(18) With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's ob ligations under Article 13.7 of this agreement.

(19) For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

4. Notwithstanding subparagraph (a), the application of the right referred to in subparagraph (a) to analogue transmissions and non-interactive free overthe-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law. (20)

(20) For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non- in teractive, free over-the-air broadcasts, provided that these retransmissions are lawfully perm itted by that Party' s government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over th e Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

Article 13.39. Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated: (21)

(21) For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 13.40 and that Party 's international obligations.

(a) on the basis of the li fe of a natural person, the term shall be not less than the li fe of the author and 50 years after the author's death; (22) and

(22) The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 13.7 shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 50 years from the end of the calendar year of the first authorised publication (23) of the work, performance or phonogram; or

(23) For greater certainty, for the purposes of subparagraph (b), if a Party 's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.

(ii) anonymous and pseudonymous works are protected for a period of 50 years as of the beginning of the calendar year subsequent to the year in which such works have been first published, (24) Performance or Phonogram, not less than 50 years from the end of the calendar year of the creation of the work, performance or phonogram

(24) In case the author of such works has been known or specified or has disclosed his identity, the protection will be lifetime of the author and fifty years thereafter commencing as of the beginning of the calendar year subsequent to the author's death.

Article 13.40. Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRlPS Agreement, the Berne Convention, the WIPO Copyright Treaty (WCT) or tbe WIPO Performances Pbonograrns Treaty (WPPT).

Article 13.41. Balance In Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means oflimitations or exceptions that are consistent with Article 13.40, including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled. (25) (26)

(25) As recognised by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, 27 June 2013 (Marrakesh Treaty).

(26) For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a. legitimate purpose under Article 13.40.

Article 13.42. Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right (27) in a work, performance or phonogram:

(a) may freely and separately transfer that right by written contract; and

(b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right. (28)

(27) For greater certainty, this provision does not affect the exercise of moral rights.

(28) Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

Article 13.43. Obligations Concerning Protection of Technological Measures and Rights Management Information

1. Each party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonogra.ms in connection with the exercise of their rights as provided under Article 13.35, Article 13.36, Article 13.37 and Article 13.38 of this Agreement, that restrict acts, in respect of their works, performances or phonograms, which are not authorised by the authors, performers or producers of pbonograms concerned or permitted by law.

2. Each Party shall provide adequate and effective legal remedies against any person who knowingly, without authorisation removes or alter any electronic rights management information and/or distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information (29) has been removed or altered without authority.

(29) For the purpose of clarity "rights management information" shall be interpreted to be as provided under Article 12 of the WCT.

Article 13.44. Collective Management

The Parties recognise the role of coUective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair,efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Section I. Enforcement

Article 13.45. General Obligation In Enforcement

Each Party shall ensure that enforcement procedures as specified in Part III, Section 1 of the TRIPS Agreement are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeilitious remedies to prevent infringements and remedies that constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. Each Party will upon request provide available information according to its national laws and regulations to facilitate the enforcement of IPRs.

Article 13.46. Border Measures

1. Each Party shall, in conformity with its domestic law and regulations and the provisions of Part III, Section 4 of the TRIPS Agreement adopt or maintain procedures to enable a right bolder, who has valid grounds for suspecting that the importations of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.

2. A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory as per its domestic laws and regulation.

Chapter 14. ADMINISTRATION OF THE AGREEMENT

Article 14.1. Joint Committee

1. The Parties hereby establish a Joint Committee.

2. The Joint Committee shall be composed of representatives of the UAE and Kenya at the level of:

(a) ministers;

(b) senior officials; and

(c) technical officials

3. The Joint Committee may establish standing or ad hoc subcommittees or working groups and assign any of its powers thereto.

4. Each Party shall be responsible for the composition of its delegation.

5. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise, to consider any matter relating to this Agreement. The regular sessions of the Joint Committee shall be held alternately in the territories of the Parties.

6. The Joint Committee shall also hold special sessions without undue delay upon request from either Party.

7. The functions of the Joint Committee shall be to:

(a) review and assess the results and overall operation of this Agreement in the light of the experience gained during its application and its objectives;

(b) consider and recommend any amendments to this Agreement that may be proposed by either Party, including the modification of concessions made under this Agreement;

(c) endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement;

(d) supervise and coordinate the work of all sub-committees and working groups established under this Agreement;

(e) consider any other matter that may affect the operation of this Agreement;

(f) upon request by either Party, to propose mutually agreed interpretation to be given to the provisions of this Agreement;

(g) adopt decisions or make recommendations as envisaged by this Agreement; and

(h) carry out any other functions as may be agreed by the Parties.

8. The Joint Committee shall establish its own working procedures.

9. Meetings of the Joint Committee and of any standing or ad hoc subcommittees or working groups may be conducted in person or by any other means as determined by the Parties.

Article 14.2. Communications

1. Each Party shall designate a contact point to receive and facilitate official communications between the Parties on any matter relating to this Agreement.

2. All official communications in relation to this Agreement shall be in the English language.

Chapter 15. EXCEPTIONS

Article 15.1. General Exceptions

1. For the purposes of Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures and Trade Facilitation), 5 (Sanitary and Phytosanitary Measures), and 6 (Technical Barriers to Trade), Article XX of the GAIT 1994 and its interpretative note are incorporated into and form part of this Agreement, mutatis mutandis.

2. For the purposes of Chapters 9 (Trade in Services) and Chapter 10 (Digital Trade) (1), Article XIV of the GATS, including its footnotes, is incorporated into and forms part of this Agreement, mutatis mutandis.

(1) This paragraph is without prejudice to whether a Party considers a digital product to be a good or service.

Article 15.2. Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

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

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

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

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

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

Article 15.3. Taxation

1. Nothing in this Agreement shall apply to any taxation measure. (2)

(2) For the avoidance of doubt, provisions where corresponding rights and obligations are also granted or imposed under the WTO Agreement shall apply to taxation measures.

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

Chapter 16. DISPUTE SETTLEMENT

Article 16.1. Definitions

For the purposes of this Chapter and Annexes 16A (Rules of Procedure) and 16B (Code of Conduct for Panellists):

complaining Party means a Party that has filed a request for dispute settlement proceedings under this Chapter;

panel means a panel established pursuant to Article 16.10;

responding Party means a Party that has received a request for dispute settlement proceedings under this Chapter.

Article 16.2. Objective

The objective of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

Article 16.3. Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement and shall make every attempt through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

Article 16.4. Scope of Application

Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation, implementation, or application of this Agreement (hereinafter referred to as "covered provisions"), wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party otherwise failed to carry out its obligations under this Agreement.

This Chapter shall not cover non-violation complaints and other situation complaints.

Article 16.5. Choice of Forum

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.

2. When a dispute arises with regard to the alleged inconsistency of a particular measure with an obligation under this Agreement and a substantially equivalent obligation under another international trade agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 2, that Party shall not initiate dispute settlement proceedings in another forum with respect to that particular measure unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.

4. For purposes of paragraph 3:

(a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a Panel in accordance with Article 16.8;

(b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a Panel in accordance with Article 6 of the WTO Dispute Settlement Understanding; and

(c) dispute settlement proceedings under any other agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement Panel in accordance with the relevant provisions of that agreement.

Article 16.6. Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.

2. Any request, notification, written submission or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Article 16.7. Request for Information

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Article 16.8 or 16.9 respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

Article 16.8. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 16.4 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual basis and the legal basis specifying the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. Consultations shall be held within 30 days of the date of receipt of the request. The consultations shall be deemed to be concluded within 30 days of the date of receipt of the request, unless the Parties agree otherwise.

4. Consultations on matters of urgency including those which concern perishable goods, shall be held within 15 days of the date of receipt of the request. The consultations shall be deemed to be concluded within those 15 days unless the Parties agree otherwise.

5. During consultations each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure is affecting the operation and application of this Agreement.

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

7. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.

8. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 16.10.

Article 16.9. Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to enter into procedures for good offices conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. Proceedings involving good offices conciliation or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices conciliation or mediation may continue while the panel procedures set out in this Chapter are in progress.

Article 16.10. Establishment of a Panel

1. The complaining Party may request the establishment of a Panel if:

(a) the respondent Party does not reply to the request for consultations in accordance with the time frames referred in Article 16.8;

(b) the consultations referred to in Article 16.8 are not held or fail to settle a dispute within 30 days or 15 days in relation to urgent matters including those which concern perishable goods after the date of the receipt of the request for consultations by the respondent Party;

2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the factual basis of the complaint and the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent with those provisions. 3. When a request is made by the complaining Party in accordance with paragraph I, a panel shall be established.

Article 16.11. Composition of a Panel

1. Unless the Parties agree otherwise, a panel shall consist of three panelists.

2. Within 20 days after the establishment of a panel, each Party shall appoint a panelist. The Parties shall, by common agreement, appoint the third panelist, who shall serve as the chairperson of the panel, within 40 days after the establishment of a panel.

3. If either Party fails to appoint a panelist within the time period established in paragraph 2, the other Party may request that the Secretary-General of the Permanent Court of Arbitration to designate the unappointed panelist within 30 days of that request.

4. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, they shall within the next 10 days, exchange their respective lists comprising three nominees each who shall not be nationals of either Party. The chairperson shall then be appointed by draw of lot from the lists within 10 days after the expiry of the time period during which the Parties shall exchange their respective lists of nominees. The selection by lot of the chairperson of the panel shall be made by the Joint Committee.

5. If a Party fails to submit its list of three nominees within the time period established in paragraph 4, the chairperson shall be appointed by draw of lot from the list submitted by the other Party.

6. The date of composition of the panel shall be the date on which the last of the three selected panelists has notified to the Parties the acceptance of his or her appointment.

Article 16.12. Decision on Urgency

If a Party so requests, the panel shall decide, within 15 days of its composition, whether the dispute concerns matters of urgency.

Article 16.13. Requirements for Panelists

1. Each panelist shall: (a) have demonstrated expertise in law, international trade, and other matters covered by thjg Agreement;

(b) be independent of, and not be affiliated with or take instructions from, either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute;

(d) comply with the Code of Conduct for Panelists established in Annex 16B (Code of Conduct for Panelists); and

(e) be chosen strictly on the basis of objectivity, reliability, and sound judgment.

2. The chairperson shall also have experience in dispute settlement procedures.

3. Persons who provided good offices, conciliation or mediation to the Parties, pursuant to Article 16.9 in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panelists in that matter.

Article 16.14. Replacement of Panelists

If any of the panelists of the original panel becomes unable to act, withdraws or needs to be replaced because that panelist does not comply with the requirements of the code of conduct, a successor panelist shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have the powers and duties of the original panelist. The work of the panel shall be suspended during the appointment of the successor panelist.

Article 16.15. Functions of the Panel

Unless the Parties otherwise agree, the Panel:

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

(b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and

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

Article 16.16. Terms of Reference

1. Unless the Parties otherwise agree within 15 days after the date of establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the confonnity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to resolve the dispute, and to deliver a report in accordance with Articles 16.20 and 16.21."

2. If the Parties agree on other terms of reference than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than 5 days after their agreement.

Article 16.17. Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.

2. When appropriate, the panel may also take into account relevant interpretations in reports of prior panels established under this Agreement and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

Article 16.18. Procedures of the Panel

1. Unless the Parties otherwise agree, the Panel shall follow the model rules of procedure set out in Annex 16A (Rules of Procedure for the Panel).

2. The Panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules of procedures.

3. There shall be no ex parte communications with the Panel concerning matters under its consideration.

4. The deliberations of the Panel and the documents submitted to it shall be kept confidential.

5. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

6. The Panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution.

7. The Panel shall make its decisions, including its reports by consensus, but if consensus is not possible then by majority of its members. Any member may furnish separate opinions on matters not unanimously agreed, but dissenting opinions of members shall in no case be disclosed.

Article 16.19. Receipt of Information

1. Upon the request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.

2. Upon the request of a Party or on its own initiative, the panel may seek from any source any information it considers appropriate. The panel also has the right to seek the opinion of experts, as it considers appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. On request of a Party, or on its own initiative, the panel may seek information and technical advice from any individual or body that it deems appropriate, provided that the Parties agree and subject to such terms and conditions as the Parties agree. The panel shall provide the Parties with any information so obtained for comment.

4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

Article 16.20. Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The interim report shall set out a descriptive part and the panel's findings and conclusions.

3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within 15 days of the date of issuance of the interim report. A Party may comment on the others Party's request within 6 days of the delivery of the request.

4. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

Article 16.21. Final Report

1. The panel shall deliver its final report to the Parties within 120 days of the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

3. The final report shall be made public within 15 days of its delivery to the Parties unless the Parties otherwise agree to publish the final report only in parts or not to publish the final report.

Article 16.22. Implementation of the Final Report

1. Where the panel finds that the respondent Party has acted inconsistently with a covered provision, the respondent Party shall take any measure necessary to comply promptly and in good faith with the findings and conclusions in the final report.

2. The respondent Party shall promptly comply with the ruling of the Panel. If it is impracticable to comply immediately, the respondent Party shall, no later than 30 days after the delivery of the final report, notify the complaining Party of the length of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

Article 16.23. Reasonable Period of Time for Compliance

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, no later than 20 days after the date of receipt of the notification made by the respondent Party in accordance with Article 16.22.2 request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent Party. The 20-day period referred to in this paragraph may be extended by mutual agreement of the Parties.

2. The original panel shall deliver its decision to the Parties within 20 days from the relevant request.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

Article 16.24. Compliance Review

1. The respondent Party shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.

2. The respondent Party shall, no later than at the date of expiry of the reasonable period oftime, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report along with a description on how the measure ensures compliance sufficient to allow the complaining Party to asse s the measure before the expiry of the reasonable period of time.

3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to decide on the matter before compensation can be sought or suspension of benefits can be applied in accordance with Article 16.25.1.(c). Such request shall be notified simultaneously to the respondent Party.

4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the respondent fail to comply with the final report or are otherwise inconsistent with the covered provisions.

5. The panel shall deliver its decision to the Parties within 60 days of the date of delivery of the request.

Article 16.25. Temporary Remedies In Case of Non-Compliance

1. If the respondent Party:

(a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time;

(b) notifies the complaining Party in writing that it is not practicable to comply with the final report within the reasonable period of time; or

(c) the original panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the party complained against is inconsistent with the covered provisions.

The respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory agreement or any necessary compensation.

2. If the Parties fail to reach a mutually satisfactory agreement or to agree on compensation within 20 days after the date ofreceipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application to that Party of benefits or other obligations under this Agreement. The notification shall specify the level of intended suspension of benefits or other obligations.

3. The complaining Party may begin the suspension of benefits or other obligations referred to in the preceding paragraph 20 days after the date when it served notice on the Party complained against, unless the respondent Party made a request under paragraph 7.

4. The suspension of benefits or other obligations:

(a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the respondent Party to comply with the final report; and

(b) shall be restricted to benefits accruing to the respondent Party under this Agreement.

5. In considering what benefits to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles: (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the Panel has found to be inconsistent with this Agreement or have caused nullification or impairment; (1)

(1) For purposes of this paragraph, "sector" means: (i) with respect to goods, all goods; (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors.

(b) the complaining Party may suspend benefit in other sectors, if it considers that it is not practicable or effective to suspend benefits or other obligations in the same sector; and

(c) in the selection of the benefits to suspend, the complaining Party shall endeavour to take into consideration those which least disturb the implementation of this Agreement.

6. The suspension of benefits or other obligations shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions which has been found in the final report has been removed, or until the Parties have agreed on a mutually satisfactory agreement or any necessary compensation.

7. If the respondent Party considers that the suspension of benefits does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original Panel shall notify to the parties its decision on the matter no later than 30 days of the receipt of the request from the respondent Party. Benefits or other obligations shall not be suspended until the original panel has delivered its decision. The suspension of benefits or other obligations shall be consistent with this decision.

Article 16.26. Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies

1. Upon the notification by the respondent Party to the complaining Party of the measure taken to comply with the final report:

(a) in a situation where the right to suspend benefits or other obligations has been exercised by the complaining Party in accordance with Article 16.23, the complaining Party shall tenninate the suspension of benefits or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or

(b) in a situation where necessary compensation has been agreed, the respondent Party may tenninate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the respondent Party. The decision of the panel shall be notified to the Parties no later than 45 days after the date of submission of the request. If the panel decides that the measUie notified in accordance with paragraph 1 is consistent with the relevant covered provisions, the suspension of benefits or other obligations, or the application of the compensation, shall be terminated no later than 15 days after the date of the decision. If the panel determines that the notified measUie achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

Article 16.27. Suspension and Termination of Proceedings

If both Parties so request, the panel shall suspend for a period agreed by the Parties and not exceeding 12 consecutive months. In the event of a suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

Article 16.28. Costs

1. Unless the Parties otherwise agree, the costs of the panel and other expenses associated with the conduct of its

proceedings shall be borne in equal parts by both the Parties. 2. Each Party shall bear its own expenses and legal costs m the panel proceedings.

Article 16.29. Mutually Agreed Solution

1. The Parties may reach a mutuaJly agreed solution at any time with respect to any dispute referred to in Article 16.3.

2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.

3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article 16.30. Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.

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

Article 16.31. Annexes

The Joint Committee may modify the Annexes 16A (Rules of Procedure) and 16B (Code of Conduct for Panelists).

ANNEX 16A. RULES OF PROCEDURE FOR THE PANEL

Timetable

1. After consulting the Parties, the panel shaU, whenever possible within 7 days of the appointment of the final panelist, fix the timetable for the panel process. The indicative timetable attached to chapter should be used as a guide.

2. The panel process shall, as a general rule, not exceed 120 days from the date of establishment of the panel until the date of the final report, unless the Parties otherwise agree.

3. Should the panel consider there is a need to modify the timetable, it shall inform the Parties in writing of the proposed modification and the reason for it.

Written Submissions and other Documents

4. Unless the Panel otherwise decides, the complaining Party shall deliver its first written submission to the panel no later than 20 days after the date of appointment of the final panelist. The Party complained against shall deliver its first written submission to the panel no later than 20 days after the date of delivery of the complaining Party's first written submission. Copies shall be provided for each panelist.

5. Each Party shall also provide a copy of its first written submission to the other Party at the same time as it is delivered to the panel.

6. Within 10 days of the conclusion of the hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.

7. The Parties shall transmit all information or written submissions, written versions of oral statements and responses to questions put by the Panel to the other Party to the dispute at the same time as it is submitted to the Panel.

8. All written documents provided to the panel or by one Party to the other Party shall also be provided in electronic form.

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

Operation of the Panel

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

11. Panel deliberations shall be confidential. Only panelists may take part in the deliberations of the panel. The reports of panels shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

12. Opinions expressed in the panel report by individual panelists shall be anonymous.

Hearings

13. The Parties shall be given the opportunity to attend hearings and meetings of the Panel.

14. The timetable established in accordance with Rule 1 shall provide for at least one hearing for the Parties to present their cases to the panel.

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

16. All panelists shall be present at hearings. Panel hearings shall be held in closed session with only the panelists and the Parties in attendance. However, in consultation with the Parties, assistants, translators or designated note takers may also be present at hearings to assist the panel in its work. Any such arrangements established by the panel may be modified with the agreement of the Parties.

17. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the respondent Party are afforded equal time to present their case. The panel shall conduct the hearing in the following manner: argument of the complaining Party; argument of the respondent Party; the reply of the complaining Party; the counter-reply of the respondent; closing statement of the complaining Party; and closing statement of the respondent Party. The Chair may set time limits for oral arguments to ensure that each Party is afforded equal time.

Questions

18. The panel may direct questions to either Party at any time during the proceedings. The Parties shall respond promptly and fully to any request by the panel for such information as the panel considers necessary and appropriate.

19. Where the question is in writing, each Party shall also provide a copy of its response to such questions to the other Party at the same time as it is delivered to the panel. Each Party shall be given the opportunity to provide written comments on the response of the other Party.

Confidentiality

20. The panel's hearings and the documents submitted to it shall be confidential. Each Party shall treat as confidential information submitted to the panel by the other Party which that Party has designated as confidential.

21. Where a Party designates as confidential its written submissions to the panel, it shall, on request of the other Party, provide the panel and the other Party with a non-confidential summary of the information contained in its written submissions that could be disclosed to the public no later than 10 days after the date of request. Nothing in these Rules shall prevent a Party from disclosing statements of its own positions to the public.

Working language

22. The working language of the panel proceedings, including for written submissions, oral arguments or presentations, the report of the panel and all written and oral communications between the Parties and with the panel, shall be English.

Venue

23. The venue for the hearings of the Panel shall be decided by agreement between the Parties. If there is no agreement, the first bearing shall be held in the territory of the respondent Party complained against, and any additional hearings shall alternate between the territories of the Parties.

Expenses

24. The panel shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains. Indicative Timetable for the Panel

25. Panel established on xx/xx/xxxx.

26. Receipt of first written submissions of the Parties:

(a) complaining Party: 20 days after the date of appointment of the final panelist;

(b) respondent Party: 20 days after (a);

27. Date of the first hearing with the Parties: 20 days after receipt of the first submission of the respondent Party against;

28. Receipt of written supplementary submissions of the Parties: 10 days after the date of the first hearing;

29. Issuance of initial report to the Parties: 90 days of the date of composition of the panel.;

30. Deadline for the Parties to provide written comments on the initial report: 15 days after the issuance of the initial report; and

31. Issuance of final report to the Parties: within 120 days of the date of composition of the panel.

ANNEX 16B. CODE OF CONDUCT FOR PANELISTS

Definitions

1. For the purposes of this Annex:

(a) assistant means a person who, under the terms of appointment of a panelist, conducts research or provides support for the panelist;

(b) panelist means a member of a panel established under Article 8;

(c) proceeding, unless otherwise specified, means the proceeding of a panel under this Chapter; and

(d) staff, in respect of a panelist, means persons under the direction and control of the panelist, other than assistants.

Responsibilities to the Process

2. Every panelist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former panelists shall comply with the obligations established in paragraphs 17 through 20.

Disclosure Obligations

3. Prior to confirmation of his or her selection as a panelist under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect bis or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. Once selected, a panelist shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 3 and shall disclose them by communicating them in writing to the Joint Committee for consideration by the Parties. The obligation to disclose is a continuing duty, which requires a panelist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding. Performance of Duties by Panelists

5. A panelist shall comply with the provisions of this Chapter and the applicable rules of procedure.

6. On selection, a panelist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

7. A panelist shall not deny other panelists the opportunity to participate in all aspects of the proceeding.

8. A panelist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

9. A panelist shall take all appropriate steps to ensure that the panelist's assistant and staff are aware of, and comply with, paragraphs 2 through 4 and 19 through 21.

10. A panelist shall not engage in ex parte contacts concerning the proceeding.

11. A panelist shall not communicate matters concerning actual or potential violations of this Annex by another panelist unless the communication is to both Parties or is necessary to ascertain whether that panelist has violated or may violate

this Annex. Independence and Impartiality of Panelists

12. A panelist shall be independent and impartial. A panelist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

13. A panelist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

14. A panelist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panelist's duties.

15. A panelist shall not use his or her position on the panel to advance any personal or private interests. A panelist shall avoid actions that may create the impression that others are in a special position to influence the panelist. A panelist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

16. A panelist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panelist's conduct or judgment.

17. A panelist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panelist's impartiality or that might reasonably create an appearance of impropriety or bias. Duties in Certain Situations 18. A panelist or former panelist shall avoid actions that may create the appearance that the panelist was biased in carrying out the panelist's duties or would benefit from the decision or report of the panel. Maintenance of Confidentiality

19. A panelist or former panelist shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage, or advantage for others, or to affect adversely the interest of others.

20. A panelist shall not disclose a panel report, or parts thereof, prior to its publication.

21. A panelist or former panelist shall not at any time disclose the deliberations of a panel, or any panelist's view, except as required by legal or constitutional requirements.

Chapter 17. FINAL PROVISIONS

Article 17.1. Annexes, Side Letters, and Footnotes

The Annexes, Side letters, and footnotes to this Agreement constitute an integral part of this Agreement.

Article 17.2. Review

This Agreement shall be reviewed every five years from the date of its entry into force.

Article 17.3. Amendments

1. Either Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and recommendation.

2. Amendments to this Agreement shall, after consideration and recommendation by the Joint Committee, be submitted to the Parties for ratification, acceptance, or approval in accordance with the constitutional requirements or legal procedures of the respective Party.

3. Amendments to this Agreement shall enter into force in the same manner as provided for in Article 17.6, unless otherwise agreed by the Parties.

Article 17.4. Accession

1. This Agreement shall be open for accession by any country or group of countries including a contracting Party to the treaty for the establishment of the East African Community after the date of entry into force of this Agreement. An applicant may accede to this Agreement subject to such terms and conditions as may be agreed between the applicant and the Parties.

2. An applicant may seek to accede to this Agreement by submitting a request in writing through the Joint Committee.

3. Following the approval of the Joint Committee the applicant may deposit the instrument of accession.

4. This Agreement shall enter into force in relation to the acceding Party on the date its instrument of accession is deposited or on such other date as maybe agreed by all of the Parties.

5. In addition to this Article, the accession process shall be carried out in accordance with the procedure for accession to be adopted by the Joint Committee.

6. Where certain amendments to this Agreement may be required as a result of accession, the Parties will jointly identify and agree to such amendments.

Article 17.5. Duration and Termination

1. This Agreement shall be valid for an indefinite period unless terminated by either Party in accordance with the terms herein.

2. Either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification.

Article 17.6. Entry Into Force

1. The Parties shall ratify this Agreement in accordance with their internal legal procedures.

2. When a Party has ratified this Agreement in accordance with its internal legal procedures, that Party shall notify the other Party of such ratification, approval or acceptance in writing, through diplomatic channels, within a period of 60 days from such ratification.

3. Unless the Parties agree otherwise, where both Parties have notified each other of such ratification, approval or acceptance, this Agreement shall enter into force on the first day of the second month following the date of receipt of the last written notification.

Article 17.7. Authentic Texts

This Agreement is done in duplicate in Arabic, and English languages. All texts shall be equally authentic. In case of any divergence, the English text shall prevail.

lN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Abu Dhabi, United Arab Emirates on the 14th day of January, 2025.

For the Government of the Republic of Kenya

H.E. Dr. Musalia Mudavadi, EGH

Prime Cabinet Secretary and Cabinet Secretary Ministry of Foreign and Diaspora Affairs

For the Government of the United Arab Emirates

H.E. Dr. Thani bin Ahmed Al Zeyoudi

Minister of State for Foreign Trade