MALAYSIA-AUSTRALIA FREE TRADE AGREEMENT

The Government of Malaysia and the Government of Australia (hereinafter referred to as "the Parties'),

REINFORCING the longstanding ties of friendship and cooperation between them;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization, the Agreement Establishing the ASEAN- Australia-New Zealand Free Trade Area and other multilateral, regional and bilateral agreements to which they are both parties;

RECOGNISING the important role and contribution of business in enhancing trade and investment among the Parties and the need to further promote and facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and further liberalise and expand bilateral trade and investment;

PROMOTING a transparent business environment that will assist enterprises in planning effectively and using resources efficiently;

Have agreed as follows:

Chapter 1. Establishment of a Free Trade Area and General Definitions

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) **AANZFTA Agreement** means the Agreement Establishing the ASEAN- Australia-New Zealand Free Trade Area done at Cha-am, Petchaburi, Thailand, on 27 February 2009;

(b) **Anti-Dumping Agreement** means the Agreement on Implementation of Article VI of GATT 1994, in Annex 1A to the WTO Agreement;

(c) **Agreement on Subsidies and Countervailing Measure**s means the Agreement on Subsidies and Countervailing Measures, in Annex 1A to the WTO Agreement;

(d) **central level of government** means:

(i) for Australia, the Commonwealth Government; and

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

(e) **Customs Administration** means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(f) **customs duties** means any customs or import duty or a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article Ill of GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Anti-Dumping Agreement, as may be amended and the Agreement on Subsidies and Countervailing Measures, as may be amended; or

(iii) fee or any charge commensurate with the cost of services rendered;

(g) **Customs Valuation Agreement** means the Agreement on Implementation of Article Vil of GATT 1994, in Annex 1A of the WTO Agreement;

(h) **days** means calendar days, including weekends and holidays;

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

(j) **GATS** means the General Agreement on Trade in Services, in Annex 1B to the WTO Agreement;

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

(l) **good** means any merchandise, product, article or material;

(m) **HS** means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as amended;

(n) **IMF Articles of Agreement** means the Articles of Agreement of the International Monetary Fund, adopted at the United Nations Monetary and Financial Conference, on July 22 1944, as amended;

(o) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association (1);

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

(q) **natural person of a Party** means a person who:

(i) for Australia, is an Australian citizen or permanent resident as defined in accordance with its laws and regulations; and

(ii) for Malaysia, is a citizen of Malaysia, or has been granted the right of permanent residence in the territory of Malaysia in accordance with its laws and regulations.

(r) **originating good** means a good that qualifies as originating under Chapter 3 (Rules of Origin);

(s) **person** means a natural person or a juridical person;

(t) **personal data** means information about an individual whose identity is apparent or can reasonably be ascertained from, the information;

(u) **professional services** means services, the supply of which requires specialised post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by a Competent Authority, but does not include services supplied by trades-persons or vessel and aircraft crew members;

(v) **regional level of government** means:

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

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

(w) **SPS Agreemen**t means the Agreement on the Application of Sanitary and Phytosanitary Measures, in Annex 1A to the WTO Agreement;

(x) **territory** means:

(i) with respect to Australia, the territory of the Commonwealth of Australia:

(AA) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the

Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(BB) including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and

(ii) with respect to Malaysia, its land territory, internal waters and territorial sea and any maritime area situated beyond the territorial sea which has been or might in future be designated under its domestic law, in accordance with international law, as an area within which Malaysia may exercise sovereign rights or jurisdiction with regard to the sea, seabed, the subsoil and the natural resources (2);

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

(z) **WTO** means the World Trade Organization; and

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

(1) For the purposes of Chapter 9 (Telecommunications Services) and Chapter 12 (Investment), this is taken to include branch or representative offices.

(2) Nothing in this subparagraph shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982.

Chapter 2. Trade In Goods

Article 2.1. Objectives

The objectives of this Chapter are to promote closer integration between the economies of the Parties through:

(a) the reduction and/or elimination of customs duties on trade in goods between the Parties; and

(b) more generally, facilitating trade in goods between the Parties.

Article 2.2. Scope

This Chapter shall apply to trade in goods of a Party.

Article 2.3. Reduction and/or Elimination of Customs Duties

1. Each Party shall progressively reduce and/or eliminate its customs duties on originating goods of the other Party in accordance with Annex 1 (Schedules of Tariff Commitments).

2. Neither Party may increase an existing customs duty or introduce a new customs duty on imports of an originating good of the other Party, other than as permitted by this Agreement.

Article 2.4. Accelerated Tariff Reduction and/or Elimination

1. On the request of a Party, the Parties shall consult to consider accelerating the reduction and/or elimination of customs duties on originating goods as set out in Annex 1 (Schedules of Tariff Commitments).

2. An agreement by the Parties to accelerate the reduction and/or elimination of the customs duty on an originating good shall supersede any duty rate or staging category for such good set out in Annex 1 (Schedules of Tariff Commitments) on the entry into force of such an agreement in accordance with Article 21.6 (Amendments) of Chapter 21 (Final Provisions).

3. A Party may at any time unilaterally accelerate the reduction and/or elimination of customs duties on originating goods of the other Party set out in Annex 1 (Schedules of Tariff Commitments). A Party intending to do so shall inform the other Party before the new rate of customs duties takes effect, or, in any event, as early as practicable.

Article 2.5. National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article Ill of GATT 1994. To this end, Article Ill of GATT 1994 is incorporated into and shall form part of this Agreement, mutatis mutandis.

Article 2.6. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with Article Ill:2 of GATT 1994, and antidumping and countervailing duties applied pursuant to Articles VI and XVI of GATT 1994 and the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of service rendered and do not represent indirect protection of domestic products or a taxation of imports or exports for fiscal purposes.

2. Neither Party may require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

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

Article 2.7. Administration of Trade Regulations

1. Article X of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. In accordance with its laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings of the kind referred to in paragraph 1 available on the internet.

Article 2.8. Customs Valuation

The Parties shall apply the provisions of Article VII of GATT 1994 and the Customs Valuation Agreement for the purposes of determining the customs value of goods traded between the Parties.

Article 2.9. Transparency

In accordance with Article X of GATT 1994, each Party shall promptly make available in printed and/or, wherever possible, electronic form all laws, regulations, judicial decisions and administrative rulings of general application to imports or exports, including information pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, to enable the other Party and traders to become acquainted with them.

Article 2.10. Non-tariff Measures

1. Except as otherwise 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 of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and to this end Article XI of GATT 1994 is incorporated into and shall form part of this Agreement, mutatis mutandis.

2. The Parties shall not adopt or maintain any other non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its obligations under the WTO Agreement or in accordance with this Agreement.

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

4. The Parties shall consult on non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties.

Article 2.11. Import Licensing

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

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

3. Upon request of the other Party, a Party shall provide information within 30 days on the criteria employed by its licensing authorities in granting or denying import licenses. The importing Party shall also consider publication of such criteria.

4. The consultations provided for in paragraph 4 of Article 2.10 (Non-Tariff Measures) shall include elements in non-automatic import licensing procedures that may be impeding trade.

Article 2.12. Amendments to the Hs

1. The Parties shall mutually decide whether any revisions are necessary to implement Annex 1 (Schedules of Tariff Commitments) due to periodic amendments to the HS.

2. Where the Parties decide that revisions are necessary in accordance with paragraph 1, the Parties, through the FTA Joint Commission or a relevant subsidiary body established by it, shall endorse and promptly publish such revisions.

3. The provisions of this Article are without prejudice to the rights of the Parties to amend the Agreement in accordance with Article 21.6 (Amendments) of Chapter 21 (Final Provisions).

Article 2.13. Institutional Arrangements

The FTA Joint Commission, or a subsidiary body established by it, may consider any matters relating to the implementation of this Chapter and the implementation of Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Cooperation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), and Chapter 7 (Trade Remedies), including:

(a) reviewing and monitoring the implementation and operation of these chapters;

(b) identifying areas to be improved for facilitating trade between the Parties;

(c) discussing any other issues related to these chapters; and

(d) reviewing implication of HS amendments.

Chapter 3. Rules of Origin

Article 3.1. Definitions

For the purposes of this Chapter:

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

(b) **CIF value** means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country of importation. The valuation shall be calculated in accordance with the Customs Valuation Agreement;

(c) **FOB value** means the value of the good free on board, independent of the means of transportation, at the port or site of final shipment abroad. The valuation shall be calculated in accordance with the Customs Valuation Agreement;

(d) **fungible** means materials that are identical or interchangeable as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(e) **generally accepted accounting principles** means 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;

(f) **indirect material** means a material used in the production, testing or inspection of a good but not physically incorporated into the good, or a material used in the maintenance of buildings or the operation of equipment associated with the production of a good including:

(i) fuel and energy;

(ii) tools, dies and moulds;

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

(iv) lubricants, greases, compounding materials and other materials used in production;

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

(vi) equipment, devices and supplies used for testing or inspecting the good;

(vii) catalysts and solvents; and

(viii) any other materials that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(g) **material** means any good used or consumed in the production of another good, and physically incorporated into that good;

(h) **originating material** means a material that qualifies as originating in accordance with the relevant provisions of this Chapter;

(i) **planted** means the planting, cultivating and harvesting of plantation crops and its related products; and

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

Article 3.2. Originating Goods

For the purposes of this Agreement, a good shall be deemed to be an originating good of a Party if it:

(a) is a wholly obtained or produced good of one or both of the Parties;

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

(c) satisfies all applicable requirements of Annex 2 (Product Specific Rules Schedule), as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers; or

(d) otherwise qualifies as an originating good under this Chapter,

and meets all other applicable requirements of this Chapter.

Article 3.3. Wholly Obtained or Produced Goods

For the purposes of Article 3.2 (Originating Goods), a good that is wholly obtained or produced in the territory of one or both of the Parties means:

(a) mineral and other naturally occurring substances extracted or taken there;

(b) plants formed or naturally grown or planted there, or products obtained from such plants;

(c) live animals born and raised there;

(d) goods obtained from live animals there;

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

(f) goods (fish, shellfish, plant and other marine life) taken from the high seas by a vessel registered to a Party and flying its flag;

(g) goods obtained or produced on board factory ships registered to a Party and flying its flag from the goods referred to in subparagraph (f);

(h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which non- Parties exercise jurisdiction, under exploitation rights granted in accordance with international law;

(i) goods which are:

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

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

(j) goods produced or obtained entirely there, exclusively from goods referred to in subparagraphs (a) to (i) or from their derivatives.

Article 3.4. Cumulation

1. A good which is to be treated as originating pursuant to Article 3.2 (Originating Goods) and is used in the production of a good or goods in the territory of the other Party shall be considered to originate in the territory of that other Party.

2. Production that occurs in the territory of one or both of the Parties by one or more producers shall count as qualifying content in the origin determination of a good regardless of whether that production was sufficient to confer originating status on the material used in the production of that good.

Article 3.5. De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 2 (Product Specific Rules Schedule) shall nonetheless be treated as an originating good if:

(a) for a good, other than that provided for in Chapters 50 to 63 of the HS, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

(b) for a good provided for in Chapters 50 to 63 of the HS, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

and the good meets all other applicable criteria of this Chapter.

2. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

Article 3.6. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. For the purposes of determining the origin of a good, accessories, spare parts,tools and instructional or other information materials presented with the good shall be considered originating goods and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification or production process.

2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good is to be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

3. Paragraphs 1 and 2 shall only apply provided that:

(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are 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 that good.

4. Where accessories, spare parts, tools and instructional or other information materials presented with the good are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of origin determination.

Article 3.7. Fungible Materials

1. The determination of whether fungible materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. The inventory management method used under paragraph 1 for a particular fungible material shall continue to be used for that material throughout the fiscal year.

Article 3.8. Packaging Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account for determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification or production process requirements as set out in Annex 2 (Product Specific Rules Schedule).

3. If a good is subject to a regional value content requirement then the value of the packaging materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

4. Where the packaging material and container is not customary for the good, its value shall not be included as originating in a regional value content calculation for the good.

Article 3.9. Indirect Material

An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

Article 3.10. Minimal Operations

1. A good shall not be considered to be originating merely by reason of having undergone one or more of the following operations or processes:

(a) operations to preserve goods in good condition for the purpose of transport or storage;

(b) facilitating shipment or transportation; (c) disassembly;

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

(e) placing in bottles, cases, boxes and other simple packaging operations; (f) changes of packaging and breaking up and assembly of packages; or (g) mere reclassification of goods without any physical change.

2. Paragraph 1 shall prevail over the Product Specific Rules set out in Annex 2 (Product Specific Rules Schedule).

Article 3.11. Regional Value Content

1. Where Annex 2 (Product Specific Rules Schedule) refers to a regional value content requirement, the regional value content of that good shall be calculated using one of the following methods:

Build-down Method/ Indirect Method

RVC = V-VNM x 100

V

or

Build-up Method

RVC = VOM x 100

V

where:

(a) **RVC** is the regional value content, expressed as a percentage; V is the value of the good, as provided in paragraph 2;

(b) **VNM** is the value of non-originating material, as provided in paragraph 3, including materials of undetermined origin as provided in Article 3.12 (Calculation of the Value of a Good or Material); and

(c) **VOM** is the value of originating material that is acquired or self- produced, and used or consumed by the producer in the production of the good as provided in Article 3.12 (Calculation of the Value of a Good or Material).

2. The value of a good referred to in paragraph 1 shall be:

(a) for goods to be exported, the FOB value of the good determined pursuant to the Customs Valuation Agreement; or

(b) for goods acquired within the territory of the Party, where the good is produced, the earliest ascertainable price paid or payable for the good, determined for domestic transactions pursuant to the Customs Valuation Agreement, mutatis mutandis.

3. The value of non-originating materials or materials of undetermined origin referred to in paragraph 1 shall be:

(a) for imported materials, the CIF value of the material, determined pursuant to the Customs Valuation Agreement; or

(b) for materials acquired within the territory of the Party where the good is produced, the earliest ascertainable price paid or payable for the non- originating materials in the territory of that Party, determined for domestic transactions pursuant to the Customs Valuation Agreement, mutatis mutandis.

Article 3.12. Calculation of the Value of a Good or Material

1. For the purpose of this Article, the value of a material is:

(a) for a material imported by the producer of the good, the value of the material;

(b) for a material acquired in the territory where the good is produced, the earliest ascertainable price paid or payable for the material; or

(c) for a material that is self-produced, the sum of all expenses incurred in the production of the material, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.

2. The value of materials may be adjusted as follows:

(a) for originating materials, the following expenses may be added to the value of the material if not included under paragraph 1:

(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Parties' territories to the location of the producer;

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

(iii) the costs of waste and spoilage, where it can be determined, incurred from the use of the material in the production of the good, less the value of renewable scrap or by-products; or

(b) for non-originating materials, where included under paragraph 1, the following expenses may be deducted from the value of the material:

(i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Parties' territories to the location of the producer;

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

(iii) the costs of waste and spoilage, where it can be determined, incurred from the use of the material in the production of the good, less the value of renewable scrap or by-products;

(iv) the cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material; and

(v) the cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

Article 3.13. Recording of Costs

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

Article 3.14. Consignment

A good shall be treated as originating provided that the good undergoes no subsequent production or any other operation in non-Parties, other than unloading, reloading, storing, repacking, relabelling or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

Article 3.15. Declaration of Origin or Certificate of Origin

1. A claim that a good should be treated as originating and accepted as eligible for a preferential tariff shall be supported by a Declaration of Origin completed by the exporter or producer as outlined in the Annex on Operational Certification Procedures (3).

2. Notwithstanding paragraph 1, Malaysia shall require its exporters or producers to obtain a Certificate of Origin as outlined in the Annex on Operational Certification Procedures*. Malaysia may elect to waive the Certificate of Origin requirement and replace it with the Declaration of Origin requirement at any time.

3. A Declaration of Origin or Certificate of Origin shall remain valid for one year after the date on which the Declaration of Origin was signed or the Certificate of Origin was issued.

4. For any originating good that has completed customs clearance of a Party on or after the date of entry into force of this Agreement, each Party shall accept a Declaration of Origin or a Certificate of Origin that has been completed and signed prior to that date.

(3) For the purposes of Article 3.15, a Declaration of Origin may be completed by an authorised representative on behalf of the exporter or producer. * For the purposes of Article 3.15, a Certificate of Origin may be obtained by an authorised representative on behalf of the exporter or producer.

Article 3.16. Issuing Authority

1. The Certificate of Origin shall be issued by an Issuing Authority of Malaysia. Malaysia shall inform Australia of the names and addresses of the Issuing Authority and shall provide specimen signatures and specimens of the impression of official seals of the Issuing Authority electronically to Australia.

2. Any change in names, addresses, or official seals shall be promptly informed in the same manner.

3. Any Certificate of Origin issued by a person not included in the specimen signatures may not be honoured by the Customs Administration of Australia.

Article 3.17. Claim for Preferential Tariff Treatment

1. Subject to Article 3.22 (Suspension or Denial of Preferential Tariff Treatment), the importing Party shall grant preferential tariff treatment to a good imported into its territory from the other Party, provided that:

(a) the good is an originating good;

(b) the consignment criteria outlined in Article 3.14 (Consignment) have been met; and

(c) the importer claiming preferential tariff treatment has met the Declaration of Origin or Certificate of Origin requirements specified in Article 3.15 (Declaration of Origin or Certificate of Origin).

2. Notwithstanding paragraph 1, the importing Party may elect to waive the requirement for a Declaration of Origin or Certificate of Origin or any of the requirements in Rule 7 of the Annex on Operational Certification Procedures.

3. The importing Party shall grant preferential tariff treatment to a good that has completed customs clearance after the date of entry into force of this Agreement and for which no preferential tariff treatment was earlier applied, if:

(a) the claim for preferential tariff treatment is made within one year from the date of payment of customs duties, or such longer period as specified in the laws, regulations and policies in the importing Party; and

(b) the good has met all the requirements of this Chapter necessary to be deemed as an originating good.

4. An originating good of a Party imported into the other Party after an exhibition in the other Party or a non-Party shall continue to qualify as an originating good.

5. Where the origin of the good is not in doubt, the discovery of minor transcription errors or discrepancies in documentation shall not ipso facto invalidate the Declaration of Origin or Certificate of Origin, if it does in fact correspond to the goods submitted.

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

7. The importing Party shall require that an importer promptly makes a corrected import declaration and pays any owed duties when the importer has reason to believe that the good does not meet the origin requirements.

Article 3.18. Exceptions from Declaration of Origin or Certificate of Origin

A Declaration of Origin or Certificate of Origin shall not be required where the total customs value of the originating goods does not exceed 200 United States dollars FOB or the equivalent amount in that Party's currency, or such higher amount as the Party may establish, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of this Chapter.

Article 3.19. Records

1. Each Party shall require that:

(a) an exporter shall maintain for five years from the date of the Declaration of Origin or Certificate of Origin, all records relating to the origin of a good for which preferential tariff treatment is claimed in the importing Party, including the Declaration of Origin or Certificate of Origin relevant to the good, or a copy thereof; and

(b) an importer claiming preferential tariff treatment shall maintain, for five years after the date of importation of a good, all records relating to the importation of the good, including the Declaration of Origin or Certificate of Origin relevant to the good, or a copy thereof.

2. The application for Certificates of Origin and all documents related to such application shall be retained by the Issuing Authority for five years from the date of issuance.

3. The records to be maintained pursuant to this Article shall include electronic records.

Article 3.20. Origin Verification

1. The importing Party may verify the eligibility of a good for preferential tariff treatment in accordance with its laws, regulations and policies.

2. Verification of eligibility for preferential tariff treatment may include either Party taking the following courses of action:

(a) instituting measures to establish the validity of the Declaration of Origin or Certificate of Origin;

(b) issuing written requests for information, to the relevant importers of a good for which preferential tariff treatment was claimed in the territory of the importing Party;

(c) requesting the importer to arrange for the supply of records relating to the production, manufacture or export of the good for which preferential tariff treatment was claimed in the territory of the importing Party;

(d) requests to the relevant administration of the exporting Party to obtain the information requested in subparagraph (c); or

(e) visiting the factory or premises of the producer, importer, exporter or any other party in the territory of a Party associated with the production, import or export of the good for which preferential tariff treatment was claimed in the territory of the importing Party, or of the materials used or consumed in the production of that good.

3. All requests to the relevant administration of the exporting Party in relation to subparagraph (2)(d) to obtain the information will be subject to the resources constraints of the relevant administration in the exporting Party.

4. The importing Party shall not visit the factory or premises of any party listed in subparagraph (2)(e) within the territory of the exporting Party without the prior consent of that Party.

5. To the extent allowed by its laws, regulations and policies, the exporting Party shall fully cooperate in any action to verify eligibility and shall require that producers and exporters cooperate in any action to verify eligibility.

6. Action to verify eligibility for preferential tariff treatment shall be completed and a decision shall be made within 130 days of the commencement of such action. A decision as to whether goods are eligible for preferential tariff treatment must be provided to all relevant parties within 20 days of the decision being made.

Article 3.21. Confidentiality

Any information communicated between the Parties concerned shall be treated as confidential and shall be used for the verification of Declarations of Origin or Certificates of Origin purposes only.

Article 3.22. Suspension or Denial of Preferential Tariff Treatment

1. Notwithstanding paragraph 1 of Article 3.17 (Claim for Preferential Tariff Treatment), the importing Party may suspend the application of preferential tariff treatment to a good that is the subject of an origin verification action under Article 3.20 (Origin Verification) for the duration of that action, or any part thereof. The importing Party shall permit the release of the good, subject to lodgement of a security equivalent to the amount of the MFN duty payable or payment of the MFN duty on that good, provided that the good is not subject to import prohibition or restriction and there is no suspicion of fraud.

2. The importing Party may deny a claim for preferential tariff treatment or recover unpaid duties where:

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

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

(c) action taken under Article 3.20 (Origin Verification) failed to verify the eligibility of the good for preferential tariff treatment.

3. The Customs Administration of the importing Party shall not reject a Declaration of Origin or Certificate of Origin only for the reason that the invoice is issued in a non-Party or by a third-party.

Article 3.23. Appeal

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

Article 3.24. Hs Amendments

1. For the purposes of this Chapter, including Annex 2 (Product Specific Rules Schedule), the references to tariff classification are to the HS applied in a Party at the time preference is claimed.

2. The Parties, through the FTA Joint Commission or a relevant subsidiary body, shall endorse and promptly publish a technical revision to Annex 2 (Product Specific Rules Schedule) to reflect each periodic amendment to the HS. The Parties shall determine the date on which such a revision will come into effect.

3. Paragraph 2 is without prejudice to the rights of the Parties to amend the Agreement in accordance with Article 21.6 (Amendments) of Chapter 21 (Final Provisions).

Article 3.25. Consultation and Review

1. The Parties shall consult regularly to ensure that the Rules in this Chapter are administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Chapter.

2. The Government authorities of the Parties shall consult with each other on any issues that arise concerning origin determination, classification of products or other matters related to this Chapter with a view to resolving such issues and, where relevant, inform the importer of the outcome.

3. The Parties, through the FTA Joint Commission or a relevant subsidiary body, may adopt:

(a) a List of Data Requirements that shall be applied in lieu of the listed data requirements in the Appendix to the Annex on Operational Certification Procedures; or

(b) other administrative practices consistent with this Agreement to ensure that the rules of origin are administered in an effective and trade facilitating manner.

Any such List of Data Requirements or administrative practices shall be promptly published and come into effect on the date determined by the Parties through the FTA Joint Commission or a relevant subsidiary body.

4. The Parties shall commence a review of this Chapter within three years and submit a final report to the FTA Joint Commission, including any recommendations, within four years of entry into force of this Agreement.

Article 3.26. Action Against Fraudulent Acts

When it is suspected that fraudulent acts in connection with the Declaration of Origin or Certificate of Origin have been committed, the Government authorities concerned shall cooperate in the exchange of information in accordance with the Parties' respective laws and regulations.

Article 3.27. Goods In Transport or Storage

1. In accordance with Article 3.17 (Claim for Preferential Tariff Treatment), the Customs Administration of the importing Party shall grant preferential tariff treatment for an originating good of the exporting Party which, on the date of entry into force of this Agreement:

(a) is in the process of being transported from the exporting Party to the importing Party; or

(b) has not been released from Customs control, including an originating good stored in a warehouse regulated by the Customs Administration of the importing Party.

2. In order to make a claim for preferential tariff treatment under paragraph 1, the importer shall comply with the requirements of Article 3.17 (Claim for Preferential Tariff Treatment).

Annex on operational certification procedures

For the purpose of implementing the Rules of Origin for the Malaysia-Australia Free Trade Agreement, the following operational procedures on the issuance of documentation that goods are originating goods in accordance with the Malaysia-Australia Free Trade Agreement Rules of Origin shall be followed:

Section A. Applicable to Declarations of Origin

Rule 1

The Declaration of Origin may take the form of a declaration on the invoice or company letterhead. At any time, the Parties may mutually decide to adopt any other format.

Section B. Applicable to Certificates of Origin

Rule 2

For the purpose of determining originating status, the Issuing Authority shall have the right to call for supporting documentary evidence and/or other relevant information to carry out any check considered appropriate.

Rule 3

1. The exporter or producer of the good shall apply in writing or by electronic means to the Issuing Authority requesting a pre-exportation examination of the origin of the good to be exported.

2. The result of the examination, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in issuing a Certificate of Origin for the good to be exported thereafter.

3. Pre-exportation examination need not apply to a good for which, by its nature, origin can be easily determined.

4. The exporter or producer of the good shall apply for the Certificate of Origin by providing appropriate supporting documents and other relevant information, proving that the good to be exported qualifies as originating.

Rule 4

The Issuing Authority shall, to the best of its competence and ability, carry out proper examination upon each application for the Certificate of Origin to ensure that:

(a) the application and the Certificate of Origin are duly completed and signed by the authorised signatory;

(b) the good is an originating good in accordance with this Chapter;

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

(d) information to meet the data requirements listed in the Appendix on Data Requirements is provided for the goods being exported.

Rule 5

1. The Certificate of Origin shall be issued by the relevant Issuing Authorities of the exporting Party prior to or at the time of exportation or soon thereafter whenever the products to be exported can be considered originating in that Party within the meaning of the Malaysia-Australia Free Trade Agreement Rules of Origin.

2. Where a Certificate of Origin has not been issued at the time of exportation or soon thereafter due to involuntary errors or omissions or other valid causes, the Certificate of Origin may be issued retroactively but no longer than one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY".

Rule 6

In the event of theft, loss or destruction of a Certificate of Origin, the exporter or producer may apply in writing to the Issuing Authority for a certified true copy of the original to be made on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY". This copy shall bear the date of the original Certificate of Origin.

Section C. Declarations of Origin and Certificates of Origin

Rule 7

1. The Declaration of Origin or Certificate of Origin must contain the data requirements listed in the Appendix or in a List of Data Requirements adopted by the Parties in accordance with paragraph 3 of Article 3.25 (Consultation and Review) of Chapter 3 (Rules of Origin) and:

(a) specify that the goods described therein are originating goods of the exporting Party and meet the requirements of this Chapter;

(b) be made in respect of one or more goods and may include a variety of goods;

(c) be completed in English; and (d) beina printed format or such other medium including electronic format.

2. The Declaration of Origin or Certificate of Origin shall comprise one original.

Rule 8

Neither erasures nor superimposition shall be allowed on the Declaration of Origin or Certificate of Origin. Any alteration shall be made by striking out the erroneous materials and making any addition required. In the case of a Declaration of Origin, the alteration shall be approved by the person making the declaration. For a Certificate of Origin, the alteration shall be certified by the Issuing Authority. Unused spaces shall be crossed out to prevent any subsequent addition.

Rule 9

The original Declaration of Origin or Certificate of Origin shall be submitted to the Customs Administration of the importing Party when requested by that Administration.

Appendix on data requirements

The data to be included in the Declaration of Origin or Certificate of Origin are: (a) name and details of the exporter/producer;

(b) declaration by the exporter/producer or their authorised representative that the goods are originating;

(c) description of the goods; (d) HS Code (6 digits); and

(e) _ origin conferring criteria.

Chapter 4. Customs Procedures and Cooperation

Article 4.1. Scope

This Chapter shall apply, in accordance with the Parties' respective laws, regulations and policies, to customs procedures applied to goods traded between the Parties.

Article 4.2. Definitions

For the purposes of this Chapter:

(a) **customs laws and regulations** means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit/transhipment of goods;

(b) **customs procedures** means the treatment applied by the Customs Administration of a Party to goods which are subject to that Party's customs laws and regulations.

Article 4.3. Customs Administration

1. Customs procedures of each Party shall conform, where possible, and to the extent permitted by its respective laws, regulations and policies, to international standards and recommended practices established by the World Customs Organization.

2. Each Party shall ensure that its customs procedures are administered to facilitate trade in an impartial, uniform and transparent manner and avoid arbitrary and unwarranted procedural obstacles.

3. The Customs Administration of each Party shall periodically review its customs procedures with a view to exploring options for their simplification and the enhancement of mutually beneficial arrangements to facilitate trade between the Parties.

4. Each Party shall ensure that goods are released within a period no longer than that required to ensure compliance with its customs laws and regulations.

Article 4.4. Cooperation

1. To the extent permitted by their laws, rules and regulations, the Parties shall endeavour to provide each other with information to assist in the investigation and prevention of infringements of customs and customs-related laws and regulations.

2. Each Party shall also make efforts to explore additional means of cooperation to enhance the ability of either Party to implement the customs-related provisions of this Agreement.

3. This could include cooperation in relation to the following:

(a) implementation and operation relating to the importation or exportation of goods;

(b) the use of information and communications technology, including possible electronic data interchange between the Parties;

(c) activities undertaken with other national authorities and the trading communities of the respective Parties;

(d) best practice on risk management and other enforcement techniques; and

(e) such other matters relating to the importation or exportation of goods as the Parties may agree.

4. The Parties shall endeavour to provide each other capacity building and technical assistance as appropriate, including in areas such as risk management, post-clearance audit, computer forensic and rules of origin.

5. Each Party shall endeavour to provide the other with advance notice of any proposed laws, regulations or policies governing the administration of customs procedures that are likely to substantially affect the operation of this Agreement.

Article 4.5. Risk Management

1. The Parties shall administer customs procedures so as to facilitate the clearance of low-risk goods and focus on high-risk goods. To enhance the flow of goods across their borders the Customs Administrations of each Party shall regularly review these procedures.

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

Article 4.6. Advance Rulings

1. Each Party shall provide for written advance rulings to be issued to an importer in its territory, or an exporter or producer in the territory of the other Party, concerning:

(a) tariff classification;

(b) questions arising from the application of the principles of the Customs Valuation Agreement; and,

(c) to the extent permitted by its laws, regulations and administrative determinations, origin of goods (5).

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

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

(b) require that an applicant for an advance ruling include a detailed description of the goods and all relevant information required to process a request for an advance ruling;

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

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

(e) provide that an advance ruling be issued to the applicant expeditiously, within the period specified in each Party's laws, regulations or administrative determinations, and in any case within 90 days of receipt of all necessary information, or within 60 days of receipt of a third party analysis report where this is required; and

(f) provide in writing the reasons for the decision.

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

4. A Party may modify or revoke an advance ruling where there is a determination that the advance ruling was based on an error of fact or law, or if there is a change in:

(a) its law consistent with relevant provisions of this Agreement; or (b) amaterial fact; or (c) the circumstances on which the ruling was based.

5. Subject to paragraph 4, each Party shall apply an advance ruling to importations into its territory beginning on the date it issues the ruling or on any other date specified in the ruling. The Party shall ensure the same treatment of all importations regardless of the importer, exporter, or producer involved, where the facts and circumstances are identical in all material respects.

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

(5)For greater certainty, Malaysia shall provide advance rulings on the origin of goods only when itis provided in its domestic legislation.

Article 4.7. Publication and Enquiry Points

1. Each Party shall publish on the Internet and/or in print form its laws, regulations, and customs procedures applicable to, or enforceable by, its Customs Administration.

2. Each Party shall designate one or more enquiry points to address enquiries from interested persons on customs matters and shall make available on the Internet information concerning procedures for making such enquiries.

Article 4.8. Review and Appeal

1. Each Party shall ensure the availability of processes for administrative and judicial review of decisions taken by its Customs Administrations independent of the authority responsible for the decision under review.

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

Article 4.9. Confidentiality

1. Where a Party providing information to the other Party in accordance with this Chapter designates the information as confidential, the other Party shall maintain the confidentiality of that information. The Parties shall not use or disclose such information for purposes other than those specified in this request for information, or to the extent that the information may be required to be disclosed by or under law, or if its disclosure has been agreed to by the other Party in writing.

2. Nothing in this Chapter shall be construed to require a Party to furnish or allow access to information the disclosure of which would:

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

(b) be contrary to any of its laws and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individuals or which could prejudice legitimate commercial interests of particular enterprises, public or private; or

(c) impede law enforcement.

Chapter 5. Sanitary and Phytosanitary Measures

Article 5.1. Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade in food, animals and plants, including their products, while protecting human, animal or plant life

or health in the territory of each Party;

(b) deepen mutual understanding of each Party's laws, regulations and procedures relating to sanitary and phytosanitary measures;

(c) enhance implementation by the Parties of the SPS Agreement; and

(d) strengthen communication, consultation and cooperation between the Parties on sanitary and phytosanitary issues.

Article 5.2. Scope

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

2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 5.3. Definitions

For the purposes of this Chapter:

(a) **sanitary and phytosanitary measures** means any measure referred to in Annex A, paragraph 1 of the SPS Agreement; and

(b) **competent authorities** means those authorities which are accountable for the implementation of matters within the scope of this Chapter.

Article 5.4. Affirmation of the Sps Agreement

The Parties affirm their rights and obligations with respect to each other under the SPS Agreement and agree that this Chapter does not limit these rights and obligations.

Article 5.5. Information Exchange

1. Acknowledging the value of exchanging information in a timely manner relating to their respective sanitary and phytosanitary measures and ensuring transparency in the implementation of such measures, each Party shall facilitate the exchange of information on their respective sanitary and phytosanitary regimes.

2. In particular, each Party shall:

(a) establish a contact point for sanitary and phytosanitary measures;

(b) provide to the contact point of the other Party a list of its competent authorities and notify the contact point of the other Party of any significant changes in the structure, organisation and division of responsibility within its administration relevant to this Chapter; and

(c) provide to the contact point of the other Party a copy of notifications made in accordance with the SPS Agreement of new or revised sanitary and phytosanitary measures including measures imposed in response to an urgent threat to human, animal or plant life or health.

Article 5.6. Cooperation In Implementation of the Sps Agreement

1. The Parties shall cooperate to enhance implementation of the SPS Agreement, including through:

(a) exchanging information relating to their implementation of the SPS Agreement; and

(b) strengthening collaboration between the Parties in their involvement in the work of relevant international bodies that develop international standards, guidelines and recommendations relevant to the matters covered by this Chapter.

2. Each Party agrees to give consideration to the issues of regionalisation and equivalence, if raised by the other Party, in accordance with the SPS Agreement, in order to facilitate trade between the Parties.

Article 5.7. Consultative Arrangements

1. The Parties note the existence of the Malaysia-Australia Agricultural Cooperation Working Group (MAACWG) and its subsidiary working groups.

2. To enhance these existing arrangements, the Parties agree to establish an SPS Working Group consisting of representatives of the competent authorities of the Parties and any other relevant representatives of the Parties.

3. The SPS Working Group shall provide a forum for consideration of any matter relating to the implementation of this Chapter, including:

(a) exchanging information on each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(b) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement;

(c) considering, where appropriate, sanitary and phytosanitary matters that may arise between the Parties; and

(d) exploring and enhancing opportunities for further cooperation and exchange of information of mutual interest on matters relating to SPS measures.

4. The SPS Working Group shall meet annually, or as otherwise agreed by the Parties, to promote the objectives set out in Article 5.1 (Objectives).

5. The SPS Working Group shall report to the FTA Joint Commission or a subsidiary body established by it.

6. The Parties agree to enter into urgent consultations at the request of either Party where trade is disrupted on sanitary and phytosanitary grounds, with a view to facilitating trade and minimising the impact of the disruption.

Chapter 6. Standards, Technical Regulations and Conformity Assessment Procedures

Article 6.1. Objectives

The objectives of this Chapter are to:

(a) facilitate trade in goods between the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;

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

(c) strengthen cooperation and information exchange between Australian and Malaysian bodies with responsibility for the development and application of technical regulations, standards and _ conformity assessment procedures;

(d) strengthen cooperation between Australia and Malaysia in the work of regional and international bodies related to standards and conformity assessment procedures; and

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

Article 6.2. Scope

This Chapter shall apply to all standards, technical regulations and conformity assessment procedures at the central level of government that may affect trade in goods between the Parties, except:

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

(b) sanitary or phytosanitary measures as defined in Annex A of the SPS Agreement.

Article 6.3. Definitions

For the purposes of this Chapter:

(a) **TBT Agreement** means the Agreement on Technical Barriers to Trade, in Annex 1A to the WTO Agreement; and

(b) the definitions in Annex 1 to the TBT Agreement shall apply.

Article 6.4. Basic Principles

1. Each Party affirms their rights and obligations to each other in accordance with the TBT Agreement.

2. Each Party shall encourage local government and non-government bodies within its territory which are responsible for the development and implementation of technical regulations, standards and conformity assessment procedures to cooperate in the implementation of this Chapter.

Article 6.5. Standards

1. Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as the basis for its technical regulations.

2. Each Party shall encourage standardising bodies located in its territory to cooperate with those located in the territory of the other Party on matters of mutual interest, including their participation in the work of regional and international bodies engaged in the development of international standards and conformity assessment procedures.

Article 6.6. Technical Regulations

1. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its regulations.

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

Article 6.7. Conformity Assessment Procedures

1. The Parties recognise the benefits of increasing efficiency, avoiding duplication and ensuring cost effectiveness in conformity assessment, and that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment procedures. In this regard, each Party shall, as appropriate:

(a) encourage conformity assessment bodies located in its territory to enter into voluntary arrangements to accept the results of assessment procedures of bodies located in the territory of the other Party;

(b) consider recognising accreditation of conformity assessment bodies located in the territory of the other Party;

(c) consider designating conformity assessment bodies located in the territory of the other Party to perform conformity assessments;

(d) facilitate access to conformity assessment procedures in its territory;

(e) encourage the adoption by conformity assessment bodies in its territory of regional and international mutual recognition agreements and arrangements; and

(f) consider implementing mutual recognition of results of conformity assessment procedures conducted by bodies located in the respective territories of the Parties.

2. The Parties shall exchange information on their experience in the development and application of the mechanisms in subparagraphs 1 (a)-(f) and other similar mechanisms with a view to facilitating the acceptance of the results of conformity assessment.

3. Where a Party does not accept the results of any conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.

Article 6.8. Information Exchange

1. The Parties shall encourage regulatory bodies in their territories to exchange information on their experience in the development and application of technical regulations.

2. Where a Party makes a notification in accordance with the TBT Agreement relating to proposed new or amended measures, including measures imposed to address urgent problems, it shall at the same time transmit the notification to

the other Party electronically through the enquiry point the Party has established in accordance with Article 10 of the TBT Agreement.

Article 6.9. Cooperation and Chapter Coordinators

1. The Parties shall intensify their joint work in the field of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's markets. In particular, the Parties shall seek to identify, develop and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures in areas of mutual interest. On request of the other Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for cooperation under this Chapter. Each Party shall promptly acknowledge receipt of any proposal by the other Party for sector-specific initiatives under this Chapter. Consideration of such proposals should be based on the mutual interest of the Parties.

2. Each Party shall designate a Chapter Coordinator who shall be responsible for coordinating with interested persons in the Party's territory and communicating with the other Party's Coordinator on matters pertaining to this Chapter. The Coordinators' functions shall include:

(a) monitoring the implementation of this Chapter;

(b) exchanging information on standards, technical regulations, and conformity assessment procedures;

(c) promptly addressing any issue that a Party raises in relation to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;

(d) facilitating the consideration of any proposal a Party makes for further cooperation between conformity assessment bodies, both governmental and non-governmental, in the territories of the Parties;

(e) facilitating the consideration of a request that a Party recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;

(f) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;

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

(h) coordinating to identify trade facilitating initiatives in accordance with paragraph 1; and

(i) on request of a Party, consulting on any matter arising under this Chapter.

3. The Chapter Coordinators shall communicate with one another by any mutually agreed method that is appropriate for the efficient and effective discharge of their functions. Each Party shall notify its Chapter Coordinators to the other Party and promptly notify of any change of their Chapter Coordinators.

4. Where a matter covered under this Chapter cannot be clarified or resolved through the Chapter Coordinators, the FTA Joint Commission or a subsidiary body established by it may establish an ad hoc technical working group with a view to identifying a workable and practical solution that would facilitate trade. A working group shall comprise representatives of the Parties and may, where appropriate, include local government representatives with responsibility for the standards, technical regulations, or conformity assessment procedures in question.

Chapter 7. Trade Remedies

Section A. General Provisions

Article 7.1. Definitions

For the purposes of this Chapter:

(a) **Agreement on Safeguards** means the Agreement on Safeguards, in Annex 1A to the WTO Agreement;

(b) **Agreement on Agriculture** means the Agreement on Agriculture, in Annex 1A to the WTO Agreement;

(c) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(d) **global safeguard measure** means a measure applied under Article XIX of GATT 1994, the Agreement on Safeguards, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement;

(e) **provisional measure** means a provisional safeguard measure described in Article 7.11 (Provisional Safeguard Measures);

(f) **safeguard measure** means a safeguard measure described in Article 7.10 (Scope and Duration of Safeguard Measures);

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

(h) **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

(i) **transitional safeguard period** means, in relation to a particular good, the period from the entry into force of this Agreement until two years after the date on which the customs duty on that good is to be eliminated, or reduces to its final commitment, in accordance with that Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

Article 7.2. Anti-dumping Measures

1. The rights and obligations of the Parties relating to application of anti-dumping measures shall be governed by Article VI of the GATT 1994 and the Anti-Dumping Agreement.

2. In order to enhance transparency:

(a) the Parties confirm their current practice of counting toward the average all individual margins, whether positive or negative, when anti-dumping margins are established on the weighted-to-weighted basis or transaction-to-transaction basis, or weighted-to-transaction basis, and share their expectation that such practice will continue; and

(b) the Party making a decision to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, will normally apply the 'lesser duty' rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

Article 7.3. Subsidies and Countervailing Measures

The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Article XVI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures.

Article 7.4. Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Agreement on Safeguards and the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.

2. A Party shall not apply a safeguard measure or provisional measure, as provided in Article 7.10 (Scope and Duration of Safeguard Measures) or Article 7.11 (Provisional Safeguard Measures) on a good that is subject to a global safeguard measure, nor shall a Party continue the imposition of a safeguard measure or provisional measure on a good that becomes subject to a global safeguard measure.

3. A Party considering the imposition of a global safeguard measure on an originating good of the other Party shall initiate consultations with that Party as far in advance of taking such measure as practicable.

Article 7.5. Cooperation

1. The Parties agree to cooperate to:

(a) enhance each Party's knowledge and understanding of the other Party's trade remedy laws, regulations, policies, and practices; and

(b) exchange information on issues relating to:

(i) anti-dumping, safeguards and subsidies and countervailing measures;

(ii) developments in the WTO and other relevant international forums; and

(iii) practices by the Parties' competent authorities in anti-dumping, safeguards and subsidies and countervailing investigations.

2. The Parties may discuss matters pertaining to this cooperation through the FTA Joint Commission or a subsidiary body established by it.

Section B. Transitional Safeguard Measures

Article 7.6. Scope

This Section applies to safeguard measures adopted or maintained by a Party affecting trade in goods among the Parties during the transitional safeguard period.

Article 7.7. Application of a Safeguard Measure

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

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

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

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

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

Article 7.8. Investigation

1. A Party shall take a safeguard measure only following an investigation by that Party's competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Agreement on Safeguards, and to this end, Article 3 and Article 4.2 of the Agreement on Safeguards shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Each Party shall ensure that its competent authorities complete any such investigation expeditiously and, in any event, within one year following the date of its initiation.

Article 7.9. Notification

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

(a) initiating an investigation under Article 7.8 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the reduction or elimination of a customs duty on that originating good;

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

(d) taking a decision to progressively liberalise an existing safeguard measure.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 7.8 (Investigation) immediately after it is available.

3. A notification as referred to in subparagraph 1(a) shall include:

(a) the reason for the initiation of the investigation;

(b) a precise description of an originating good subject to the investigation and its subheading or more detailed level of the tariff;

(c) the period subject to the investigation; and

(d) the date of initiation of the investigation.

4. Notifications as referred to in subparagraphs 1(b), (c) and (d) shall include:

(a) a precise description of the originating good involved and its subheading or more detailed level of the tariff;

(b) evidence of serious injury or threat thereof caused by increased imports of the originating good of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

(c) the details of the proposed safeguard measure; and

(d) the proposed date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided.

Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information provided under paragraphs 2 and 4 arising from the investigation referred to in Article 7.8 (Investigation), exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 7.12 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 7.11 (Provisional Safeguard Measures), on request of the other Party, consultations shall be initiated immediately after such application.

Article 7.10. Scope and Duration of Safeguard Measures

1. A Party may not maintain a 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;

(b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of that Party determine, in conformity with the procedures referred to in Article 7.8 (Investigation), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting; or

(c) for a period exceeding three years, including any extension.

2. Where the expected duration of the safeguard measure is over one year, the importing Party shall ensure that the safeguard measure is progressively liberalised at regular intervals during the period of application.

3. When a Party terminates a safeguard measure on a good, the rate of customs duty for that good shall be no higher than the rate that, according to Annex 1 (Schedules of Tariff Commitments), would have been in effect as if the safeguard measure had never been applied.

4. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate following the end of the transitional safeguard period for such good.

5. A Party may not impose a safeguard measure more than once on imports of any good. 6. A Party shall not apply a safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance to Annex 1 (Schedules of Tariff Commitments).

Article 7.11. Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an

originating good from the other Party have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of Article 7.1 (Definitions), Article 7.7 (Application of a Safeguard Measure), Article 7.8 (Investigation), Article 7.9 (Notification) and Article 7.10 (Scope and Duration of Safeguard Measures) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to in Article 7.10 (Scope and Duration of Safeguard Measures).

3. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 7.8 (Investigation) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

Article 7.12. Compensation

1. A Party proposing to apply a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade compensation in the form of substantially equivalent concessions during the period of application of the safeguard measure. Such consultations shall begin within 30 days of the decision to apply the safeguard measure and, in accordance with Article 7.9 (Notification), shall take place prior to the application of the safeguard measure.

2. If the Parties are unable to reach agreement on compensation within 30 days of the commencement of the consultations, the exporting Party shall be free to suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The Party may suspend the concession only for the minimum period necessary to achieve the substantially equivalent effects and only while the safeguard measure is maintained.

3. The right of suspension provided for in paragraph 2 shall not be exercised for the first year that the safeguard measure is in effect, provided that the safeguard measure has been applied as the result of an absolute increase in imports and that such a measure conforms to this Section.

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

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

Chapter 8. Trade In Services

Article 8.1. Scope

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

2. For the purposes of this Chapter, measures by a Party means measuresadopted or maintained 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.

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

4. This Chapter shall not apply to measures affecting:

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

(b) government procurement;

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

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

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services.

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

Article 8.2. Definitions

For the purposes of this Chapter:

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

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

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

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

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

(d) j**uridical person of a Party** means a juridical person which is either:

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

(ii) in the case of the supply of a service through commercial presence, owned or controlled by a natural or juridical person of the other Party;

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

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

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

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

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

(g) **sector of a service** means:

(i) with reference to a specific commitment, one or more, or all, sub- sectors of that service, as specified in a Party's schedule of specific commitments in Annex 3 (Schedules of Specific Services Commitments); or

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

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

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

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

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

part; or

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

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

(l) **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;

(m) **service supplier of a Party** means a person of that Party that supplies a service (6);

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

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

(i) from the territory of one Party into the territory of the other Party;

(ii) in the territory of one Party to the service consumer of the other Party;

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

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

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

(6) 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. juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment 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.

Article 8.3. National Treatment

1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons 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 (7).

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

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

(7) 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.

Article 8.4. Institutional Arrangements

The FTA Joint Commission or a subsidiary body established by it may consider any matters relating to the implementation of this Chapter and its Annex on Financial Services, Chapter 9 (Telecommunications Services), Chapter 10 (Movement of Natural Persons), and Chapter 11 (Framework on Mutual Recognition Arrangements), including:

(a) reviewing and monitoring the implementation and operation of these chapters and annex;

(b) identifying areas to be improved for facilitating trade between the Parties;

(c) the implementation of Article 8.13 (Emergency Safeguard Measures);

(d) consideration of the application of Most-Favoured-Nation (MFN) treatment;

(e) facilitating cooperation between the Parties; and

(f) discussing any other issues related to these chapters and annex.

Article 8.5. Market Access

1. With respect to market access through the modes of supply identified in subparagraph (0) of Article 8.2 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments) (8).

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons 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 services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test (9);

(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.

(8) If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (o}(i) of Article 8.2 (Definitions) 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 through the mode of supply referred to in subparagraph (o)(iii) of Article 8.2 (Definitions), it is hereby committed to allow related transfers of capital into its territory.

(9) Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 8.6. Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 8.3 (National Treatment), Article 8.5 (Market Access) and Article 8.7 (Additional Commitments). With respect to sectors where such commitments are undertaken, each schedule shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the timeframe for implementation of such commitments.

2. Measures inconsistent with both Article 8.3 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Market Access. In this case, the inscription will be considered to provide a condition or qualification to

National Treatment as well.

3. Schedules of specific commitments in respect of services shall be set out in Annex 3 (Schedules of Specific Services Commitments) of this Agreement. The specific commitments in respect of the supply of a service by a service supplier of one Party through presence of natural persons of a Party in the territory of the other Party shall be set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) of this Agreement.

Article 8.7. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Article 8.3 (National Treatment) and Article 8.5 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) and in Annex 4 (Schedules of Movement of Natural Persons Commitments).

Article 8.8. Modification of Schedules

1. A Party may modify or withdraw any commitment in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), at any time after three years have elapsed from the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, mutatis mutandis, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999 (the GATS Article XXI Procedures), mutatis mutandis, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the "Secretariat" and the "Council for Trade in Services" shall each be read as references to the FTA Joint Commission.

Article 8.9. Domestic Regulation

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

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the WTO negotiations on disciplines on such measures, pursuant to Article V1.4 of GATS, and shall amend this Article, as appropriate, after consultations between the Parties, to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures are, inter alia:

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

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

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

3. In sectors in which a Party has undertaken specific commitments under Article 8.3 (National Treatment), Article 8.5 (Market Access) and Article 8.7 (Additional Commitments), pending the incorporation of the disciplines referred to in paragraph 2, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

(a) does not comply with the criteria outlined in subparagraphs 2(a), (b) or (c); and

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

4. In determining whether a Party is in conformity with its obligations under subparagraph 3(a), account shall be taken of international standards of relevant international organisations applied by that Party (10).

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

(a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) within a reasonable period of time after the submission of an application considered complete under laws and

regulations, inform the applicant of the decision concerning the application;

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

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

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

7. Subject to its laws and regulations, each Party shall permit service suppliers of the other Party to use the business names under which they ordinarily trade in the territory of the other Party and otherwise ensure that the use of business names is not unduly restricted.

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

Article 8.10. Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certification granted in the other Party for purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers of the other Party, subject to the requirements of paragraph 4.

2. Recognition referred to in paragraph 1, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognises, unilaterally or by agreement or arrangement, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party, a Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate accession to such an agreement or arrangement or to negotiate a comparable one with it. Where a Party accords recognition unilaterally, it shall afford the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications obtained in the other Party should also be recognised.

4. A Party shall not accord recognition in a manner which could constitute a means of discrimination between countries 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.

Article 8.11. Monopoly and Exclusive Services Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 8.3 (National Treatment) and Article 8.5 (Market Access).

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

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

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

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

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

Article 8.12. Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.11 (Monopoly and Exclusive Services Suppliers), may restrain competition and thereby restrict trade in services.

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

Article 8.13. Emergency Safeguard Measures

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

2. Notwithstanding paragraph 1, if:

(a) a Party considers it has suffered a substantial adverse impact caused by a specific commitment in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments); and

(b) a Party provides for more favourable treatment under this Agreement than the Party is obliged to provide to services and service suppliers of the other Party under GATS or the AANZFTA Agreement at the time this Agreement enters into force, the affected Party may request consultations with the other Party to deal with such situation and the requested Party shall respond to the request in good faith.

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

Article 8.14. Payments and Transfers

1. Except under the circumstances envisaged in Article 18.4 (Measures to Safeguard the Balance-of-Payments) of Chapter 18 (General Provisions and Exceptions), 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 (IMF) under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 18.4 (Measures to Safeguard the Balance-of- Payments) of Chapter 18 (General Provisions and Exceptions), or at the request of the IMF.

Article 8.15. Denial of Benefits

A Party may deny the benefits of this Chapter:

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

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

(i) by a vessel registered under the law of a non-Party; and

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

(c) to a service supplier, that is a juridical person, if it establishes that it is not a service supplier of the other Party.

Article 8.16. Review of Commitments

1. The Parties shall review commitments on trade in services with the first review within three years from the date of entry into force of this Agreement, and at least every five years subsequently, with the aim of improving the overall commitments undertaken by the Parties under this Agreement on a mutually advantageous basis.

2. In reviewing the commitments in accordance with paragraph 1, the Parties shall take into account paragraph 1 of Article IV and paragraph 2 of Article XIX of the GATS.

Annex on financial services

Article 1. Scope

1. This Annex provides for commitments additional to Chapter 8 (Trade in Services), Chapter 12 (Investment) and Chapter 17 (Transparency) in relation to financial services and shall prevail to the extent of any inconsistency with those Chapters.

2. This Annex shall apply to measures adopted or maintained by a Party affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a financial service:

(a) from the territory of one Party into the territory of the other Party;

(b) inthe territory of one Party to the service consumer of the other Party;

(c) by a service supplier of one Party, through commercial presence in the territory of the other Party; or

(d) by aservice supplier of one Party, through presence of natural persons of that Party in the territory of the other Party.

3. This Annex does not apply to services supplied in the exercise of governmental authority as follows:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities forming part of a statutory system of social security or public retirement plans; or

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

4. If a Party allows any of the activities referred to in subparagraphs 3(b) or (c) to be conducted by its financial institutions in competition with a public entity or a financial institution, this Annex shall apply to such activities.

5. Subparagraph (l) of Article 8.2 (Definitions) in Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

Article 2. Definitions

For the purposes of this Annex:

(a) **financial institution** means any financial intermediary or other juridical person that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

(b) **financial service** is any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(i) direct insurance (including co-insurance):

(AA) life; and

(BB) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers

drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

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

(BB) foreign exchange;

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

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

(EE) transferable securities; and

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

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

(xii) money broking;

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

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(c) **financial service supplier** means any natural person or juridical person of a Party wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity;

(d) **new financial service** means a financial service that is not supplied by any financial institutions in the territory of a Party but which is supplied in the territory of the other Party. This includes existing and new products or services, and the manner in which the product or service is delivered;

(e) **public entity** means a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes. This does not include an entity principally engaged in supplying financial services on commercial terms;

(f) **self-regulatory organisation** means:

(i) for Australia: any non-government body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

(ii) for Malaysia: any non-government body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association that is recognised by legislation as a_ self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers or financial institutions pursuant to legislation or delegation from central, regional or local governments or authorities.

Article 3. Shariah-compliant Financial Services

The Parties recognise that a Shariah-compliant financial service compatible with the definition in subparagraph (b) of Article 2 (Definitions) is a financial service, including for the purposes of Article 4 (New Financial Services). Accordingly, each Party will consider applications by financial institutions of the other Party to supply such services in its territory on an equal basis as any other application to supply financial services, consistent with its laws and regulations, including any regulatory or

supervisory requirements, and in accordance with its commitments and obligations under this Annex.

Article 4. New Financial Services

1. Each Party shall permit a financial institution of the other Party established in its territory to supply any new financial services similar to those services that a Party would permit its own financial institutions, in like circumstances, to supply under its laws and regulations.

2. A Party may however determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where the authorisation to supply new financial services is required, a decision shall be made within a reasonable time, and the authorisation may only be refused for prudential reasons.

3. Further to paragraph 1, a financial institution of a Party may apply to the other Party to consider authorising the supply of a financial service that is not supplied in either Party's territory. Such application shall be subject to the law of the Party to which the application is made.

Article 5. Prudential and Regulatory Supervision

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

2. These measures shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers or financial institutions of the other Party in comparison to its own like financial service suppliers or financial institutions, or a disguised restriction on trade in services.

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

Article 6. Recognition

1. A Party may recognise prudential measures of any international standard setting body or a non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard setting body or a non-Party concerned or may be accorded autonomously.

2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity to the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances as referred to in paragraph 2 exist.

Article 7. Financial Services Exceptions

Nothing in this Annex shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws and regulations that are not inconsistent with Chapter 8 (Trade in Services) or this Annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject always to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

Article 8. Regulatory Transparency

1. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application

adopted or maintained by self-regulatory organisations of the Party are promptly published or otherwise made publicly available.

2. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons (11) of the other Party regarding measures of general application to which this Annex shall apply.

3. Each Party shall endeavour to:

(a) publish in advance any measures of general application relating to the subject matter of this Annex that it proposes to adopt and the purpose of the measure;

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures; and

(c) allow reasonable time between publication of such final measures and their effective date.

4. At the time it adopts final measures, a Party shall endeavour to address in writing substantive comments received from interested persons with respect to the proposed measures.

5. Each Party's regulatory authorities shall endeavour to make publicly available all of their requirements, including any documentation required, for completing applications relating to the supply of financial services.

6. On the request of an applicant in writing, a Party's regulatory authority shall inform the applicant of the status of its application in writing. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.

7. Each Party's regulatory authority shall make administrative decisions on a completed application of a financial institution of the other Party seeking to supply a financial service in that Party's territory within 120 days, and shall notify the applicant of the decision in writing without undue delay:

(a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information is received; and

(b) where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

8. On the request in writing of an unsuccessful applicant a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application in writing.

(11) The Parties confirm their shared understanding that interested persons in this Article should only be persons whose direct financial interest could be potentially affected by the adoption of regulations of general application.

Article 9. Payment and Clearing Systems

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

Article 10. Dispute Settlement

Arbitral tribunals agreed between or appointed by the Parties under Chapter 20 (Consultations and Dispute Settlement) to adjudicate disputes on prudential issues and other financial matters, and any procedures agreed for good offices, conciliation or mediation on such matters, shall have or provide for the necessary expertise relevant to the specific financial service under dispute.

Chapter 9. Telecommunications Services

Article 9.1. Objective

The objective of this Chapter is to make additional commitments that will further liberalise and promote competition in the telecommunications markets of the Parties. These commitments are consistent with and build on the GATS Annex on

Telecommunications and the WTO Telecommunications Reference Paper. To this end each Party commits to:

(a) ensure that anti-competitive conduct does not hinder new entrants to the telecommunications market;

(b) the provision of access to critical parts (as provided for in this Chapter) of telecommunications networks within its territory to suppliers of telecommunications networks or services of the other Party; and

(c) ensure that regulatory decisions are clear, timely and transparent.

Article 9.2. Scope

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

2. This Chapter shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's laws and regulations.

3. Nothing in this Chapter shall be construed as:

(a) requiring a Party to compel any juridical person to establish, construct, acquire, lease, operate, or provide telecommunications networks or services not offered to the public generally; or

(b) requiring a Party to compel any juridical person exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network.

Article 9.3. Definitions

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

(a) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) **dialling parity** means the ability of an end user to use an equal number of digits to access a like public telecommunications service, regardless of the public telecommunications service supplier chosen by such end user and in a way that involves no unreasonable dialling delays;

(c) **end user** means a final consumer of or subscriber to public telecommunications networks or services, including a service supplier other than a supplier of public telecommunications services;

(d) **essential facilities** means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(e) **interconnection** means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with the users of another supplier and to access services provided by another supplier;

(f) **leased circuit** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular customer or other users;

(g) **major supplier** means a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market (12) for public telecommunications services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(h) **network elements** means facilities or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facilities or equipment, which may include local loops, sub-loops and line-sharing;

(i) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;

(j) **number portability** means the ability) of end users of public telecommunications networks or services to retain existing

telephone numbers when switching between suppliers of like public telecommunications networks or services;

(k) **physical co-location** means physical access to space in order to install, maintain, or repair equipment, at premises owned or controlled and used by a major supplier to supply public telecommunications services;

(l) **public telecommunications network** means the telecommunications infrastructure which is used to provide public telecommunications services;

(m) **public telecommunications service** means any telecommunications service that is offered to the public generally. Such services may include, inter alia, telephone and data transmission typically involving customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(n) **regulatory decisions** means decisions by regulators made pursuant to authority conferred under domestic law in relation to:

(i) the making of rules for the telecommunications industry excluding legislation and statutory rules;

(ii) the approval of terms and conditions, standards and codes to apply in the telecommunications industry;

(iii) the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and

(iv) licensing;

(o) **service supplier** means a natural person or a juridical person that supplies a service and includes a supplier of public telecommunications services;

(p) **telecommunications** means the transmission and reception of signals by any electromagnetic or photonic means;

(q) **telecommunications regulatory body** means a central government body or bodies responsible for the regulation of telecommunications networks or services. For greater certainty, Ministers or the Cabinet of a Party are not such a body; and

(r) **user** means an end user or a supplier of public telecommunications networks or services.

(12) For greater certainty, "relevant market' may refer to a market for the supply of public telecommunications networks or services (or part thereof} provided by any supplier of public telecommunications networks or services, that give its supplier the ability to materially affect the terms of participation in the market (having regard to price and supply).

Section A. Access to and Use of Public Telecommunications Networks or Services

Article 9.4. Access and Use

1. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service offered in its territory or across its borders in a timely fashion, on transparent, reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 3 to 6.

2. Any new or amended measures of a Party that significantly affect such access or use shall be made publicly available, and service suppliers of the other Party whose interests are adversely affected by such measures shall be provided with an opportunity to comment.

3. Each Party shall ensure that service suppliers of the other Party are permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network and which is necessary to supply a supplier's service;

(b) provide services to individual or multiple end users over leased or owned circuits;

(c) interconnect owned or leased circuits with public telecommunications networks or services in the territory, or across the borders, of that Party or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing, and conversion functions; and

(e) use operating protocols of their choice in the supply of any services, other than as necessary to ensure the availability of

telecommunications networks and services to the public generally.

4. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information in its territory or across its borders and for access to information to which the service supplier is legally entitled contained in databases or otherwise stored in machine-readable form in the territory of either Party or any non-Party which is a party to the WTO Agreement.

5. Notwithstanding paragraph 4, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the privacy of personal data of end users of public telecommunications networks or services,

provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or disguised restriction on trade in services.

6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

Section B. Obligations Relating to Suppliers of Public Telecommunications Networks or Services

Article 9.5. Interconnection

1. Each Party shall ensure that suppliers of public telecommunications networks or services in its territory provide, directly or indirectly, interconnection with suppliers of public telecommunications networks or services of the other Party.

2. In carrying out its obligations under paragraph 1, each Party shall ensure that suppliers of public telecommunications networks or services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end users of public telecommunications networks or services obtained as a result of interconnection arrangements and only use such information for the purpose of providing those services.

Article 9.6. Number Portability

Each Party shall adopt or maintain measures to ensure that suppliers of public telecommunications networks or services in its territory provide number portability on a timely basis, and on reasonable terms and conditions for mobile services and any other services as designated by that Party.

Article 9.7. Dialling Parity

Each Party shall ensure that:

(a) its telecommunications regulatory body has the authority to require that suppliers of public telecommunications networks or services in its territory provide dialling parity within the same category of services to suppliers of public telecommunications networks or services of the other Party ; and

(b) suppliers of public telecommunications networks or services of the other Party are afforded non-discriminatory access to telephone numbers.

Article 9.8. Submarine Cable Systems

Where a Party authorises a supplier of public telecommunications networks or services to operate a submarine cable system as a public telecommunications service, it shall ensure that such supplier accords the suppliers of public telecommunications networks or services of the other Party reasonable and non- discriminatory treatment with respect to access to submarine cable systems (including landing facilities) in its territory.

Article 9.9. General Competitive Safeguards

1. Each Party shall maintain appropriate measures, including the effective enforcement of such measures, for the purpose of preventing service suppliers from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 shall mean business conduct or transactions that adversely affect competition, including:

(a) anti-competitive horizontal arrangements between competitors;

(b) abuse of dominant position; and (c) anti-competitive vertical arrangements.

Section C. Additional Obligations Relating to Major Suppliers of Public Telecommunications Networks or Services

Article 9.10. Treatment by Major Suppliers

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major supplier accords in like circumstances to its subsidiaries, its affiliates, or any non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates, or quality of like public telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

Article 9.11. Competitive Safeguards

1. Each Party shall maintain appropriate measures, including the effective enforcement of such measures, for the purpose of preventing suppliers that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 9.12. Resale

1. Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major supplier provides at retail to end users that are not suppliers of public telecommunications services; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such services (13).

2. Each Party may determine in accordance with its laws and regulations which public telecommunications services must be offered for resale by major suppliers in accordance with paragraph 1, based on the need to promote competition or such other factors as the Party considers relevant.

(13) Parties may determine whether conditions or limitations are unreasonable or discriminatory by reference to their effect on competition or other such factors as the Party considers relevant.

Article 9.13. Unbundling of Network Elements

Each Party shall provide its telecommunications regulatory body with the authority to require that major suppliers in its territory provide suppliers of public telecommunications networks or services of the other Party access to network elements for the provision of public telecommunications networks or services on an unbundled basis, in a timely fashion, on terms

and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

Article 9.14. Interconnection with Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of the other Party:

(a) at any technically feasible point in the major supplier's network;

(b) of a quality no less favourable than that provided by such major suppliers for their own like services, for like services of non-affiliated service suppliers, or for their subsidiaries or other affiliates;

(c) in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable and non-discriminatory, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

(d) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect their facilities and equipment with those of major suppliers in its territory pursuant to at least one of the following options:

(a) a Reference Interconnection Offer or other Standard Interconnection Offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services;

(b) terms and conditions of an existing interconnection agreement;

(c) through negotiation of a new interconnection agreement; or

(d) binding arbitration.

3. Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

4. With respect to any major supplier in its territory each Party shall ensure that:

(a) a Reference Interconnection Offer or other Standard Interconnection Offer; or

(b) the terms of the major supplier's interconnection agreement; are published or otherwise made publicly available (14).

(14) For Australia, this paragraph only applies to services deemed or declared a ‘declared service' by Australia's telecommunications regulator in accordance with Australian legislation. For Malaysia, this paragraph only applies to services listed on the Access List by the Malaysian telecommunications regulator in accordance with Malaysian legislation

Article 9.15. Provisioning and Pricing of Leased Circuit Services

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party leased circuit services that are public telecommunications services in a timely fashion, on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

2. In carrying out its obligations under paragraph 1, each Party shall provide its telecommunications regulatory body the authority to require major suppliers in its territory to offer such leased circuit services that are public telecommunications services to suppliers of public telecommunications networks or services of the other Party at capacity-based, cost-oriented prices.

Article 9.16. Co-location

1. Each Party shall ensure that major suppliers in its territory provide to suppliers of public telecommunications networks or services of the other Party physical co-location of equipment necessary for interconnection or access to unbundled network elements in a timely fashion, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory,

and transparent.

2. Where physical co-location under paragraph 1 is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers in its territory cooperate with suppliers of public telecommunications networks or services to find and implement a practical and commercially viable alternative solution in a timely fashion, on terms and conditions, and cost-oriented rates, that are reasonable, non-discriminatory and transparent. Such solutions may include, but are not limited to:

(a) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;

(b) conditioning additional equipment space or virtual co-location in a timely fashion, on terms and conditions, and at cost oriented rates, that are reasonable, non-discriminatory and transparent;

(c) optimising the use of existing space; or (d) finding adjacent space.

3. Each Party may determine, in accordance with its laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co- location or the practical and commercially viable alternative solutions referred to in paragraphs 1 and 2.

Article 9.17. Access to Facilities

1. Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, rights of way, transmission towers, underground facilities, and any other structures deemed necessary by the Party, owned or controlled by such major suppliers to suppliers of public telecommunications networks or services of the other Party in a timely fashion, on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory, and transparent.

2. Each Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights of way, transmission towers, underground facilities or other structures to which it requires major suppliers in its territory to provide access under paragraph 1 on the basis of the state of competition in the relevant market.

Article 9.18. Denial of Access

If access to any part of a major supplier's network, including but not limited to access to interconnection, co-location, poles, ducts, conduits, rights of way, transmission towers or underground facilities, is denied through a decision of a Party's telecommunications regulatory body, that Party shall ensure that its telecommunications regulatory body provides the access seeker with a clear and transparent explanation of its decision to deny such access.

Section D. Other Measures

Article 9.19. Independent Regulatory Bodies and Government Ownership

1. Each Party shall ensure that any telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of public telecommunications networks or services. To this end, each Party shall ensure that the Party's telecommunications regulatory body does not hold any financial interest or maintain an operating role in any such supplier.

2. Each Party shall ensure that the decisions and procedures of its telecommunications regulatory body are impartial with respect to all interested persons. To this end, each Party shall ensure that any financial interest that it holds in a supplier of public telecommunications networks or services does not influence the decisions and procedures of its telecommunications regulatory body.

3. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body shall be fair and impartial and shall be made and implemented without undue delay.

Article 9.20. Universal Service

Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 9.21. Licensing Process

1. When a Party requires a supplier of public telecommunications networks or services to have a license, the Party shall make publicly available:

(a) the procedures for applying for all such licences, and the criteria by which applications for such licences are assessed,

(b) the standard terms and conditions applicable to such licences; and

(c) the period normally required to reach a decision concerning an application for a license.

2. Each Party shall ensure that, on request, an applicant receives the reasons for its denial of a license.

Article 9.22. Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies and numbers, in an objective, timely, transparent, and non-discriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 8.5 (Market Access) of Chapter 8 (Trade in Services). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications networks or services, provided it does so in a manner consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for non-government telecommunications networks or services, each Party shall endeavour to rely on an open and transparent public comment process that considers the overall public interest. Each Party shall endeavour to rely generally on market based approaches in assigning spectrum for terrestrial non-government telecommunications services.

Article 9.23. Enforcement

1. Each Party shall provide its relevant bodies the authority to enforce compliance with the Party's measures relating to the obligations set out in Articles 9.4 to 9.17:

Access and Use (Article 9.4);

Interconnection (Article 9.5);

Number Portability (Article 9.6);

Dialling Parity (Article 9.7);

Submarine Cable Systems (Article 9.8);

General Competitive Safeguards (Article 9.9);

Treatment by Major Suppliers (Article 9.10);

Competitive Safeguards (Article 9.11);

Resale (Article 9.12);

Unbundling of Network Elements (Article 9.13);

Interconnection with Major Suppliers (Article 9.14);

Provisioning and Pricing of Leased Circuit Services (Article 9.15);

Co-Location (Article 9.16); and

Access to Facilities (Article 9.17).

2. Such authority shall include the ability to impose, or seek from administrative or judicial bodies, effective sanctions which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension, and revocation of licenses.

Article 9.24. Resolution of Telecommunications Complaints and Disputes

Further to Chapter 17 (Transparency), each Party shall ensure the following:

(a) suppliers of public telecommunications networks or services of the other Party may seek timely review by a telecommunications regulatory body or other relevant body of the Party to resolve complaints by or disputes between suppliers of public telecommunications networks or services regarding the Party's measures relating to matters set out in Articles 9.4 to 9.17;

(b) suppliers of public telecommunications networks or services of the other Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period after the supplier of public telecommunications networks or services requests interconnection, by its telecommunications regulatory body to review disputes regarding the terms, conditions, and rates for interconnection with such major supplier;

(c) any service supplier that is aggrieved or whose interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may obtain review of the determination or decision by an impartial and independent judicial authority; and

(d) neither Party shall permit an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body unless the relevant judicial body stays such determination or decision.

Article 9.25. Transparency of Measures Relating to Telecommunications

Further to Chapter 17 (Transparency) and subject to Articles 9.1 (Objective), 9.4 (Access and Use), 9.11 (Competitive Safeguards), 9.14 (Interconnection with Major Suppliers), 9.18 (Denial of Access), 9.21 (Licensing Process) and 9.22 (Allocation and Use of Scarce Resources), each Party shall ensure that:

(a) regulatory decisions, including the basis for such decisions of its telecommunications regulatory body, are promptly published or otherwise made available to all interested persons; and

(b) its measures relating to public telecommunications networks or services are made publicly available, including measures relating to:

(i) tariffs and other terms and conditions of service;

(ii) procedures relating to judicial and other adjudicatory proceedings;

(iii) specifications of technical interfaces;

(iv) conditions for attaching terminal or other equipment to the public telecommunications network; and

(v) notification, permit, registration, or licensing requirements, if any.

Article 9.26. Flexibility In the Choice of Technologies

1. Neither Party may prevent suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services, including commercial mobile wireless services and packet based services, subject to requirements necessary to satisfy legitimate public policy interests (15).

2. Notwithstanding paragraph 1, a Party may apply measures that limit the technologies or standards that a supplier of public telecommunications networks or services may use to supply its services, provided that its measures are designed to achieve a legitimate public policy objective and are not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade.

(15) For the avoidance of doubt, public policy interests include those that protect the technical integrity of the network.

Article 9.27. Industry Participation

1. Each Party shall facilitate the involvement of suppliers of public telecommunications networks or services of the other Party operating in its territory in the regulation of the telecommunications industry, in a manner that is open to any participant in the telecommunications industry in the territory of the Party concerned.

2. Industry participation shall include the following objectives:

(a) to assist in representing the interests of market entrants and incumbents;

(b) to provide feedback to the regulatory agency on its decisions; and

(c) to prepare standards governing relationships between suppliers.

3. Each Party shall ensure its service suppliers comply with a standard formulated by the industry:

(a) where they have agreed to do so; or

(b) where the regulator has approved and implemented the standard as an enforceable measure.

Article 9.28. Relation to other Chapters

In the event of any inconsistency between this Chapter and another Chapter, this Chapter shall prevail to the extent of the inconsistency.

Article 9.29. Consultation

At the request of either Party, the Parties shall enter into consultations to discuss any issues arising under this Chapter, including issues of interpretation and issues arising due to technological or industry developments.

Article 9.30. Cooperation

The Parties shall explore additional avenues of cooperation, including capacity building measures in the area of telecommunications competition policy and other technical and regulatory issues, for the purpose of enhancing each Party's ability to enforce its laws and regulations governing telecommunications.

Article 9.31. Relation to International Organisations and Agreements

The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunications networks or services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunications Union and the International Organization for Standardization.

Chapter 10. Movement of Natural Persons

Article 10.1. Objectives

The objectives of this Chapter are to:

(a) provide for rights and obligations additional to those set out in Chapter 8 (Trade in Services) and Chapter 12 (Investment) in relation to the movement of natural persons between the Parties for business purposes;

(b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties; and

(c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies, while recognising the need to ensure border security and to protect the domestic labour force and permanent employment in the territory of the Parties.

Article 10.2. Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), to measures affecting the movement of natural persons of a Party into the territory of

the other Party. Such persons may include:

(a) business visitors;

(b) contractual service suppliers;

(c) executives of a business headquartered in a Party establishing a branch or subsidiary, or other commercial presence of that business in the other Party;

(d) intra-corporate transferees; or

(e) installers and servicers.

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

Article 10.3. Definitions

For the purposes of this Chapter:

(a) **granting Party** means a Party who receives an application for temporary entry from a natural person of the other Party who is covered by paragraph 1 of Article 10.2 (Scope);

(b) **immigration formality** means a visa, permit, pass or other document or electronic authority permitting a natural person of a Party to enter, reside, work or establish commercial presence in the territory of the granting Party; and

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

Article 10.4. Immigration Measures

1. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 12 (Investment) shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter or to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.

2. The sole fact of requiring natural persons to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing benefits accruing to the other Party under this Chapter, or of unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

Article 10.5. Grant of Temporary Entry

Each Party shall, in accordance with this Chapter and that Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), grant temporary entry or extension of temporary stay to natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope), provided those natural persons:

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

(b) meet all relevant eligibility requirements for the relevant immigration formality permitting temporary entry or extension of temporary stay to the granting Party.

Article 10.6. Schedules of Commitments for the Movement of Natural Persons

Each Party shall set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) a schedule containing its specific commitments for the temporary entry and stay in its territory of natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope). These schedules shall specify the conditions and limitations governing those commitments, including lengths of stay.

Article 10.7. Spouses and Dependants

For a natural person who has been granted temporary entry or extension of temporary stay under this Chapter for at least 12 months and who has a spouse and/or dependants, a Party shall, upon application, grant the accompanying spouse and/or dependants temporary entry and stay in its territory for an equal period to that of the natural person. A Party shall also, upon application, allow the accompanying spouses and/ or dependants who have been granted temporary entry and stay under an immigration formality pursuant to this Article to work subject to the Party's laws and regulations, relevant licensing, administrative and registration requirements.

Article 10.8. Processing of Applications

1. Where an application for an immigration formality is required by a Party, that Party shall process promptly complete applications for immigration formalities or extensions thereof received from natural persons or representative (16) of natural persons of the other Party covered by paragraph 1 of Article 10.2 (Scope).

2. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person or representative of natural person of the other Party covered by paragraph 1 of Article 10.2 (Scope), notify the natural person or its representative of:

(a) the receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application including, if approved, the period of stay and other conditions or, if refused, any avenues for review.

3. In relation to a complete application for an immigration formality covered by paragraph 1 of Article 10.2 (Scope), where practicable the granting Party shall both make a decision and notify the natural person or its representative of that decision prior to the natural person's arrival in its territory.

4. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with each Party's laws and regulations.

(16) For the purposes of this Article, "representative" means: (a) for Australia, a duly appointed migration agent or authorized recipient in accordance with Australia's immigration law and regulations; and (b) for Malaysia, a prospective employer or authorised agent in accordance with immigration laws and regulations and directives issued by the Director General of Immigration related to immigration matters.

Article 10.9. Transparency

Each Party shall:

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

(b) no later than six months after the date of entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available, the requirements for the movement of natural persons under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of the other Party to become acquainted with those requirements;

(c) establish or maintain appropriate mechanisms to respond to inquiries from the other Party, and interested persons of the other Party, regarding measures affecting the temporary entry and temporary stay of natural persons of the other Party; and

(d) upon modifying or amending any immigration measure that affects the temporary entry of natural persons, ensure that the information published or otherwise made available pursuant to subparagraph (b) is updated as soon as possible within 90 days.

Article 10.10. Application of Chapter 20 (consultations and Dispute Settlement)

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

2. A Party shall not have recourse to Chapter 20 (Consultations and Dispute Settlement) regarding a refusal to grant

temporary entry under this Chapter unless:

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

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

Chapter 11. Framework on Mutual Recognition Arrangements

Article 11.1. Objectives

The objectives of this Chapter are to:

(a) provide the framework for the development of Mutual Recognition Arrangements on qualifications, registration, licensing and certification requirements and experience for the fulfilment in whole or in part, of standards and criteria for the authorisation, licensing or certification of professional services suppliers; and

(b) promote the exchange of information and adoption of best practices on standards and criteria between the Parties,

in order to facilitate the mobility of professional service suppliers between the Parties.

Article 11.2. Scope

1. The Parties shall encourage the development of Mutual Recognition Arrangements among competent bodies on professional services, by facilitating discussion and exchange of information between these bodies.

2. Wherever appropriate, recognition by the relevant competent bodies should be based on multilaterally agreed criteria.

Article 11.3. Definitions

For the purposes of this Chapter:

competent authority refers to a body with authority in relation to certain professional services, or to an authorized agency of such a body. A competent authority may take the form of, for example, a professional institution, regulatory body or governmental agency and may have been established under the laws and regulations of a Party.

Article 11.4. Responsibilities and Administration

1. The Parties, through the FTA Joint Commission or subsidiary body established by it shall:

(a) develop and monitor procedures for fostering the development and implementation of Mutual Recognition Arrangements between the competent authorities or bodies of the Parties;

(b) exchange information by whatever means considered most appropriate particularly on assessment/evaluation processes and the adopted competencies, criteria, standards, or benchmarks pertaining to mutual recognition;

(c) promote acceptable international standards, criteria and best practices to facilitate the effective and efficient delivery of professional services;

(d) to the extent possible, maintain a current listing of all Mutual Recognition Arrangements and be updated on the progress of any Mutual Recognition Arrangement being entered into between the competent authorities or bodies of the Parties; and

(e) examine other issues of mutual interest relating to the supply of professional services.

2. To facilitate the work of the FTA Joint Commission or subsidiary body established by it, each Party shall consult with the relevant bodies in its territory to identify professional services for negotiations on Mutual Recognition Arrangements.

3. The FTA Joint Commission or subsidiary body established by it shall report on its progress, including with respect to any recommendations or initiatives to promote the mutual recognition of qualifications, licensing and qualification requirements, as well as its work programme, within one year of the date of entry into force of the Agreement and thereafter as necessary.

Article 11.5. Review

The FTA Joint Commission or subsidiary body established by it may review this Chapter as mutually agreed.

Chapter 12. Investment

Article 12.1. Scope

This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party;

(b) taxation, subject to Article 18.3 (Taxation) of Chapter 18 (General Provisions and Exceptions); and

(c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

Article 12.2. Definitions

For the purposes of this Chapter:

(a) **covered investment** means with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted by the host Party, subject to its relevant laws, regulations and policies;

(b) **freely usable currency** means a currency determined by the International Monetary Fund under the IMF Articles of Agreement to be a currency that is, in fact, widely used to make payments for international transactions and is widely traded in the principal exchange markets;

(c) **investments** means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the other Party, and in particular, though not exclusively, includes:

(i) shares, stocks and debentures of a juridical person or interests in the property of a juridical person;

(ii) a claim to money or a claim to any performance having financial value;

(iii) rights under contract, including turkey, construction, management, production or revenue-sharing contracts;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents and utility models, industrial designs, trade marks and service marks, geographical indications, layout designs of integrated circuits, trade names, trade secrets, technical processes, know-how which are recognised pursuant to the laws and regulations of each Party and goodwill;

(v) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations, and permits; and

(vi) movable and immovable property and any other property rights such as mortgages, liens or pledges.

The term investment also includes amounts yielded by investments, in particular, profits, interests, capital gains, dividends, royalties and fees.

Any alteration of the form in which assets are invested shall not affect their classification as investments; and

(d) **investor of a Party** means a Party, or a natural person of a Party or a juridical person of a Party, that seeks to make (17), is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a citizen of a Party and a non- Party shall be deemed to be exclusively a citizen of the State of his or her dominant and effective nationality.

(17) For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of the other Party

that has taken active steps to make an investment. Where a Notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor of the other Party that has initiated such notification or approval process.

Article 12.3. Relation to other Chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent they are covered by Chapter 8 (Trade in Services) or Chapter 10 (Movement of Natural Persons).

2. Notwithstanding paragraph 1, Article 12.7 (Minimum Standard of Treatment), Article 12.8 (Expropriation and Compensation), Article 12.9 (Transfers), Article 12.10 (Treatment in the Case of Strife) and Article 12.11 (Subrogation) shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's Schedule of Specific Services Commitments in Annex 3 (Schedules of Specific Services Commitments).

Article 12.4. National Treatment (18)

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

(18) The application of this Article is subject to Article 12.16 (Work Programme).

Article 12.5. Most-favoured-nation Treatment (19)

Each Party shall accord to investors of the other Party, and covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, treatment no less favourable than that it accords, in like circumstances, to investors and investments in its territory of investors of any non-Party (20).

(19) The application of this Article is subject to Article 12.16 (Work Programme).

(20) For greater certainty, this Article does not apply to dispute settlement procedures.

Article 12.6. Performance Requirements

Neither Party shall apply in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of the other Party in its territory any measure which is inconsistent with the Agreement on Trade-Related Investment Measures, in Annex 1A to the WTO Agreement.

Article 12.7. Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment for aliens, including fair and equitable treatment and full protection and security.

2. For greater certainty:

(a) "fair and equitable treatment" requires each Party not to deny justice in any legal or administrative proceedings;

(b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment; and

(c) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international

agreement, does not establish that there has been a breach of this Article.

Article 12.8. Expropriation and Compensation (21)

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose (22);

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in subparagraph 1(c) shall:

(a) be paid without delay (23);

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become public knowledge or known earlier; and

(d) be fully realisable and freely transferable in freely usable currencies.

3. The compensation referred to in subparagraph 1(c) shall include interest at a commercially reasonable rate, accrued from the date of expropriation until the date of payment, unless such rate is prescribed by law (24). The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If the investor requests compensation to be paid in a freely usable currency, the compensation referred to in subparagraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment and shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

(21) For greater certainty, this Article should be read in conjunction with the Annex on Expropriation.

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

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

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

Article 12.9. Transfers

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 12.8 (Expropriation and Compensation) and Article 12.10 (Treatment in the Case of Strife);

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and

(g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offences and the recovery of the proceeds of crime;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

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

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes; and

(h) severance entitlements of employees.

4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the International Monetary Fund (IMF) under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 18.4 (Measures to Safeguard the Balance-of-Payments) of Chapter 18 (General Provisions and Exceptions) or at the request of the IMF.

Article 12.10. Treatment In the Case of Strife

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

(a) its own investors and their investments; and

(b) investors of a non-Party and their investments.

Article 12.11. Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency making the

payment, pursue those rights and claims against the other Party.

3. Notwithstanding the provisions of paragraphs 1 and 2, the Party claiming the subrogation shall, if the other Party requests it, consult with the other Party for the purpose of satisfying it as to the subrogation.

Article 12.12. Denial of Benefits

Subject to prior notification or consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is a juridical person of such other Party and to investments of that investor if the juridical person has no substantive business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the juridical person.

Article 12.13. Promotion and Facilitation of Investment

The Parties shall seek to strengthen and build on existing cooperative arrangements in the promotion and facilitation of investment where this is of mutual benefit, including through:

(a) supporting joint investment promotion activities;

(b) facilitating the provision and exchange of investment information including laws, regulations and policies to increase awareness of investment opportunities; and

(c) fostering technical cooperation in mutually agreed sectors.

Article 12.14. Non-conforming Measures (25)

1. Articles 12.4 (National Treatment) and 12.5 (Most-Favoured-Nation Treatment) do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedules of Non-Conforming Measures;

(ii) a regional level of government, as set out by that Party in its Schedules of Non-Conforming Measures; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph 1(a); or

(c) an amendment to any measure referred to in subparagraph 1(a) to the extent that the amendment does not decrease the conformity of the measure as it existed at the date of entry into force of the Party's Schedules of Non-Conforming Measures, with Articles 12.4 (National Treatment) and 12.5 (Most-Favoured-Nation Treatment).

2. Articles 12.4 (National Treatment) and 12.5 (Most-Favoured-Nation Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedules of Non-Conforming Measures.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedules of Non-Conforming Measures, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 12.4 (National Treatment) and 12.5 (Most-Favoured-Nation Treatment) do not apply to government procurement.

(25) The application of this Article is subject to Article 12.16 (Work Programme).

Article 12.15. Special Formalities

1. Nothing in Article 12.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 12.4 (National Treatment) and 12.5 (Most-Favoured- Nation Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 12.16. Work Programme

1. The Parties shall enter into discussions on Schedules of Non-Conforming Measures within three years from the date of entry into force of this Agreement, unless the Parties otherwise agree. Such discussions shall include, if mutually agreed by the Parties, negotiation of Schedules of Non-Conforming Measures.

2. The Parties shall conclude the discussions, and where relevant the negotiations, referred to in paragraph 1, no later than five years from the date of entry into force of this Agreement, unless the Parties otherwise agree. These discussions shall be overseen by the FTA Joint Commission established under Article 19.1 (Free Trade Agreement Joint Commission) in Chapter 19 (Institutional Provisions).

3. Schedules of Non-Conforming Measures referred to in paragraph 1 shall enter into force by exchange of notes on a date agreed to by the Parties subject to each Party's internal procedures (26).

4. Notwithstanding anything to the contrary in this Chapter, Article 12.4 (National Treatment), Article 12.5 (Most-Favoured-Nation Treatment) and Article 12.14 (Non-Conforming Measures) shall not apply until the Parties' Schedules of Non-Conforming Measures have entered into force in accordance with paragraph 3.

(26) Any Schedules negotiated between the Parties in accordance with this Article will, upon entry into force, constitute an integral part of this Agreement

Article 12.17. Institutional Arrangements for Investment

For the purposes of effective implementation and operation of this Chapter, the Parties agree to assign the following functions, among others, to the FTA Joint Commission established under Article 19.1 (Free Trade Agreement Joint Commission) of Chapter 19 (Institutional Provisions) or subsidiary bodies established by the FTA Joint Commission:

(a) exchange information on and discuss issues related to this Chapter;

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

(c) oversee the negotiations referred to in Article 12.16 (Work Programme).

Article 12.18. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on investment flows, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect national security and public morals;

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

(c) aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of investments or investors of the Parties; or

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

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

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

(iii) safety;

(e) imposed for the protection of national treasures of artistic, historic, or archaeological value; or

(f) to conserve exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. In cases where a Party takes any measures pursuant to paragraph 1 that do not conform to the obligations of the provisions of this Chapter other than the provisions of Article 12.10 (Treatment in the Case of Strife), that Party shall promptly notify the other Party on the measures.

Annex on expropriation

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 12.8 (Expropriation and Compensation) addresses two situations:

(a) the first is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure;

(b) the second is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions by a Party, ina specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(b) whether the government action breaches the government's prior binding written commitment, where applicable, to the investor whether by contract, licence or other legal document; and

(c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose (27).

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriations.

(27) "Public purpose" shall be read with reference to subparagraph (1)(a) of Article 12.8 (Expropriation and Compensation).

Chapter 13. Intellectual Property

Article 13.1. Purpose

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

Article 13.2. Definitions

For the purposes of this Chapter, unless the contrary intention appears:

(a) **circumvention device** means any device that:

(i) is promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(ii) has only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(iii) is primarily designed or produced for the purpose of enabling or facilitating the circumvention of any effective technological measure;

(b) **circumvention service** means a service that:

(i) is promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(ii) has only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or

(iii) is primarily designed or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure;

(c) **copyright piracy on a commercial scale** includes:

(i) infringements of copyright for the purpose of commercial advantage or financial gain; and

(ii) distribution of infringing copies that is not for the purpose of commercial advantage or financial gain but which has a substantial prejudicial impact on the owner of copyright;

(d) **effective technological measure** means any technology, device, or component used by the owner of copyright in a work or sound recording in connection with the exercise of their copyright rights, that in the normal course of operation prevents copyright infringement in a work or sound recording;

(e) **industrial property** includes patents, plant varieties, utility models, industrial designs, trade marks, service marks, trade names, indications of source or appellations of origin and geographical indications;

(f) **intellectual property rights** includes copyright and related rights; rights in trade marks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as defined or referred to in the TRIPS Agreement;

(g) **national of a Party** includes, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 1.3 of the TRIPS Agreement, as amended from time to time;

(h) **WIPO** means the World Intellectual Property Organization; and

(i) **work** includes a cinematograph film.

Article 13.3. Obligations Are Minimum Obligations

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may provide more extensive protection for, and enforcement of, intellectual property rights than this Chapter requires, provided that this additional protection and enforcement is not inconsistent with the provisions of this Agreement.

Article 13.4. International Agreements

1. Each Party affirms its rights and obligations with respect to each other under the TRIPS Agreement.

2. Each Party affirms that it has ratified or acceded to the following agreements, as subsequently rectified, amended or modified:

(a) the Berne Convention for the Protection of Literary and Artistic Works (1971) (the Berne Convention);

(b) the Patent Cooperation Treaty (1970);

(c) the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention);

(d) the Convention Establishing the World Intellectual Property Organization (1967); and

(e) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of Registration of Marks (Geneva Act 1977).

3. Subject to the fulfilment of its necessary domestic requirements, each Party shall ratify or accede to the following agreements as soon as practicable:

(a) the WIPO Copyright Treaty (1996); (b) the WIPO Performances and Phonograms Treaty (1996);

(c) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989); and

(d) the Singapore Treaty on the Law of Trademarks (2006).

Article 13.5. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection (28) of such intellectual property rights, subject to the exceptions provided in those multilateral agreements concluded under the auspices of WIPO to which the Parties are, or become, contracting parties.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other 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 and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

(28) For the purposes of this paragraph, protection includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, protection also includes the prohibition on circumvention of effective technological measures specified in Article 13.14.

Article 13.6. Transparency

Patent and trade mark databases will be made available on the Internet (29).

(29) For the purposes of this Article, charging of a nominal fee does not prevent the database being sufficiently publicly available and easily accessible.

Article 13.7. Harmonisation

1. Where appropriate, the Parties shall work towards harmonising their industrial property measures with international norms, and participate in international forums, particularly the WIPO and the WTO, working towards reforming and further developing the international industrial property system.

2. The Parties shall work together to reduce differences between their respective industrial property measures, particularly in relation to those differences that affect complexity and costs to users and which inhibit progress toward the mutual exploitation of search and examination work.

Article 13.8. Presumptive Validity

1. Each Party shall continue to enhance their registration systems for trade marks and plant varieties through the provision of examination, opposition and cancellation (30) procedures which provide rights of presumptive validity while continuing to simplify and streamline its administration system for the benefit of users of the system.

2. Each Party shall continue to enhance their registration system for patents through the provision of examination and cancellation procedures which provide rights of presumptive validity while continuing to simplify and streamline its administration system for the benefit of users of the system.

(30) For the purposes of this Article, a Party may treat the term "cancellation® as synonymous with "revocation".

Article 13.9. Trade Marks

1. Each Party shall provide high quality trade mark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

2. Each Party recognises that trade marks may include signs or marks which are not visually perceptible. A Party may require

that trade marks be represented graphically (31).

3. The Parties agree to exchange information on the protection of non-traditional trade marks, including signs which, either wholly or in part, are composed of a shape, a colour, a sound, or a scent, with a view to including non-traditional marks in the first general review of the Agreement.

4. Each Party may provide limited exceptions to the rights conferred by a trade mark such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

(31) For the purposes of this Article, graphically means a written description, drawing or combination of these as prescribed by each Party.

Article 13.10. Geographical Indications

1. Each Party shall recognise that geographical indications may be protected through a trade mark or sui generis system or other legal means in accordance with its laws and regulations.

2. Each Party shall recognise and provide appropriate protection for trade mark rights where they predate other claimed rights including geographical indications.

3. In determining whether to protect a term claimed to be a geographical indication with respect to goods or services, a Party shall provide the legal means to take into account, in accordance with its legal systems and practice, whether that term is customary in common language as the common name for such goods or services in the territory of that Party.

4. Each Party shall provide an opportunity for interested persons to object to the protection of a term claimed to be a geographical indication at least on the basis that the term is customarily used in common language as the common name for the particular goods or services in the territory of that Party.

5. Where protection of a term claimed to be a geographical indication is sought in a Party, that Party shall publish particulars of the application prior to making a decision to reject or accept the application.

6. Each Party shall publish protected geographical indications.

7. Where a Party provides the means to protect a geographical indication that identifies goods other than wine and spirits against use in translation or transliteration, it shall do so only where that translation or transliteration conveys or evokes the significance of the geographical indication to which it relates in the territory of that Party.

8. The Parties agree to exchange information on:

(a) the protection of geographical indications; and

(b) the relationship between existing Intellectual Property Rights and later claimed rights, with a view to including these topics in the first general review of this Agreement.

Article 13.11. Patents

1. Subject to the exceptions set out in Article 27 of the TRIPS Agreement, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application (32).

2. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure:

(a) was made or authorised by, or derived from, the patent applicant, and

(b) occurs within 12 months prior to the date of filing of the application in the territory of the Party.

3. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Nothing in this Article will limit the scope of exceptions to patentability available in each Party's laws and regulations at the time that this Agreement enters into force.

(32) For the purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as synonymous with the terms "non-obvious" and "useful", respectively.

Article 13.12. Exceptions to Copyright

Each Party shall confine limitations or exceptions to the exclusive rights of copyright to certain special cases which do not conflict with a normal exploitation of a work or sound recording and do not unreasonably prejudice the legitimate interests of the owner of copyright in the work or sound recording.

Article 13.13. Effective Collective Management of Copyright

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

Article 13.14. Effective Technological Measures

1. Each Party shall provide for civil remedies where a person knowingly, or having reasonable grounds to know:

(a) circumvents an effective technological measure; or

(b) manufactures, imports, distributes, offers to the public, provides, or otherwise deals in a circumvention device or circumvention service;

unless the activities described in subparagraphs (a) or (b) are authorised by the copyright owner or otherwise permitted by exceptions made in accordance with paragraph 3.

2. Each Party shall provide, at a minimum, for criminal procedures and penalties where for the purpose of commercial advantage or financial gain, a person intentionally, knowingly or recklessly:

(a) circumvents an effective technological measure; or

(b) manufactures, imports, distributes, offers to the public, provides, or otherwise deals in a circumvention device or circumvention service;

unless the activities described in subparagraphs (a) or (b) are authorised by the copyright owner or otherwise permitted by exceptions made in accordance with paragraph 3.

3. Each Party shall provide that any exceptions to the obligations in paragraphs 1 and 2 be confined to certain special cases which do not conflict with a normal application of an effective technological measure for the protection of a work or sound recording and do not unreasonably prejudice the legitimate interests of the owner of copyright in that work or sound recording.

Article 13.15. Copyright Rights Management Information

1. In order to provide adequate and effective legal remedies to protect rights management information, each Party shall provide that any person who without authority, and knowingly, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright:

(a) knowingly removes or alters any rights management information;

(b) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(c) distributes to the public, imports for distribution, broadcasts, communicates, or makes available to the public copies of works or sound recordings, knowing that rights management information has been removed or altered without authority,

shall be liable and subject to civil and, as appropriate, criminal remedies.

2. Each Party may provide that criminal procedures and penalties in paragraph 1 do not apply to a library (33), archive, educational institution, or public non-commercial broadcasting entity.

3. Each Party may provide that subparagraph 1(a) does not apply in relation to anything lawfully done for the sole purpose

of:

(a) law enforcement;

(b) national security; or

(c) performing a statutory function.

4. Rights management information means:

(a) electronic information that identifies a work, performance, or sound recording; the author of the work, the performer of the performance, or the producer of the sound recording; or the owner of any right in the work, performance, or sound recording; or

(b) electronic information about the terms and conditions of the use of the work, performance, or sound recording; or

(c) any electronic numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance, or sound recording or appears in connection with the communication or making available of a work, performance or sound recording to the public. Nothing in this paragraph obligates a Party to require the owner of any right in the work, performance or sound recording to attach rights management information to copies of the work, performance, or sound recording, or to cause rights management information to appear in connection with a communication of the work, performance, or sound recording to the public.

(33) The Parties understand that a reference to a library may mean a non-profit library.

Article 13.16. Service Provider Liability

1. Each Party shall provide for a legislative scheme to limit liability of, or remedies that may be available against service providers (34) for infringement of copyright or related rights (35) that they do not control, initiate or direct and that take place through their systems or networks.

2. The scheme in paragraph 1 will only apply if a service provider meets conditions including:

(a) removing or disabling access to infringing material on notification from the rights owner through a procedure established by each Party; and

(b) no financial benefit is received by the service provider for the infringing activity in circumstances where it has the right and ability to control such activity.

(34) Each Party may determine, in accordance with its laws and regulations, what constitutes a service provider.

(35) Each Party may determine, in accordance with its laws and regulations, what constitutes a related right for the purpose of this Article.

Article 13.17. National Government Use of Software

Each Party shall maintain appropriate measures that require its central government agencies to use only legitimate computer software in a manner authorised by law. Each Party shall encourage its respective regional and local governments to adopt similar measures.

Article 13.18. Enforcement

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights.

2. In civil and criminal proceedings involving copyright, each Party shall provide for a presumption or similar method to establish ownership and subsistence of copyright.

3. Each Party shall provide, at a minimum, for criminal procedures and penalties to be applied in cases where a person intentionally, knowingly or recklessly engages in trade mark counterfeiting or copyright piracy on a commercial scale.

4. Each Party shall apply higher criminal penalties to intellectual property offences committed by corporations than to intellectual property offences committed by individuals.

5. Each Party shall make available to intellectual property rights holders civil judicial proceedings concerning the enforcement of intellectual property rights.

6. In civil judicial proceedings under paragraph 5, each Party shall provide that its judicial authorities shall have the authority to order at least:

(a) provisional measures, including

(i) to prevent the entry into the channels of commerce in their jurisdiction of goods;

(ii) to preserve relevant evidence in regard to the alleged infringement;

(b) damages (36);

(c) payment to a prevailing right holder of court costs and fees and reasonable attorney's fees by the party engaged in the proscribed activity at the conclusion of the civil judicial proceeding; and

(d) delivery up or destruction of the devices and products found to be involved in the proscribed activity.

(36) Each Party may determine what constitutes "damages" for the purposes of this Article.

Article 13.19. Protection of Encrypted Programme-carrying Satellite Signals

1. Each Party shall make it a criminal offence to:

(a) manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted programme-carrying satellite signal without the authorisation of the lawful distributor of such signal; and

(b) wilfully receive and make use of, or further distribute a programme- carrying signal that originated as an encrypted programme-carrying satellite signal:

(i) knowing that it has been decoded without the authorisation of the lawful distributor of the signal, or

(ii) with intent to avoid payment of any rate or fee applicable to the provision of that signal.

2. In relation to the activities described in subparagraphs (a) and (b), a Party may provide for civil remedies for any person that holds an interest in the encrypted programme-carrying satellite signal or its content.

Article 13.20. Border Measures

1. Each Party shall ensure that the requirements necessary for a right holder to initiate procedures to suspend the release of goods suspected of being counterfeit trade mark or pirated copyright goods shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide that its competent authorities have the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

3. Each Party shall provide that its competent authorities may _ initiate enforcement measures ex officio with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods, without the need for a specific formal complaint.

4. Each Party shall treat intentional, knowing or reckless importation or exportation (37) of pirated copyright goods or of counterfeit trade mark goods as unlawful activities subject to criminal penalties.

5. Parties may exclude from the application of this Article the importation or exportation of small quantities of goods which are considered to be of a non- commercial nature.

(37) A Party may comply with this paragraph in relation to exportation through its measures concerning distribution.

Article 13.21. Cooperation on Enforcement

Subject to their respective laws, regulations, and policies, the Parties shall cooperate with a view to eliminating trade in goods infringing intellectual property rights. Such cooperation may include:

(a) the notification of contact points for the enforcement of intellectual property rights;

(b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning the infringement of intellectual property rights;

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

(d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually determined by the Parties.

Article 13.22. Other Cooperation

The Parties, through their competent agencies, shall encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities concerning the protection and enforcement of intellectual property rights with a view to:

(a) strengthening their respective intellectual property administrative systems; and

(b) stimulating the creation and development of intellectual property by nationals of each Party.

Article 13.23. Consultations

Each Party agrees to enter into technical consultations at the written request of the other Party to address any matter relating to this Chapter.

Chapter 14. Competition Policy

Article 14.1. Objectives

The Parties recognise the importance of promoting competition and of curtailing anti- competitive practices which have the potential to undermine the objectives of the Agreement.

Article 14.2. Definitions

For the purpose of this Chapter:

(a) anti-competitive practices means business conduct or transactions that adversely affect competition, including:

(i) anti-competitive horizontal arrangements between competitors;

(ii) abuse of dominant position; and

(iii) anti-competitive vertical arrangements.

Article 14.3. Promotion of Competition

Each Party shall promote competition by adopting, maintaining and enforcing measures, as the Party deems appropriate, to address anti-competitive practices in its territory.

Article 14.4. Application of Competition-related Measures

1. Each Party shall ensure that all commercial activities are subject to generic or relevant sectoral competition measures in force in its territory.

2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be in accordance with the principles of transparency, timeliness, non-discrimination and procedural

fairness.

3. The Parties shall apply competition measures to address anti-competitive conduct to the business activities of government-owned and non-government-owned businesses.

Article 14.5. Exemptions

A Party may exempt specific businesses or sectors from the application of competition measures, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

Article 14.6. Cooperation and Coordination

1. The Parties recognise the importance of cooperation and coordination to further the promotion of competition and the curtailment of anti-competitive practices.

2. The Parties may cooperate and coordinate, as appropriate, on consumer protection and in enforcing competition laws, regulations and policies, including through the exchange of information, notification, consultation, and coordination on cross-border enforcement matters.

3. Each Party, through its competition authority, may notify the competition authority of the other Party of an enforcement activity if it considers that such enforcement activity may substantially affect important interests of the other Party.

4. On request of either Party, the Parties shall consult on any issues related to the implementation of this Chapter.

Chapter 15. Electronic Commerce

Article 15.1. Purpose

The purpose of this Chapter is to promote electronic commerce between the Parties and the wider use of electronic commerce globally. To this end, the Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development and, where relevant, the applicability of the WTO Agreement to measures affecting electronic commerce. The Parties also recognise the importance of ensuring that bilateral trade through electronic commerce is, to the extent possible, less restricted or no more restricted than comparable non-electronic bilateral trade.

Article 15.2. Electronic Supply of Services

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 8 (Trade in Services) and its Annex on Financial Services and Chapter 9 (Telecommunications Services), subject to any exceptions set out in this Agreement that are applicable to such obligations.

Article 15.3. Definitions

For the purposes of this Chapter:

(a) **digital certificates** means electronic documents or files that are issued by a certification authority or otherwise linked to a party to an electronic communication or transaction for the purpose of establishing the party's identity;

(b) **electronic authentication** means the process of verification of an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

(c) **electronic transmission** means transmission made using any electromagnetic or photonic means;

(d) **electronic version of a document** means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;

(e) **trade administration document** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;

(f) **UNCITRAL** means the United Nations Commission on International Trade Law; and

(g) **unsolicited commercial electronic message** means an electronic message which is sent for commercial purposes to an electronic address without the consent of the recipient using an Internet carriage service or other telecommunications service.

Article 15.4. Customs Duties

1. Neither Party shall impose customs duties on electronic transmissions between the Parties.

2. Nothing in paragraph 1 shall preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 15.5. Domestic Regulatory Frameworks

1. Each Party shall maintain laws and regulations governing electronic transactions based on the UNCITRAL Model Law on Electronic Commerce 1996.

2. Each Party shall:

(a) minimise the regulatory burden on electronic commerce; and

(b) consult, as appropriate, with industry in the development of electronic commerce regulatory frameworks.

Article 15.6. Electronic Authentication and Digital Certificates

1. Each Party shall maintain measures for electronic authentication that permit Parties to electronic transactions to:

(a) determine the appropriate authentication technologies and implementation models for their electronic transactions, and do not limit the recognition of such technologies and implementation models; and

(b) have the opportunity to prove that their electronic transactions comply with the Party's laws and regulations.

2. Each Party shall work towards the mutual recognition of digital certificates at government level based on internationally accepted standards.

3. Each Party shall encourage the interoperability of digital certificates in the business sector.

Article 15.7. Online Consumer Protection

Each Party shall, to the extent possible and in a manner considered appropriate by each Party, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its laws, regulations and policies.

Article 15.8. Online Personal Data Protection

1. Each Party shall establish or maintain legislation or regulations that protect the personal data of the users of electronic commerce.

2. In the development of personal data protection standards, each Party shall take into account the international standards and criteria of relevant international organisations.

Article 15.9. Paperless Trading

1. Each Party shall accept the electronic format of trade administration documents as the legal equivalent of paper documents except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

2. The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.

3. In implementing initiatives which provide for the use of paperless trading, the Parties shall take into account the methods agreed by international organisations.

4. Each Party shall endeavour to make all trade administration documents available to the public in electronic form.

Article 15.10. Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures to minimise unsolicited commercial electronic messages.

2. The Parties shall, subject to their respective laws and regulations and mutual interest, cooperate bilaterally and in international forums regarding the regulation of unsolicited commercial electronic messages. Areas of cooperation may include, but should not be limited to, the exchange of information on technical, educational and policy approaches to unsolicited commercial electronic messages.

Chapter 16. Economic and Technical Cooperation

Article 16.1. Objectives

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

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

(a) promoting and enhancing economic and technical cooperation for the benefit and development of both Parties in accordance with the applicable laws, regulations and policies of each Party;

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

(c) advancing human resource development, creating new opportunities for trade and investment;

(d) contributing to the important role of the private sector in encouraging mutual economic growth and development; and

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

Article 16.2. Scope

1. The Parties affirm the importance of all areas of cooperation between the Parties with particular attention given to the following areas:

(a) automotive;

(b) agriculture;

(c) tourism;

(d) clean coal technology; and

(e) electronic commerce.

2. The details of areas of cooperation specified in paragraph 1 shall be set out in the Implementing Arrangement for Economic and Technical Cooperation activities in agreed areas pursuant to this Chapter.

3. The Parties may include the following other areas of cooperation:

(a) forestry, fisheries and plantation;

(b) education and human resource development;

(c) competition policy;

(d) services;

(e) investment;

(f) domestic economic reform;

(g) health;

(h) information and communications technology;

(i) science and technology;

(j) small and medium enterprises; and

(k) other areas to be mutually agreed upon by the Parties. 4. Cooperation between the Parties under this Chapter should contribute to achieving the objectives of the Agreement, and in particular the objectives in Article 16.1 (Objectives), through the identification and development of innovative cooperation activities capable of providing added value to the Parties' relationship.

Article 16.3. Forms of Cooperation

1. The forms of cooperation under this Chapter may include:

(a) exchanging information on developments in areas of mutual interest to the Parties;

(b) encouraging and facilitating visits and exchanges of experts; (c) promoting the holding of seminars and workshops;

(d) promoting and encouraging cooperation between the private sectors of both Parties; and

(e) other forms of cooperation as mutually agreed by the Parties.

2. Economic and technical cooperation under this Chapter shall support the implementation of this Agreement through economic and technical cooperation activities which are trade or investment related and mutually agreed by the Parties.

Article 16.4. Costs of Cooperation

1. The implementation of cooperation under this Chapter shall be subject to the availability of funds and resources of each Party and the applicable laws and regulations of each Party.

2. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels, in an equitable manner to be mutually agreed upon between the Parties.

Article 16.5. Oversight of Economic and Technical Cooperation

1. The FTA Joint Commission established in paragraph 1 of Article 19.1 (Free Trade Agreement Joint Commission) of Chapter 19 (Institutional Provisions) shall oversee cooperation between the Parties under this Chapter. The FTA Joint Commission's functions shall be to:

(a) facilitate the exchange of information in the relevant areas of cooperation;

(b) review and monitor the implementation and operation of this Chapter; (c) discuss any issues related to this Chapter;

(d) identify ways and opportunities for further cooperation between the Parties; and

(e) supervise the functions and activities of any subsidiary bodies established.

2. The FTA Joint Commission shall respect existing consultation mechanisms between the Parties and, as appropriate, share information and coordinate with such mechanisms to ensure effective and efficient implementation of cooperative activities and projects.

3. The FTA Joint Commission may delegate its functions under this Article to a subsidiary body established in accordance with subparagraph 2(c) of Article 19.1 (Free Trade Agreement Joint Commission) of Chapter 19 (Institutional Provisions).

Chapter 17. Transparency

Article 17.1. Relation to other Chapters

Where there are specific provisions in other Chapters of this Agreement regarding the subject matter of this Chapter, they

shall prevail to the extent that they are inconsistent with the provisions of this Chapter.

Article 17.2. Definitions

For the purposes of this Chapter

'**administrative ruling of general application**' means an administrative or quasi-judicial ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:

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

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

Article 17.3. Publication

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

2. To the extent possible, each Party shall make the measures referred to in paragraph 1 available on the internet.

3. To the extent possible, each Party shall:

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

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

Article 17.4. Notification and Provision of Information

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

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement, regardless of whether the requesting Party has been previously notified of that measure.

3. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

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

Article 17.5. Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner its measures referred to in paragraph 1 of Article 17.3 (Publication), each Party shall ensure that in its administrative proceedings in which these measures are applied to particular persons, goods or services of the other Party in specific cases it:

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

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

(c) follows its procedures in accordance with its law.

Article 17.6. Review

1. Each Party shall maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review (38) and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the above mentioned tribunals or procedures provide:

(a) the parties to a proceeding with a reasonable opportunity to support or defend their respective positions; and

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

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

(38) For greater certainty, "review" includes merits (de novo) review only where provided for under the Party's law.

Chapter 18. General Provisions and Exceptions

Article 18.1. General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Cooperation), Chapter 5 (Sanitary and Phytosanitary Measures), and Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures) of this Agreement, Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Telecommunications Services), Chapter 10 (Movement of Natural Persons), and Chapter 15 (Electronic Commerce) of this Agreement, Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

Article 18.2. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

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

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(iii) taken so as to protect critical public infrastructures (39) including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures;

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

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

2. The FTA Joint Commission shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination.

(39) For greater certainty, this includes critical public infrastructures whether publicly or privately owned.

Article 18.3. Taxation

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 12.8 (Expropriation and Compensation) of Chapter 12 (Investment); or

(c) they are granted or imposed under Article 12.9 (Transfers) of Chapter 12 (Investment).

3. For the avoidance of doubt, nothing in this Agreement shall apply to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, a pension trust, or superannuation fund, or other arrangement to provide pension, or superannuation, or similar benefits on a requirement that the Party maintain continuous jurisdiction, regulation, or supervision over such trust, fund, or other arrangement.

4. Nothing in this Agreement shall affect the rights and obligations of a Party under any tax convention relating to the avoidance of double taxation in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail.

5. If either Party considers that there is any inconsistency relating to a taxation measure between this Agreement and any tax convention, the relevant authorities shall immediately consult. For the purpose of this paragraph, the relevant authorities shall include:

(a) for Australia, the Treasury and the Department of Foreign Affairs and Trade; and

(b) for Malaysia, the Ministry of Finance.

6. For the purpose of paragraph 5, any consultations between the Parties about whether a measure is a taxation measure shall be done by the competent tax authorities, as stipulated under the laws of each Party.

7. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

8. For the purpose of this Article, taxation measures do not include any import or customs duties.

Article 18.4. Measures to Safeguard the Balance-of-payments

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

(a) in the case of trade in goods, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of GATT 1994, in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services in respect of which it has obligations under Article 8.3 (National Treatment) and Article 8.5 (Market Access) of Chapter 8 (Trade in Services), including on payments or transfers for transactions related to such commitments; and

(c) in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments as defined in subparagraph (a) of Article 12 (Definitions) of Chapter 12 (Investment).

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

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

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

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

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

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

3. With respect to trade in services and investment:

(a) it is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial

reserves adequate for the implementation of its programme of economic development or economic transition; and

(b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

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

5. A Party adopting or maintaining any restrictions under paragraph 1 shall:

(a) in the case of investment, respond to the other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement; and

(b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with the other Party.

Chapter 19. Institutional Provisions

Article 19.1. Free Trade Agreement Joint Commission

1. The Parties hereby establish a Free Trade Agreement Joint Commission (the FTA Joint Commission) which shall meet at the level of, and be co-chaired by, senior officials or as mutually determined by the Parties. Each Party shall be responsible for the composition of its delegation.

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

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

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

(c) establish, as appropriate, subsidiary bodies to address issues arising under, and to assist implementation of this Agreement;

(d) supervise and coordinate the work of any subsidiary bodies established pursuant to this Agreement;

(e) adopt as appropriate any decision or recommendation of any subsidiary body established pursuant to this Agreement;

(f) report to the Joint Trade Committee, as appropriate; and (g) carry out any other functions as the Parties may agree.

3. The FTA Joint Commission may:

(a) explore measures for the further expansion of trade and investment between the Parties; and

(b) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement pursuant to Article 20.8 (Referral to the FTA Joint Commission) of Chapter 20 (Consultations and Dispute Settlement).

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

5. Unless the Parties otherwise agree, the FTA Joint Commission shall convene its inaugural meeting within one year after this Agreement enters into force and then each year, or as otherwise mutually determined by the Parties. The FTA Joint Commission shall convene alternately in Australia and Malaysia, unless the Parties agree otherwise. Special meetings of the FTA Joint Commission may be convened, as mutually agreed by both Parties, within 30 days upon the request of either Party.

Article 19.2. Communications

1. Communications between the Parties on any matter relating to this Agreement shall be in the English language and facilitated through the following contact points:

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

(b) in the case of Australia, the Department of Foreign Affairs and Trade.

2. On the request of one Party, the contact point of the other Party shall identify the office or official responsible for the

matter at issue and assist, as necessary, in facilitating communications with the requesting Party.

Chapter 20. Consultations and Dispute Settlement

Section A. Introductory Provisions

Article 20.1. Objectives

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

Article 20.2. Definitions

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

(a) **Complaining Party** means the Party that requests consultations under Article 20.6 (Consultations);

(b) **dispute arising under this Agreement** means a complaint made by the Complaining Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations (40) under this Agreement; and

(c) **Responding Party** means the Party to which the request for consultations is made under Article 20.6 (Consultations).

(40) A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

Article 20.3. Scope

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 14 (Competition Policy), Chapter 15 (Electronic Commerce), and Chapter 16 (Economic and Technical Cooperation).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 20.5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

Article 20.4. General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties.

Article 20.5. Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which

the Parties are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

3. This Article does not apply where the Parties agree in writing that this Article shall not apply to a particular dispute.

Section B. Consultation Provisions

Article 20.6. Consultations

1. Either Party may request consultations with respect to any dispute arising under this Agreement or if any benefit that could have reasonably been expected to accrue to it under Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin) or Chapter 8 (Trade in Services), is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement. The Responding Party shall accord due consideration to a request for consultations made by the Complaining Party and shall accord adequate opportunity for such consultations.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. The Responding Party shall immediately acknowledge receipt of the request, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) 10 days after the date of receipt of the request in cases of urgency, including perishable goods; or

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

5. The Parties shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

Article 20.7. Good Offices, Conciliation, Mediation

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

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or reconvened under this Chapter.

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

Section C. Adjudication Provisions

Article 20.8. Referral to the Fta Joint Commission

If consultations undertaken pursuant to Article 20.6 (Consultations) fail to resolve a nullification or impairment complaint under the timeframes and circumstances set out in subparagraphs 1(a)-(b) of Article 20.9 (Request for Establishment of Arbitral Tribunals), the Complaining Party shall, by delivery of written notification to the other Party, refer the complaint to

the FTA Joint Commission in accordance with subparagraph 3(b) of Article 19.1 (Free Trade Agreement Joint Commission) of Chapter 19 (Institutional Provisions) for its consideration.

Article 20.9. Request for Establishment of Arbitral Tribunals

1. The Complaining Party may request the establishment of an arbitral tribunal to consider a dispute arising under this Agreement if:

(a) the Responding Party does not enter into consultations in accordance with paragraph 4 of Article 20.6 (Consultations); or

(b) the consultations fail to resolve a dispute within:

(i) 20 days after the date of receipt of the request for consultations in cases of urgency, including perishable goods;

(ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

(iii) such other period as the Parties may agree.

2. A request made pursuant to paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. The Responding Party shall immediately acknowledge receipt of the request, indicating the date on which the request was received.

4. Where a request is made pursuant to paragraph 1, an arbitral tribunal shall be established in accordance with Article 20.10 (Establishment and Reconvening of Arbitral Tribunals).

Article 20.10. Establishment and Reconvening of Arbitral Tribunals

1. An arbitral tribunal requested pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.

2. Unless the Parties otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 20.9 (Request for Establishment of Arbitral Tribunals), the Parties shall enter into consultations with a view to reaching agreement on the procedures for composing the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties may agree to use any of the optional procedures specified in this Chapters Annex on Rules of Procedure for Arbitral Tribunal Proceedings (Rules of Procedure Annex). Any procedures for composing the arbitral tribunal which are agreed under this paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of paragraphs 12 and 13.

4. If the Parties are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in paragraph 3, either Party may, at any time thereafter, notify the other Party that it wishes to use the procedures set forth in paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in accordance with paragraphs 5 to 7.

5. The Complaining Party shall appoint one arbitrator within 10 days of the date of the receipt of the notification referred to in paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in paragraph 4.

6. Following the appointment of the arbitrators in accordance with paragraph 5, the Parties shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each Party may provide to the other Party a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in paragraph 4, either Party may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.

8. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators shall:

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

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, either Party;

(d) not have dealt with the matter in any capacity; and

(e) disclose to the Parties, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties otherwise agree, arbitrators shall not be nationals of a Party. In addition, the chair of the arbitral tribunal shall not have his or her usual place of residence in the territory of a Party.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. The Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

12. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

13. Where an arbitral tribunal is reconvened under Article 20.15 (Compliance Review) or Article 20.16 (Compensation and Suspension of Concessions or other Obligations) the reconvened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

Article 20.11. Functions of Arbitral Tribunals

1. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the provisions of this Agreement cited by the Parties; and

(c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties agree otherwise within 20 days from the date of the establishment of an arbitral tribunal:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 20.9 (Request for Establishment of Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement."

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties;

(b) its findings on the facts of the case and on the applicability of the provisions of this Agreement; and

(c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; or

(d) its reasons for its findings in subparagraphs (b) and (c).

4. In addition to paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

7. The arbitral tribunal shall consult the Parties regularly and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

8. An arbitral tribunal reconvened under this Chapter shall also carry out functions with regard to compliance review under Article 20.15 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 20.16 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal reconvened under Article 20.15 (Compliance Review) and Article 20.16 (Compensation and Suspension of Concessions or other Obligations).

9. An arbitral tribunal shall make its findings by consensus. Where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

Article 20.12. Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in this Chapter's Rules of Procedure Annex unless the Parties agree otherwise. On the request of a Party, or on its own initiative, the arbitral tribunal may, after consulting the Parties, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal reconvened under Article 20.15 (Compliance Review) or Article 20.16 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties agree otherwise.

4. Similarly, a Compliance Review Tribunal reconvened pursuant to Article 20.15 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after reconvening, fix the timetable for the compliance review process taking into account the time periods specified in Article 20.15 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties agree otherwise. All presentations and statements made at hearings shall be made in the presence of the Parties. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties. Neither Party shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by the other Party. The Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the arbitral tribunal which that Party has designated as confidential. A Party shall upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

11. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties. Where the Parties agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties an interim report, meeting the requirements specified in paragraph 3 of Article 20.11 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. A Party may, seven days after the final report of the arbitral tribunal is presented to the Parties or at any time thereafter, make the report publicly available subject to the protection of any confidential information contained in the report.

Article 20.13. Suspension and Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of either Party. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

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

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

Section D. Implementation Provisions

Article 20.14. Implementation

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in paragraph 1;

(b) whether such implementation can take place immediately; and

(c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, wnenever possible, be mutually agreed by the Parties. Where the Parties are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the arbitral tribunal's final report to the Parties either Party may request that the chair of the arbitral tribunal determine the reasonable period of time. Unless the Parties otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties.

5. Where a request is made pursuant to paragraph 4, the chair of the arbitral tribunal shall present the Parties with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral tribunal's final report to the Parties. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

Article 20.15. Compliance Review

1. Where the Parties disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in paragraph 1 of Article 20.14 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal reconvened for this purpose (Compliance Review Tribunal) (41). Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of either Party.

2. Such request may only be made after the earlier of:

(a) the expiry of the reasonable period of time; or

(b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Responding Party; and

(b) whether the Responding Party has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).

4. The Compliance Review Tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties;

(b) its findings on the factual aspects of the case; and

(c) its findings on whether the Responding Party has complied with the obligation in paragraph 1 of Article 20.14 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties within 75 days of the date it reconvenes and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.

6. Where an arbitral tribunal is requested to reconvene pursuant to paragraph 1, it shall reconvene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to reconvene to the submission of its final report shall not exceed 120 days, unless paragraph 12 of Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) applies or the Parties otherwise agree.

(41) Consultations under Article 20.6 (Consultations) are not required for these procedures.

Article 20.16. Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under paragraph 1 of Article 20.14 (Implementation).

However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under paragraph 1 of Article 20.14 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

(a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in paragraph 1 of Article 20.14 (Implementation); or

(b) a failure to comply with the obligation in paragraph 1 of Article 20.14 (Implementation) has been established in accordance with Article 20.15 (Compliance Review)

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under paragraph 2, the Complaining Party may at any time thereafter notify the Responding Party that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification and impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to paragraph 8; or

(b) a mutually agreed solution has been reached.

5. A notification made under paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

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

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in paragraph 6 have not been followed, the Responding Party may request the arbitral tribunal to reconvene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties within 30 days of the date it reconvenes. Where an arbitral tribunal is requested to reconvene pursuant to this paragraph, it shall reconvene within 15 days of the date of the request, unless paragraph 12 of Article 20.10 (Establishment and Reconvening of Arbitral Tribunals) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in paragraph 1 of Article 20.14 (Implementation) has been complied with or a mutually satisfactory solution is reached.

10. Where the right to suspend concessions or other obligations has been exercised under this Article, if the Responding Party considers that:

(a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or

(b) it has complied with the obligation in paragraph 1 of Article 20.14 (Implementation),

it may request the arbitral tribunal to reconvene to examine the matter (42).

11. Where the arbitral tribunal reconvenes pursuant to subparagraph 10(a), paragraph 8 shall apply. Where the arbitral tribunal reconvenes pursuant to subparagraph 10(b), paragraphs 3 to 5 of Article 20.15 (Compliance Review) shall apply.

(42) Where a Compliance Review Tribunal determines that measures taken to comply are inconsistent with this Agreement, it may also, on

request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

Section E. Section E Final Provisions

Article 20.17. Expenses

1. Unless the Parties otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.

Article 20.18. Contact Points

1. Each Party shall designate a contact point for this Chapter and shall notify the other Party of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Party of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party through its designated contact point who shall provide confirmation of receipt of such documents in writing.

Article 20.19. Language

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

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

Annex on rules of procedure for arbitral tribunal proceedings

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 20 (Consultations and Dispute Settlement).

Timetable

2. After consulting the Parties, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties, an arbitral tribunal may, in consultation with the Parties, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Operation of Arbitral Tribunals 7. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions. 8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties.

11. The arbitral tribunal's deliberations shall be confidential. The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Written Submissions and Other Documents

13. Each Party shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, the Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

14. Each Party shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Party.

15. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party may deliver a copy of the document(s) to the other Party by facsimile, email or other means of electronic transmission.

16. A Party may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral tribunal proceeding by delivering a new document clearly indicating the changes.

Hearings

17. At the first substantive hearing with the Parties, each Party shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

18. The Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

Availability of Information

19. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties. Neither Party shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by the other Party. The Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party shall, upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Information Gathering

20. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

21. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties. Where the Parties agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties with any information or technical advice it receives and an opportunity to provide comments.

Reports

22. The arbitral tribunal shall provide to the Parties an interim report, meeting the requirements specified in paragraph 3 of Article 20.11 (Functions of Arbitral Tribunals).

23. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties in its final report.

24. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

Venue

25. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first hearing to be held in the capital of the Responding Party.

Remuneration and Payment of Expenses

26. The arbitral tribunal 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 pursuant to Rule 10.

Chapter 21. Final Provisions

Article 21.1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 21.2. Relation to other Agreements

1. Each Party reaffirms its existing rights and obligations under the WTO Agreement and other agreements to which both Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any existing right or obligation of a Party under the WTO Agreement and other agreements to which the Parties are party.

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

Article 21.3. Amendment of International Agreements

If any international agreement, or a provision therein, referred to in this Agreement (or incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

Article 21.4. Disclosure of Information

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

Article 21.5. Confidentiality

Unless otherwise provided in this Agreement, each Party shall undertake, in accordance with its laws and regulations, to observe the confidentiality of information provided by the other Party.

Article 21.6. Amendments

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures and on such date as the Parties may agree.

Article 21.7. General Review

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, within five years of the entry into force of this Agreement and at least every five years thereafter unless otherwise agreed by the Parties.

Article 21.8. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 45 days after the date on which the Parties exchange written notifications that their respective internal procedures for the entry into force of this Agreement have been completed or after such other period as the Parties may agree.

2. Either Party may terminate this Agreement by written notification to the other Party, and such termination will take effect 180 days after the date of the notification.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Kuala Lumpur, this 22™ day of May 2012.

For the Government of Australia

For the Government of Malaysia