# FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE REPUBLIC OF MALDIVES

PREAMBLE

The Government of the People's Republic of China ("China") and the Government of the Republic of Maldives ("Maldives"), hereinafter collectively referred to as "the Parties":

INSPIRED by their longstanding friendship and growing economic and trade relationship;

DESIRING to strengthen their cooperation on jointly building the 21st-Century Maritime Silk Road through fostering closer economic and trade ties between the Parties;

RECOGNIZING that the strengthening of their economic partnership through a free trade agreement, which removes barriers to the trade in goods, trade in services and investment flows, will produce mutual benefits for the Parties, including creation of new employment opportunities and improvement of the general welfare of the Parties;

BUILDING on their rights, obligations and undertakings under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, regional and bilateral agreements and arrangements;

UPHOLDING the rights of their governments to regulate in order to meet national policy objectives, and to preserve their flexibility to safeguard public welfare; and

RESOLVED to create an expanded market for goods and services in their territories through establishing clear rules governing their trade which will ensure a predictable, transparent and consistent commercial framework for business operations;

HAVE AGREED as follows:

## Chapter 1. GENERAL PROVISIONS

### Article 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.

### Article 2. Relation to other Agreements

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

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

### Article 3. Geographical Applicability

1. This Agreement shall apply to the entire customs territory of China, including land territory, territorial airspace, internal waters and territorial sea as well as their bed and subsoil, and any area beyond its territorial sea within which it may exercise sovereign rights and/or jurisdiction in accordance with international law and its domestic law.

2. This Agreement shall apply to the territory of Maldives, which shall encompass the land, air space, sea and seabed within the archipelagic baselines of the Maldives drawn in accordance with its domestic law and international law, and includes the

territorial waters, the seabed and air space thereof beyond the said baselines, where it may exercise sovereign rights or jurisdiction in accordance with its domestic law and international law.

3. Each Party is fully responsible for the observance of all provisions of this Agreement and shall take such reasonable measures as may be available to it to ensure their observance by local governments and authorities in its territory.

# Chapter 2. GENERAL DEFINITIONS

## Article 4. General Definitions

For the purposes of this Agreement, unless otherwise specified:

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

any charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the WTO Agreement on Subsidies and Countervailing Measures; and

any fee or other charge in connection with importation commensurate with the cost of services rendered;

Customs Valuation Agreement means the Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

days mean calendar days;

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

GATS means the General Agreement on Trade in Services, which is part of the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994, which is part of the WTO Agreement;

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

this Agreement means the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Republic of Maldives;

WTO means the World Trade Organization; and

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

# Chapter 3. TRADE IN GOODS

## Article 5. Definitions

For the purposes of this Chapter, unless otherwise specified:

base rate of customs duty means the most-favored-nation (MFN) import customs duty rate applied on 1 January 2014 provided by each Party;

goods mean domestic products as these are understood in GATT 1994 and includes originating goods;

goods and products shall be understood to have the same meaning, unless the context otherwise requires; and

originating means qualifying under the rules of origin set out in Chapter 4 (Rules of Origin and Origin Implementation Procedures);

## Article 6. Scope

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

## Article 7. National Treatment

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

## Article 8. Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, no Party may increase any base rate of customs duty, or adopt any new customs duty, on an originating good of the other Party.

2. Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods of the other Party in accordance with Annex 1.

## Article 9. Accelerated Elimination of Customs Duties

1. At the request of a Party, the Parties shall consult to consider accelerating the elimination of customs duties on originating goods as set out in their Schedules in Annex 1.

2. An agreement by the Parties to accelerate the elimination of customs duties on originating goods shall supersede any duty rate determined pursuant to their Schedules for such good and shall enter into force following approval by each Party in accordance with their respective applicable legal procedures.

3. A Party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other Party set out in its Schedule in Annex 1. A Party considering doing so shall inform the other Party as early as practicable before the new rate of customs duty takes effect.

## Article 10. Import and Export Restrictions

The rights and obligations of the Parties in respect of import and export restrictions shall be governed by Article XI of GATT 1994, which is hereby incorporated into and made part of this Agreement.

## Article 11. Administrative Fees and Formalities

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

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

## Article 12. Non-Tariff Measures

1. No Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or in accordance with other provisions of this Agreement.

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

3. Each Party shall ensure that import licensing regimes applied to goods originating in the other Party are applied in accordance with the WTO Agreement, and in particular, with the provisions of the WTO Agreement on Import Licensing Procedures.

4. Promptly after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing regimes and related licensing procedures. Thereafter each Party shall notify the other Party of any new import licensing procedure and any modification to its existing import licensing procedures before it takes effect.

### Article 13. State Trading Enterprises

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of GATT 1994.

### Article 14. Contact Points

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

### Article 15. Committee on Trade In Goods

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

2. The Committee shall meet on the request of a Party to consider any matter arising under this Chapter, Chapters 6 (Technical Barriers to Trade and Sanitary and Phytosanitary Measures) and 7 (Trade Remedies).

3. The Committee's functions shall include:

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

(b) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures.

# Chapter 4. RULES OF ORIGIN AND ORIGIN IMPLEMENTATION PROCEDURES

## Section A. Rules of Origin

### Article 16. Definitions

For the purposes of this Chapter:

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

CIF means the value of the imported good inclusive of the cost of insurance and freight up to the port or place of entry in the country of importation;

FOB means the value of the exported good free on board inclusive of the cost of transport to the port or site of final shipment abroad;

fungible materials mean materials which are interchangeable for commercial purposes, whose properties are essentially identical, and between which it is impractical to differentiate by a mere visual examination;

generally accepted accounting principles mean the recognized accounting standards of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Those standards may encompass broad guidelines of general applications as well as detailed standards, practices and procedures;

good means any merchandise, product, article, or material;

Harmonized System means the Harmonized Commodity Description and Coding System of the World Customs Organization;

materials mean ingredients, parts, components, subassemblies and/or goods that were physically incorporated into another good or were subject to a process in the production of another good;

neutral elements mean the goods used in the production, testing or inspection of

another good but not physically incorporated into the good by themselves.

non-originating goods or non-originating materials mean goods or materials that do not qualify as originating under this Chapter and goods or materials of undetermined origin;

originating materials or originating goods mean materials or goods which qualify as originating in accordance with the provisions of this Chapter; and

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

## Article 17. Originating Goods

Except as otherwise provided in this Chapter, the following goods shall be considered as originating in a Party:

(a) goods wholly obtained or produced in a Party as defined in Article 18;

(b) goods produced in a Party exclusively from originating materials; or

(c) goods produced from non-originating materials in a Party, provided that the goods conform to a regional value content not less than 40%, except for the goods listed in Annex 2 which must comply with the requirements specified therein.

## Article 18. Goods Wholly Obtained or Produced

For the purposes of Article 17(a), the following goods shall be considered as wholly obtained or produced entirely in a Party:

(a) live animals born and raised in a Party;

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

(c) plant and plant products grown, and harvested, picked or gathered in a Party;

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in a Party;

(e) minerals and other naturally occurring substances not included in subparagraphs (a) through (d) above, extracted or taken from its soil, waters, seabed or subsoil beneath the seabed;

(f) goods extracted from the waters, seabed or subsoil beneath the seabed outside the territorial waters of a Party, provided that the Party has rights to exploit such waters, seabed or subsoil beneath the seabed in accordance with relevant international law and domestic law of that Party;

(g) goods of sea fishing and other marine products taken from the sea outside the territorial waters of a Party by a vessel registered in a Party and flying the flag of that Party;

(h) goods processed or made on board factory ships registered in a Party and flying the flag of that Party, exclusively from goods referred to in subparagraph (d) and (g) above;

(i) scrap and waste derived from manufacturing or processing operations consumption in a Party, fit only for the recovery of raw materials or for recycling purposes;

(j) used goods consumed and collected in a Party, fit only for the recovery of raw materials; or

(k) goods produced entirely in a Party exclusively from goods referred to in subparagraphs (a) to (j) above.

## Article 19. Regional Value Content

1. The Regional Value Content criterion (RVC) shall be calculated as follows:

RVC = FOB - VNM / FOB ×100%

Where:

RVC is the regional value content, expressed as a percentage; VNM is the value of the non-originating materials.

2. VNM shall be determined according to the following circumstances:

(a) in case of the imported non-originating materials, VNM shall be the CIF value of the materials at the time of importation;

(b) in case of the non-originating materials obtained in a Party, VNM shall be the earliest ascertainable price paid or payable for the non-originating materials in that Party. The value of such non-originating materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the materials from the supplier's warehouse to the producer's location.

3. If a product which has acquired originating status in accordance with paragraph 1 in a Party is further processed in that Party and used as material in the manufacture of another product, no account shall be taken of the non-originating components of that material in the determination of the originating status of the product.

## Article 20. Accumulation

Where originating goods or materials of a Party are incorporated into a good in the other Party, the goods or materials so incorporated shall be regarded to be originating in the latter Party.

## Article 21. Minimal Operations or Processes

1. Notwithstanding Article 17(c), a good shall not be considered as originating, if it has only undergone one or more of the following operations or processes:

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

(b) simple assembly of parts of articles to constitute a complete article, or disassembly of products into parts;

(c) packing, unpacking or repacking operations for the purposes of sale or presentation;

(d) slaughtering of animals;

(e) washing, cleaning, removal of dust, oxide, oil, paint or other coverings;

(f) ironing or pressing of textiles;

(g) simple painting and polishing operations;

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

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

(j) peeling, stoning and shelling of fruits, nuts and vegetables;

(k) sharpening, simple grinding or simple cutting;

(l) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);

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

(n) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;

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

(p) operations whose sole purpose is to ease port handling; and

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

2. For the purposes of this Article:

(a) "simple" generally describes activities which need neither special skills nor special machines, apparatus or equipment specially produced or installed for carrying out the activity; and

(b) "simple mixing" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction.

## Article 22. De Minimis

A good that does not meet the change in tariff classification required in Annex 2 is nonetheless originating, if the value of non-originating material that have been used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10% of the FOB value of the given good. The value of the said non-originating material shall be determined pursuant to Article 19.2.

## Article 23. Fungible Materials

Where originating and non-originating fungible materials are used in the production of a good, the following methods shall be adopted in determining whether the materials used are originating:

(a) physical separation of the materials; or

(b) an inventory management method recognized in the generally accepted accounting principles of the exporting Party, and shall be used for at least one fiscal year.

## Article 24. Neutral Elements

In determining whether a good is an originating good, the origin of the following neutral elements shall be disregarded:

(a) fuel, energy, catalysts and solvents;

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

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

(d) tools, dies and moulds;

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

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

(g) any other goods 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.

## Article 25. Packing, Packages and Containers

1. Containers and packing materials used for the transport of goods shall not be taken into account in determining the origin of the goods.

2. Where goods are subject to a change in tariff classification criterion set out in Annex 2, the origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods. However, if the goods are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the goods.

## Article 26. Accessories, Spare Parts and Tools

1. Where a good is subject to change in tariff classification criterion set out in Annex 2, accessories, spare parts, tools or instructional and information materials presented with the good upon importation shall be disregarded when determining the origin of the good, provided that these are classified with and not invoiced separately from the good.

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

3. This Article shall apply only where the quantities and values of said accessories, spare parts, tools or, instructional and information materials are customary for the good.

### Article 27. Direct Consignment

1. Preferential tariff treatment under this Agreement shall only be granted to originating products which are transported directly between the Parties.

2. Notwithstanding paragraph 1, goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 3 months in such non-Parties, shall still be considered as directly transported between the Parties, provided that:

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

(b) the goods do not enter into trade or consumption there;

(c) the goods do not undergo any other operation there other than unloading and reloading, or any operation required to keep them in good condition; and

(d) the goods remain under customs control during transit in those non-Parties.

3. Compliance with the provisions set out in paragraph 2 shall be evidenced by presenting the customs authority of the importing Party either with customs documents of the non-Parties, or with any other documents to the satisfaction of the customs authority of the importing Party.

## Section B. Origin Implementation Procedures

### Article 28. Certificate of Origin

1. A Certificate of Origin as set out in Annex 3 shall be issued by the authorized bodies of a Party on application by the exporter or producer, provided that the goods can be considered as originating in that Party subject to the provision of this Chapter.

2. The Certificate of Origin shall:

(a) contain a unique certificate number;

(b) cover one or more goods under one consignment;

(c) state the basis on which the goods are deemed to qualify as originating for the purposes of this Chapter;

(d) contain security features, such as specimen signatures or stamps as advised to the importing Party by the exporting Party; and

(e) be completed in English.

3. The Certificate of Origin shall be issued before or at the time of shipment. It shall be valid for 1 year from the date of issuance in the exporting Party.

4. Each Party shall inform the customs authority of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of any security features for relevant forms and documents used by each authorized body, prior to the issuance of any certificates by that body. Any change in the information provided above shall be promptly notified to the customs authority of the other Party.

5. If the Certificate of Origin has not been issued before or at the time of shipment due to force majeure or justifiable reasons, the Certificate of Origin may be issued retrospectively but no longer than 1 year from the date of shipment, bearing the words “ISSUED RETROSPECTIVELY”.

6. For cases of theft, loss or accidental destruction of a Certificate of Origin, the exporter or producer may make a written or electronic request to the authorized bodies of the exporting Party for issuing a certified copy, provided that the original copy previously issued has been verified not to be used. The certified copy shall bear the words “CERTIFIED TRUE COPY of the original Certificate of Origin number dated ”. The certified copy shall be valid during the term of validity of the original Certificate of Origin.

### Article 29. Retention of Origin Documents

1. Each Party shall require its producers, exporters and importers to retain documents that prove the originating status of the goods as well as the fulfillment of the other requirements of this Chapter for at least 3 years or in accordance with its domestic law.

2. Each Party shall require that its authorized bodies retain copies of Certificates of Origin and other related supporting documents for at least 3 years or in accordance with its domestic law.

3. The records to be maintained may include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

## Article 30. Obligations Regarding Importations

Unless otherwise provided in this Chapter, the importer claiming for preferential tariff treatment shall:

(a) indicate in the customs declaration that the good qualifies as an originating good;

(b) possess a valid Certificate of Origin, at the time the import customs declaration referred to in subparagraph (a) is made; and

(c) submit the original Certificate of Origin and other documentary evidence related to the importation of the goods, upon requirements of the customs authority of the importing Party.

## Article 31. Refund of Import Customs Duties or Deposit

1. Where a Certificate of Origin is not submitted to the customs authority of the importing Party at the time of importation pursuant to Article 30, upon the request of the importer, the customs authority of the importing Party may impose the applied non-preferential customs duties, or require a guarantee equivalent to the full amount of the customs duties on that good, provided that the importer formally declares to the customs authority at the time of importation that the good in question qualifies as an originating good.

2. The importer may apply for a refund of any excess customs duties imposed or guarantee paid within the period specified in the legislation of the importing Party.

## Article 32. Waiver of Certificate of Origin

1. Notwithstanding Article 30, a Party shall waive the requirements for the presentation of a Certificate of Origin to any consignments of originating goods of a customs value not exceeding US$ 600 or its equivalent amount in the Party's currency.

2. Waivers provided for in paragraph 1 shall not be applicable when it is established by the customs authority of the importing Party that the importation forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of Certificate of Origin.

## Article 33. Verification of Origin

1. For the purpose of determining the authenticity or accuracy of the Certificate of Origin, the originating status of the goods concerned, or the fulfillment of the other requirements of this Chapter, the customs authority of the importing Party may conduct origin verification by means of:

(a) requests for additional information from the importer;

(b) requests for additional information from the exporter or producer in the territory of the exporting Party;

(c) requests to the customs authority of exporting Party to verify the origin of a good; or

(d) such other procedures as the customs authority of the Parties may jointly decide.

2. A verification process under paragraph 1 shall only be initiated when there are reasonable grounds to doubt the accuracy or authenticity of the origin of the goods concerned.

3. The customs authority of the importing Party requesting verification to the exporting Party shall specify the reasons, and provide any documents and information justifying the verification.

4. The customs authority of the exporting Party referred to in paragraph 1 receiving a request for verification, shall respond to the request promptly and reply within 6 months from the date of raising verification request.

5. The importer, exporter, and producer referred to in paragraph 1 receiving a request for additional information, shall respond to the request promptly and reply within 6 months from the date of request.

6. If no reply is received within the periods mentioned above, or if the reply does not contain sufficient information to determine the authenticity of the documents or the originating status of the goods in question, the requesting customs authority may deny preferential tariff treatment.

### Article 34. Denial of Preferential Tariff Treatment

Except as otherwise provided in this Chapter, the importing Party may deny claim for preferential tariff treatment, if:

(a) the goods do not meet the requirements of this Chapter;

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

(c) the Certificate of Origin does not meet the requirements of this Chapter; or

(d) in a case according to Article 33.6.

### Article 35. Article 35: Electronic Origin Data Exchange System

The Parties shall develop an Electronic Origin Data Exchange System to ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the Parties.

### Article 36. Self-Declaration of Origin

The Parties agree to explore the possibilities to facilitate an exporter or importer to make a self-declaration on origin to streamline the documentary requirement.

### Article 37. Contact Points

1. Each Party shall establish a contact point which shall have the general responsibility of coordinating and implementing this Chapter. The contact points will be:

(a) for China, General Administration of Customs or its successor; and

(b) for Maldives, Maldives Customs Service or its successor.

2. Each Party shall provide the other Party with the name(s) of the designated contact point and the contact details of the relevant official(s) in that organization, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify the other Party promptly of any change of its contact point or any amendments to the details of the relevant official(s).

### Article 38. Consultation

1. The contact point of each Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter to ensure this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Chapter. Such consultations shall be conducted through the relevant contact points, and shall take place within 30 days of the request, unless the Parties otherwise determine.

2. In the event that such consultations fail to resolve any matter, the requesting Party may refer the matter to the Committee on Customs referred to in Article 54 for further consideration.

## Chapter 5. CUSTOMS PROCEDURES AND TRADE FACILITATION

### Article 39. Definitions

For the purposes of this Chapter:

customs administration means:

for China, the General Administration of Customs of the People's Republic of China; and

for Maldives, Maldives Customs Service;

customs law means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authority, and any regulations made by the customs authority under their statutory powers;

customs procedures mean the treatment applied by the customs administration to goods and means of transport that are subject to customs control; and

means of transport mean various types of vessels, vehicles and aircrafts which enter or leave the territory that carry persons and/or goods.

## Article 40. Scope and Objectives

1. This Chapter shall apply, in accordance with the Parties' respective international obligations and domestic customs law, to customs procedures applied to goods traded between the Parties and to the movement of means of transport between the Parties.

2. The objectives of this Chapter are to:

(a) simplify and harmonize customs procedures of the Parties;

(b) facilitate trade between the Parties; and

(c) promote cooperation between the customs administrations, within the scope of this Chapter.

## Article 41. Facilitation

1. The Parties shall ensure that their customs procedures and practices are predictable, consistent and transparent, to facilitate trade.

2. The Parties shall use efficient customs procedures, based, as appropriate, on international standards, aiming to reduce costs and unnecessary delays in trade between them, in particular the standards and recommended practices of the World Customs Organization, including the principles of the revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention).

3. The Parties shall limit controls, formalities and the number of documents required in the context of trade in goods between the Parties to those necessary and appropriate to ensure compliance with legal requirements, thereby simplifying, to the greatest extent possible, the related procedures.

4. 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 international trade.

## Article 42. Transparency

1. Each Party shall promptly publish, including on the Internet, its laws, regulations, and where applicable, administrative rules or procedures, of general application, relevant to trade in goods between the Parties.

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.

3. To the extent practicable and in a manner consistent with its laws and regulations, each Party shall publish, in advance, on the Internet, draft laws and regulations of general application relevant to trade between the Parties, with a view to affording the public, especially interested persons, an opportunity to provide comments.

4. Each Party shall ensure, to the extent possible, that a reasonable interval is provided between the publication of new or amended laws and regulations of general application relevant to trade between the Parties and their entry into force.

5. Each Party shall administer, in a uniform, impartial and reasonable manner, its laws and regulations of general application relevant to trade between the Parties.

## Article 43. Customs Valuation

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

## Article 44. Tariff Classification

The Parties shall apply the International Convention on the Harmonized Commodity Description and Coding System to goods traded between them.

## Article 45. Cooperation

1. To the extent permitted by their laws and regulations, the customs administrations of the Parties shall assist each other, in relation to:

(a) the implementation and operation of this Chapter;

(b) capacity building on customs procedures for enhancing trade facilitation; and

(c) such other issues as the Parties may mutually agree.

2. Each Party shall endeavor to provide the other Party with timely notice of any significant modification of its customs laws, regulations or procedures that are likely to substantially affect the operation of this Agreement.

## Article 46. Advance Rulings

1. Each Party shall provide for written advance rulings to be issued to a person described in paragraph 2(a) concerning tariff classification and whether goods are originating under this Agreement.

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

(a) provide that an exporter, importer or any person with a justifiable cause, or a representative thereof, may apply for an advance ruling, before the date of importation of the goods that are the subject of the application. A Party may require that an applicant have legal representation or registration in its territory;

(b) include a detailed description of the 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 request;

(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; and

(e) provide that the ruling be issued, in the national language of the issuing customs administration, to the applicant, expeditiously on receipt of all necessary information, within 90 days.

3. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the basis for its decision to decline to issue the advance ruling.

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

5. Each Party shall endeavor to make information on advance rulings which it considers to be of significant interest to other traders, publicly available, taking into account the need to protect confidential information.

6. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory through any port of entry, beginning on the date the advance ruling was issued or on any other date specified in the advance ruling. The Party shall ensure the same treatment of all importations of goods subject to the advance ruling during the validity period regardless of the importer or exporter involved, where the facts and circumstances are identical in all material respects.

7. A Party may modify or revoke an advance ruling, consistent with this Agreement, where there is a change in the laws or regulations; where incorrect information was provided or relevant information was withheld; where there is a change in a material fact; or where there is a change in the circumstances on which the ruling was based.

## Article 47. Review and Appeal

Each Party shall, in accordance with its domestic laws and regulations, provide that the importer, exporter or any other person affected by its determinations on a customs matter, have access to:

(a) a level of administrative review of determinations by its customs administrations independent of the official or office responsible for the decision under review; and

(b) judicial review of the determinations subject to its laws and regulations.

## Article 48. Application of Information Technology

1. Each Party shall apply information technology to support customs operations, where it is cost-effective and efficient, particularly in the paperless trading context, taking into account developments in this area within relevant international organizations, including the World Customs Organization.

2. Each Party shall endeavor to establish, as far as practicable, an electronic means for communication of relevant information required by its customs administration and other relevant border agencies to facilitate the international movement of goods and means of transport.

## Article 49. Risk Management

1. Each Party shall determine which persons, goods or means of transport are to be examined and the extent of the examination, based on risk management.

2. Each Party shall work to further enhance the use of risk management techniques in the administration of its customs procedures so as to facilitate the clearance of low-risk goods and allow resources to focus on high-risk goods.

3. Risk management shall be applied in such a manner that it does not create arbitrary or unjustifiable discrimination under the same conditions or disguised restriction on international trade.

## Article 50. Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. For greater certainty, this paragraph shall not require a Party to release goods where its requirements for release have not been met.

2. In accordance with paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the release of goods as rapidly as possible after arrival, provided all other regulatory requirements have been met;

(b) as appropriate, provide for advance electronic submission and processing of information before the physical arrival of goods with a view to expediting the release of goods; and

(c) may allow importers to obtain the release of goods prior to meeting all import requirements of that Party if the importer provides sufficient and effective guarantees and where it is decided that neither further examination, physical inspection nor any other submission is required.

3. Each Party shall endeavor to adopt and maintain a system under which goods in need of urgent clearance can obtain prompt customs clearance.

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

## Article 51. Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

(a) provide for the release of perishable goods under normal circumstances within the shortest possible time; and

(b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs administration.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

## Article 52. Single Window

1. The Parties shall endeavor to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

3. The Parties shall, to the extent possible and practicable, use information technology to support the single window.

## Article 53. Consultation

1. The customs administration of each Party may at any time request consultations with the customs administration of the other Party, on any matter arising from the implementation or operation of this Chapter, in cases where there are reasonable grounds or truth provided by the requesting Party. Such consultations shall be conducted through the relevant contact points, and shall take place within 60 days of the request, or any other possible time period that the Parties may mutually determine.

2. In the event that such consultations fail to resolve any such matter, the requesting Party may refer the matter to the Committee on Customs referred to in Article 54 for further consideration.

3. Each customs administration shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Party and any amendment of the said information shall be notified promptly.

## Article 54. Committee on Customs

1. With the view to the effective implementation and operation of Chapters 4 (Rules of Origin and Origin Implementation Procedures) and 5 (Customs Procedures and Trade Facilitation), a Committee on Customs is hereby established, under the FTA Joint Commission.

2. The function of the Committee on Customs shall be as follows:

(a) ensure the proper function of these two Chapters and attempt to resolve all issues arising from their application;

(b) keep Annex 2 updated on the basis of the transposition of the Harmonized Commodity Description and Coding System of the World Customs Organization;

(c) ensure the effective, uniform and consistent administration of these two Chapters, and enhance the cooperation in this regard;

(d) identify areas related to these two Chapters to be improved for facilitating trade between the Parties;

(e) address technical issues related to the implementation of Annex 2, such as change in tariff classification, regional value content calculation, etc.;

(f) review the interpretation and implementation of these two Chapters, and propose revisions to these two chapters as appropriate;

(g) exchange information on customs strategic development of each Party to strengthen the cooperation between the Parties; and

(h) make recommendations and report to the FTA Joint Commission.

3. The Committee on Customs shall consist of representatives from Customs administrations of the Parties. When deemed necessary and appropriate, as well as agreed by the Parties, representatives from other relevant government agencies or

relevant non-government organizations may be invited to the Committee meetings. One or more contact points shall be designated for this purpose.

4. The Committee shall be convened annually, or at other times as the Parties may mutually agree, in a format or method agreeable to the Parties.

# Chapter 6. TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES

## Article 55. Scope and Definitions

1. This Chapter shall apply to all sanitary and phytosanitary measures, standards, technical regulations, and conformity assessment procedures that may affect trade in goods between the Parties.

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

3. For the purposes of this Chapter,

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures, which is part of the WTO Agreement; and

TBT Agreement means the Agreement on Technical Barriers to Trade, which is part of the WTO Agreement.

4. For the purposes of this Chapter, the definitions in the SPS Agreement and the TBT Agreement shall apply.

## Article 56. Objectives

The objectives of this Chapter are to:

(a) facilitate bilateral trade and access to respective markets within the scope of this Chapter and further the implementation of the TBT Agreement and the SPS Agreement between the Parties;

(b) facilitate information exchange and technical cooperation between the Parties, and enhance mutual understanding of each Party's regulatory system; and

(c) strengthen cooperation between the Parties in the field of sanitary and phytosanitary measures and technical regulations, standards and conformity assessment procedures.

## Article 57. Affirmation

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

2. Except as otherwise provided for in this Chapter, the TBT Agreement and the SPS Agreement shall apply between the Parties, and both Agreements are hereby incorporated into and made part of this Chapter, mutatis mutandis.

## Article 58. Transparency

1. Each Party shall make available the full text of its sanitary and phytosanitary measures, technical regulations and conformity assessment procedures which are notified to the WTO, in available languages, to the requesting Party within 30 working days after receiving a written request. Upon request by competent authorities of a Party, the other Party shall provide summaries of the above documents in English.

2. Each Party shall allow at least 60 days for the other Party to present comments, except in circumstances where risks to health, safety and the environment have arisen or is threatening to arise and warrant urgent action.

3. Each Party shall take the comments of the other Party into due consideration and shall endeavor to provide responses to these comments, within a reasonable time, upon request.

## Article 59. Measures at the Border

Where a Party detains, at a port of entry, goods exported from the other Party due to a perceived failure to comply with a sanitary and phytosanitary measure, technical regulation or conformity assessment procedures, the reasons for the detention shall be promptly notified to the importer or his or her representative.

### Article 60. Article 60: Cooperation

The Parties shall strengthen their cooperation in the areas of mutual interest relating to technical barriers to trade, sanitary and phytosanitary measures in the following areas, including but not limited to:

(a) communication between each other's competent authorities, exchange of information in respect of technical regulations, standards, conformity assessment procedures and sanitary and phytosanitary measures;

(b) reinforcing the role of international standards as a basis for technical regulations, conformity assessment procedures and sanitary and phytosanitary measures;

(c) cooperation between the standardizing body or bodies of the Parties, where such cooperation shall include, but is not limited to, exchange of information and experience on standards; and

(d) any other areas agreed by the Parties.

### Article 61. Contact Points

1. Without prejudice to Article 15, each Party shall establish a contact point which shall have the general responsibility of coordinating and implementation of this Chapter. The contact points will be:

(a) for China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor; and

(b) for Maldives, Ministry of Economic Development or its successor.

2. Each Party shall provide the other Party with the name of the designated contact point and the contact details of the relevant official in that organization, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify the other Party promptly of any change in its contact point or any amendments to the details of the relevant official.

### Article 62. Consultation and Dispute Settlement

1. Without prejudice to Article 15, each Party may at any time request consultations with the other Party on any matter arising from the operation or implementation of this Chapter. Such consultations shall be coordinated by the contact points of the Parties, and shall take place within 60 days from the request, unless the Parties otherwise determine. Consultation may be conducted via teleconference, videoconference, or through any other means mutually agreed by the Parties.

2. In the event that such consultations fail to reach a mutually satisfactory solution, the requesting Party may refer the matter to the Committee on Trade in Goods for consideration.

3. Any issues under this Chapter shall not be subject to Chapter 13 (Dispute Settlement).

# Chapter 7. TRADE REMEDIES

## Section A. General Trade Remedies

### Article 63. Anti-dumping and Countervailing Measures

1. Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the WTO Agreement on Subsidies and Countervailing Measures.

2. No Party shall use a methodology based on surrogate value of a third country or region for the purpose of determining normal value when calculating dumping margin in an anti-dumping investigation.

### Article 64. Global Safeguard Measures

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards Agreement.

# Section B. Bilateral Safeguard Measures

## Article 65. Definitions

For the purposes of this Chapter:

competent authority means,

for China, the Ministry of Commerce, or its successor; and

for Maldives, the Ministry of Economic Development, or its successor;

domestic industry means, with respect to an imported good, the producer as a whole of the like or directly competitive product operating within the territory of a Party, or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products;

Safeguards Agreement means the Agreement on Safeguards, which is part of the WTO Agreement;

safeguard measure means a measure described in Article 66;

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

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

transition period means in relation to a particular product, the 5 year period from the entry into force of this Agreement, except that for any product for which the date on which the customs duty on that product is to be eliminated in accordance with Annex 1 is more than 5 years, transition period shall mean the tariff elimination period for that good.

## Article 66. Application of a Bilateral Safeguard Measure

1. During the transition period only, if as a result of the reduction or elimination of a customs duty provided for in this Agreement, an originating product benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic industry producing a like or directly competitive product, the importing Party may apply a safeguard measure described in paragraph 2.

2. If the conditions in paragraph 1 are met, a Party may:

(a) suspend the further reduction of any rate of customs duty on the product provided for in this Agreement; or

(b) increase the rate of customs duty on the product to a level not exceeding the lesser of:

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

(ii) the MFN applied rate of customs duty in effect on the product on the date on which the safeguard measure is applied.

## Article 67. Scope and Duration of Bilateral Safeguard Measures

1. No Party may apply or 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; or

(b) for a period exceeding 2 years; except that the period may be extended by up to 1 year, if the competent authorities determine, in conformity with the procedures set out in this Chapter, 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. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over 1 year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application.

3. No bilateral safeguard measure may be applied more than once on the same product.

4. No Party may apply a safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, and no Party may maintain a safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

5. On the termination of a safeguard measure, the Party that applied the safeguard measure shall apply the rate of customs duty set out in its schedule to Annex 1 on the date of termination as if the safeguard measure has never been applied.

## Article 68. Investigation Procedures and Transparency Requirements

1. A Party shall apply a safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the Safeguards Agreement; and to this end, Articles 3 and 4.2 of the Safeguards Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

2. Each Party shall ensure that its competent authorities complete any such investigation within 1 year after its initiation.

## Article 69. Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. Before taking a provisional measure, the applying Party shall notify the other Party and shall, on request of the other Party, initiate consultations after applying such a measure.

3. The duration of a provisional safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Articles 66 through 68 shall be met. Such a provisional safeguard measure shall take the form of a suspension of the further reduction of any rate of duty provided for in this Agreement on the product or an increase in the customs duties not exceeding the lesser of the rates in Article 66.2(b). Any additional customs duties or guarantees collected shall be promptly refunded if the subsequent investigation referred to in Article 68.1 determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.

4. The duration of any such provisional safeguard measure shall be counted as part of the initial period and any extension of a safeguard measures.

## Article 70. Notification and Consultation

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

(a) initiating a safeguard investigation;

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

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

(d) taking a decision to liberalize a safeguard measure previously applied, in accordance with Article 67.2.

2. In making the notification referred to in paragraphs 1(b) and 1(c), the Party applying a safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed safeguard measure, the grounds for introducing such a safeguard measure, the proposed date of introduction and its expected duration and timetable for progressive liberalization. In the case of an extension of a safeguard measure, the written results of the determination required by Article 68, including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting shall also be provided.

3. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, inter alia, reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 71.1.

4. A party shall provide to the other Party a copy of the public version of the report of its competent authorities required under Article 68 as soon as it is available.

### Article 71. Compensation

1. A party applying a safeguard measure shall, in consultation with the other Party, provide to the other Party mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. Such consultations shall begin within 30 days of the application of the safeguard measure.

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

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

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

# Chapter 8. TRADE IN SERVICES

### Article 72. Definitions

For the purposes of this Chapter:

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

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

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

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

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

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

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

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

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

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

person means either a natural person or a juridical person;

natural person of a Party means:

(a) for China, a natural person who resides in the territory of either Party, and who under Chinese law is a national of China;

(b) for Maldives, a natural person who resides in the territory of either Party, and who under Maldivian law is a national of Maldives;

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

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

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

in the territory of the other Party; or

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

(i) natural persons of the other Party; or

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

a juridical person is:

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

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

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

sector of a service means:

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

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

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

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

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

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

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

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;

service supplier means any person that supplies a service (1);

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

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

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

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

(b) in the 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;

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

## Article 73. Scope and Coverage (2)

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

2. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, except as provided for in paragraph 3 of the Annex on

Air Transport Services of GATS. The definitions of paragraph 6 of the Annex on Air Transport Services of GATS shall apply and are hereby incorporated and made part of this Agreement, mutatis mutandis.

3. Articles 74 and 75 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

(2) The Parties agree that any sector or sub-sector or part thereof that is inscribed explicitly in their Schedules of Specific Commitments shall be covered by the provisions of this Chapter, notwithstanding possible interpretations of the sectoral scope defined by this Article.

## Article 74. National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, a 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 favorable than that it accords to its own like services and service suppliers. (3)

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

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

## Article 75. Market Access

1. With respect to market access through the modes of supply identified in the definition of trade in services contained in Article 72, a Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments. (4)

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (5)

(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.

(4) 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 (a) of the definition of trade in services contained in Article 72, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (c) of the definition of trade in services contained in Article 72, it is thereby committed to allow related transfers of capital into its territory.

(5) Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

## Article 76. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 74 or 75, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule as additional commitments.

## Article 77. Domestic Regulation

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

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

3. Each Party shall aim to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures are based on objective and transparent criteria, such as competence and the ability to supply the service, and are not more burdensome than necessary to ensure the quality of the service. Each Party shall ensure that licensing procedures are not in themselves a restriction on the supply of the service.

4. In determining whether a Party is in conformity with the obligation under paragraph 3, account shall be taken of international standards of relevant international organizations (6) applied by that Party.

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

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

## Article 78. Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorization, licensing or certification of service suppliers, and subject to the requirements of paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognizes, by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of a non-Party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of that other Party shall also be recognized.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular Article VII:3 of GATS.

## Article 79. Transparency

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

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

3. Nothing in this Chapter 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 80. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's 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. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

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

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

## Article 81. Business Practices

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 80, 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 of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

## Article 82. Subsidies

1. A Party which considers that it is adversely affected by a subsidy of the other Party may request ad hoc consultations with that other Party on such matters. The requested Party shall enter into such consultations.

2. The Parties shall review any disciplines agreed under Article XV of GATS with a view to incorporating them into this Chapter.

## Article 83. Payments and Transfers

1. Subject to its specific commitments, and except in the circumstances envisaged in Article 84, 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 under the Articles of the Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of the Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 84 or at the request of the International Monetary Fund.

## Article 84. Article 84: Restrictions to Safeguard the Balance of Payments

Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of GATS shall apply under this Chapter.

## Article 85. Article 85: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order; (7)

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article 74, provided that the difference in treatment is aimed at ensuring the equitable or effective (8) imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

(7) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(8) Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which: (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base. Tax terms or concepts in subparagraph (d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

## Article 86. Security Exceptions

Nothing in this Chapter shall be construed:

(a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

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

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

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

(c) to prevent a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

## Article 87. Schedules of Specific Commitments

1. Each Party shall set out in a Schedule the Specific Commitments it undertakes under Articles 74, 75 and 76. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

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

2. Measures inconsistent with both Articles 74 and 75 shall be inscribed in the column relating to Article 75. In this case the inscription will be considered to provide a condition or qualification to Article 74 as well.

3. Schedules of Specific Commitments are annexed to this Agreement as Annex 5.

## Article 88. Modification of Schedules

1. A Party (referred to in this Article as the "modifying Party") may modify or withdraw any commitment in its Schedule of Specific Commitments, at any time after 3 years have elapsed from the date on which that commitment entered into force provided that:

(a) it notifies the other Party (referred to in this Article as the “affected Party”) of its intention to modify or withdraw a commitment no later than 3 months before the intended date of implementation of the modification or withdrawal; and

(b) upon notification of a Party’s intent to make such modification, the Parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall endeavor to maintain a general level of mutually advantageous commitment that is not less favorable to trade than provided for in the Schedules of Specific Commitments prior to such negotiations.

3. If agreement under paragraph 1(b) is not reached between the modifying Party and the affected Party within 3 months, the affected Party may refer the matter to arbitration by an arbitration panel established following the same procedures as provided for in Chapter 13 (Dispute Settlement). Such an arbitration panel shall present its finding as to the ways to ensure that the general level of mutually advantageous commitments under this Chapter is maintained.

4. The modifying Party may not modify or withdraw its commitment until it has made the necessary adjustments in conformity with the findings of the arbitration in relation to the question of whether paragraph 1(b) is satisfied under paragraph 3.

## Article 89. Review

With the objective of further liberalizing trade in services between them, in particular eliminating substantially all remaining discrimination, the Parties shall review at least every 2 years, or more frequently if so agreed, their Schedules of Specific Commitments, taking into account in particular any autonomous liberalization and on-going work under the auspices of the WTO. The first such review shall take place no later than 2 years after the entry into force of this Agreement.

## Article 90. Committee on Trade In Services

1. The Parties hereby establish a Committee on Trade in Services that shall meet on the request of a Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The functions of the Committee shall be:

(a) to monitor the implementation of this Chapter;

(b) to propose agreed solutions in case a problem arises in relation to the implementation of this Chapter;

(c) to request and provide information about each Party’s laws and regulations related to trade in services;

(d) to exchange information on the existing possibilities for each other’s service suppliers to access each Party’s market;

(e) to examine the opportunities and benefits for the Parties to improve and facilitate market access for each other’s service suppliers;

(f) to propose and discuss suggestions to improve the functioning of this Chapter; and

(g) to execute other tasks assigned by the FTA Joint Commission.

3. The Committee shall consider the establishment of working groups as appropriate.

4. The Committee shall be co-chaired, and meet once every 2 years, unless otherwise agreed by the Parties. The Committee

meetings may be conducted by any agreed method.

5. The Committee shall include representatives of the authorities of each Party with expertise in the sectors or areas to be discussed.

6. The Committee shall report on its work to the FTA Joint Commission.

### Article 91. Annexes

Annexes 4 and 5 shall form an integral part of this Chapter.

# Chapter 9. INVESTMENT

## Section A. Investment

### Article 92. Scope and Coverage

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

(a) investors of the other Party; and

(b) covered investments.

2. A Party's obligations under this Section shall apply:

(a) to all levels of government of that Party; and

(b) to any non-governmental body when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party (9).

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services).

4. Notwithstanding paragraph 3, for the purpose of protection of investments with respect to the commercial presence mode of service supply, Articles 95 through 98, 102 and 103 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party. Section B shall apply to Articles 95 through 98, 102 and 103 with respect to the supply of a service through commercial presence.

5. For greater certainty, this Chapter does not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

(9) For greater certainty, governmental authority is delegated under the law of a Party, including through a legislative grant, and a government order, directive or other action transferring to the person, or authorizing the exercise by the person of, governmental authority. For greater certainty, "governmental authority" refers to the power that is vested in the government of a Party, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.

### Article 93. National Treatment (10)

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

(10) For greater certainty, whether treatment is accorded in "like circumstances" under Article 93 or 94 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

## Article 94. Most-Favored-Nation Treatment (11)

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party or covered investment any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.

4. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B, that are provided for in international investment or trade agreements.

(11) For the purposes of this Article, the term "non-Party" shall not include the following WTO members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

## Article 95. Minimum Standard of Treatment (12)

(12) Article 95 shall be interpreted in accordance with Annex 6.

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with due process of law; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

## Article 96. Compensation for Losses

1. Notwithstanding Article 100.3, each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be in accordance with Article 97.2 through 97.4, mutatis mutandis.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 93 but for Article 100.3.

## Article 97. Expropriation and Compensation (13)

(13) Article 97 shall be interpreted in accordance with Annexes 6 and 7.

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of compensation in accordance with this Article; and

(d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest at a commercially reasonable rate for that freely usable currency accrued from the date of expropriation until the date of payment.

5. Any measure of expropriation or the amount of compensation may, at the request of the investors affected, be reviewed by a judicial or other independent authority of the Party taking the measure as prescribed by the Party's laws.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

7. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

## Article 98. Transfers (14)

(14) Article 98 does not affect each Party's ability to administer its capital account for the maintenance of the stability and soundness of its

financial system, such as the foreign exchange market, stock market, bond market and financial derivatives market.

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Articles 96 and 97;

(f) payments arising out of a dispute; and

(g) earnings and remuneration of a national of a Party who works in a covered investment in the territory of the other Party.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent 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 offenses;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

5. In case of a serious balance of payments difficulty or of a threat thereof, a Party may temporarily restrict transfers, provided that such a Party implements measures in accordance with the Articles of Agreement of the International Monetary Fund. These restrictions shall be imposed on an equitable, non-discriminatory and good faith basis, and shall not exceed what is necessary to deal with such circumstances.

6. For greater certainty, provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1 through 3 shall not be construed to prevent a Party from adopting or maintaining measures that are necessary to secure compliance with its laws and regulations, including those relating to the prevention of deceptive and fraudulent practices, that are not inconsistent with this Agreement.

## Article 99. Performance Requirements

The Parties agree that the provisions of the WTO Agreement on Trade-Related Investment Measures are incorporated mutatis mutandis into this Agreement and shall apply with respect to all investments falling within the scope of this Chapter.

## Article 100. Non-Conforming Measures

1. Articles 93 and 94 do not apply to:

(a) any existing non-conforming measures maintained within the territory of a Party;

(b) the continuation of any non-conforming measure referred to in subparagraph (a);

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does

not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

2. Articles 93 and 94 do not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

3. Articles 93 and 94 do not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. Articles 93 and 94 do not apply to government procurement.

5. The Parties will endeavor to progressively remove the non-conforming measures.

## Article 101. Special Formalities and Information Requirements

1. Nothing in Article 93 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 investors be residents of the Party or that covered investments be legally constituted under the laws or 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 93 and 94, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business 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 102. Subrogation

If a Party (or any statutory body, governmental agency or institution, or corporation designated by the Party) makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party, in whose territory the covered investment was made, shall recognize the subrogation or transfer of any rights the investor would have possessed in this Chapter with respect to the covered investment but for the subrogation, including any rights under Section B, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.

## Article 103. Denial of Benefits

1. A Party may deny the benefits (15) of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if a non-Party or persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and a non-Party, or persons of a non-Party or the denying Party, own or control the enterprise.

(15) For greater certainty, a Party may deny benefits of this Chapter under paragraphs 1 and 2, including access to dispute settlement under Section B, at any appropriate time. Such denial may be made during proceedings under Section B, subject to the applicable arbitral rules.

## Article 104. Essential Security

Nothing in this Chapter shall be construed:

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

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

## Article 105. Protection of Confidential Information

Nothing in this Chapter shall be construed to require a Party to furnish or allow access to protected information or other confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

## Article 106. Measures to Safeguard the Balance of Payments

1. In case of a serious balance of payments difficulty or of a threat thereof, a Party may restrict transfers, provided that such a Party implements measures in accordance with the Articles of Agreement of the International Monetary Fund. These restrictions shall be imposed on an equitable, non-discriminatory and temporary basis that shall be phased out progressively as such situation improves, and shall not exceed what is necessary to deal with such circumstances.

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

## Article 107. Prudential Measures

1. Notwithstanding any other provision of this Chapter, a Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system. (16)

2. Nothing in this Chapter applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies. (17) This paragraph shall not affect a Party's obligations under Article 98.

3. Where an investor submits a claim to arbitration under Section B, and the disputing Party invokes paragraphs 1 and 2, the investor-State tribunal established pursuant to Section B may not decide whether and to what extent it is a valid defence to the claim of the investor. It shall seek a report in writing from the Parties on this issue. The investor-State tribunal may not proceed pending receipt of such a report or of a decision of a State-State arbitral tribunal, should such a State-State arbitral tribunal be established.

4. Pursuant to a request for a report received in accordance with the above paragraph, the financial services authorities of the Parties shall engage in consultations. If the financial services authorities of the Parties reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, they shall prepare a written report describing their joint decision. The report shall be transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal.

5. If, after 60 days, the financial services authorities of the Parties are unable to reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, the issue shall, within 30 days, be referred by either of the Parties to a State-State arbitral tribunal established pursuant to Chapter 13 (Dispute Settlement). In such a case, the provisions requiring consultations between the Parties in Article 146 shall not apply. The decision of the State-State arbitral tribunal shall be transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal. All of the members of any such State-State arbitral tribunal shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

(16) It is understood that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or the financial system, as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

(17) For greater certainty, measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies do not include measures that expressly nullify or amend contractual provisions that specify the currency of denomination or the rate of exchange of currencies.

## Article 108. Taxation

1. Except as provided in this Article, nothing in this Section shall impose obligations with respect to taxation measures.

2. Article 97 shall apply to all taxation measures (18), except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under Section B only if:

(a) the claimant has first referred to the competent tax authorities (19) of the Parties in writing the issue of whether that taxation measure involves an expropriation; and

(b) within 180 days after the date of such referral, the competent tax authorities of the Parties fail to agree that the taxation measure is not an expropriation.

3. Nothing in this Chapter shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Chapter and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Chapter and that convention.

(18) For greater certainty, measures regarding tax preservation or punishment against illegal activities that are non-discriminatory and adopted or implemented for the purpose of levying or collecting taxes in a fair and effective manner, do not constitute expropriations as provided in Article 97.

(19) For the purposes of this Article, the "competent tax authorities" mean: (a) for China, the Ministry of Finance and State Administration of Taxation or an authorized representative of the Ministry of Finance and State Administration of Taxation; and (b) for Maldives, the Maldives Inland Revenue Authority.

## Article 109. Promotion of Investment

The Parties shall cooperate in promoting investment through, amongst others:

(a) increasing investments between the Parties;

(b) organizing investment promotion activities;

(c) promoting business matching events;

(d) organizing and supporting the organization of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and

(e) conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation.

## Article 110. Facilitation of Investment

Subject to their laws and regulations, the Parties shall cooperate to facilitate investment between the Parties through, amongst others:

(a) creating the necessary environment for all forms of investment;

(b) simplifying procedures for investment applications and approvals;

(c) promoting dissemination of investment information, including investment laws, regulations, policies and procedures; and

(d) establishing one-stop investment centers in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licenses and permits.

## Article 111. Committee on Investment

1. The Parties hereby establish a Committee on Investment that shall meet on the request of a Party or the FTA Joint Commission to consider any matter arising under this Chapter.

2. The Committee's functions shall include:

(a) reviewing the implementation of this Chapter;

(b) identifying and recommending measures or initiatives to promote and increase investment flows between the Parties; and

(c) may, pursuant to Article 117.3, adopt a joint decision of the Parties, declaring their interpretation of a provision of this Chapter and Annexes 6 through 8; and

(d) may propose amendments to this Chapter in the light of experience of its operation.

# Section B. Investor-State Dispute Settlement

## Article 112. Consultations

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, it shall deliver a request for consultations to the respondent at least 90 days prior to submission of the dispute to arbitration. The request shall:

(a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;

(b) for each claim, identify the provision of this Agreement or the investment agreement alleged to have been breached and any other relevant provisions;

(c) for each claim, identify the measures or events giving rise to the claim;

(d) for each claim, provide a brief summary of the legal and factual basis; and

(e) specify the relief sought and the approximate amount of damages claimed.

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall enter into consultations with a view to reaching a mutually satisfactory solution.

## Article 113. Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultations pursuant to Article 112 and 90 days have elapsed since the date of the request for consultations:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached

(A) an obligation under Articles 93 through 98; or

(B) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached

(A) an obligation under Articles 93 through 98; or

(B) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach (20),

(20) For greater certainty, a minority non-controlling shareholder of an enterprise may not submit a claim on behalf of that enterprise.

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

2. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or

measures alleged to constitute a breach under this Article and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

(a) an enterprise of a non-Party that owns or controls, directly or indirectly, the investor of a Party, or

(b) an enterprise of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.

Notwithstanding the previous paragraph, the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the enterprise of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

3. Provided that 6 months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules (21); or

(21) In the case of arbitration under this Section pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. In addition to any other information required by the applicable arbitral rules, the notice of arbitration shall also include information addressing each of the categories in Article 112.1(a) through 112.1(e). The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

6. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

## Article 114. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Chapter.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

(a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing."

## Article 115. Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than 3 years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 113.1 and knowledge that the claimant (for claims brought under Article 113.1(a)) or the enterprise (for claims brought under Article 113.1(b)) has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement;

(b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 112; and

(c) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 113.1(a), by the claimant's written waiver, and

(ii) for claims submitted to arbitration under Article 113.1(b), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 113.

3. Notwithstanding paragraph 2(c), the claimant (for claims brought under Article 113.1(a)) and the claimant or the enterprise (for claims brought under Article 113.1(b)) may initiate or continue an action that seeks interim injunctive relief under the law of the respondent and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

4. Notwithstanding paragraph 2(c)(ii), a waiver from the enterprise shall not be required if the respondent has deprived the claimant of its ownership or control of the enterprise.

## Article 116. Constitution of the Tribunal

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.

4. Unless a disputing party disagrees, the appointing authority may appoint a presiding arbitrator who is a national of a Party.

5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 113.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 113.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

## Article 117. Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 113.1(a)(i)(A), or Article 113.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules of international law (22).

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 113.1(a)(i)(B), or Article 113.1(b)(i)(B), the tribunal shall apply:

(a) the rules of law specified in the pertinent investment agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws; (23) and

(ii) such rules of customary international law as may be applicable.

3. A joint decision of the Parties, acting through the Committee on Investment, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

(22) For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.

(23) The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

### Article 118. Awards

1. Where a tribunal makes an award against a respondent, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 113.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic laws.

3. A tribunal may not award punitive damages.

4. The award shall be made available to the public promptly. (24)

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

(24) For greater certainty, nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 104 or 105.

### Article 119. Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 8.

## Section C. Definitions

### Article 120. Definitions

For the purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party;

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

disputing parties mean the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and a branch located in the territory of a Party and carrying out business activities there;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

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

ICSID Additional Facility Rules mean the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Dispute;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock, and other forms of equity participation in an enterprise;

(c) bonds, debentures, loans, and other debt instruments, including debt instruments issued by a Party or an enterprise; (25)

(25) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

(f) intellectual property rights;

(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (26), (27) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

(26) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment also depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is

without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(27) The term “investment” does not include an order or judgment entered in a judicial or administrative action.

investment agreement means a written agreement (28) between a national authority (29) of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(28) “Written agreement” refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 118.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(29) For purposes of this definition, “national authority” means: (a) for China, an agency of the central government; and (b) for Maldives, an agency of the government.

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party, a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

national means:

(a) for China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and

(b) for Maldives, a natural person who is a national of the Republic of Maldives as defined in the Constitution of Maldives.

New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

non-disputing Party means the Party that is not a party to an investment dispute;

person means a natural person or an enterprise;

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

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement; and

UNCITRAL Arbitration Rules mean the arbitration rules of the United Nations Commission on International Trade Law.

# Chapter 10. ECONOMIC AND TECHNICAL COOPERATION

## Section A. General Provisions

### Article 121. Objectives

1. The Parties agree to strengthen economic cooperation with the aim to enhance the mutual benefits of this Agreement in accordance with their national strategies and policy objectives. This Chapter shall build upon and complement existing or already planned bilateral cooperation initiatives and activities.

2. The objective of this Chapter is to establish a framework and mechanisms for present and future development of cooperative relations between the Parties.

3. The cooperation under this Chapter shall pursue the following objectives:

(a) facilitating the implementation of this Agreement with a view to promoting economic and social development of the Parties; and

(b) creating and enhancing sustainable trade and investment opportunities by facilitating trade and investment between the Parties and by strengthening competitiveness and capacities, with a view to promoting sustainable economic growth and development.

### Article 122. Scope

1. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in other Chapters of this Agreement.

2. The Parties affirm the importance of all forms of cooperation, with particular attention to economic, trade, financial, technical, educational and cultural cooperation, as means to contribute to implementing the objectives and principles derived from this Agreement.

3. Cooperation may cover any area jointly identified by the Parties that may serve the Parties in attaining the objectives of this Chapter. Cooperation may include, but are not limited to the areas listed in Section B.

### Article 123. Mechanisms for Cooperation

1. The Parties shall cooperate with the objective of identifying and employing effective methods and means for the implementation of this Chapter. To this end the Parties shall coordinate efforts with relevant international organizations and develop, where applicable, synergies with other forms of bilateral cooperation existing between the Parties.

2. In order to administrate this Chapter and to facilitate the management of cooperation activities, the Parties hereby establish a Committee on Economic and Technical Cooperation, under the FTA Joint Commission.

3. The Committee shall have the following functions:

(a) to oversee the implementation of this Chapter;

(b) to encourage the Parties to undertake cooperation activities under the cooperation framework established in this Chapter;

(c) to make recommendations on the cooperation modalities and activities under this Chapter, in accordance with the strategic priorities of the Parties; and

(d) to review the operation of this Chapter and the application and fulfillment of its objectives between the relevant authorities, including but not limited to the relevant government agencies, research institutes, and universities in order to foster closer cooperation in thematic areas; the review may be carried out through periodic reports from the Parties.

4. In order to implement cooperation activities, the Committee may suggest to conduct cooperation through appropriate means in accordance with each Party’s capabilities and available resources.

### Article 124. Non-Application of Dispute Settlement

1. No Party shall have recourse to any dispute settlement procedures under this Agreement in respect of the provisions of this Chapter. For this purpose, Chapter 13 (Dispute Settlement) shall not apply to this Chapter.

2. Any dispute between the Parties concerning the interpretation or application of this Chapter shall, as far as possible, be settled through consultations between the Parties. Consultations shall take place in the FTA Joint Commission.

# Section B. Areas of Cooperation

## Article 125. Trade and Investment Promotion

Recognizing that strong trade and investment flows are important for the development of the respective economies, the Parties agree to explore cooperation in trade and investment promotion through, inter alia:

(a) enhancing the availability and transparency of information on investing and doing business in the Parties;

(b) enhancing the trade and investment environment by sharing best practices;

(c) encouraging the utilization of promotional forums for exports and investment opportunities in the Parties, and facilitating dialogue between firms and industry groups of the Parties; and

(d) enhancing maritime and aviation connections between the Parties to reduce the cost of trade and investment.

## Article 126. Tourism Cooperation

The Parties, recognizing that strong tourism industry and people-to-people flows are important for the development of their respective economies, will endeavor to further cooperation in the field of tourism and tourism related service through, inter alia:

(a) strengthening the communications and exchanges between tourism authorities of the Parties;

(b) promoting information sharing on relevant statistics, promotional materials, policies, and laws and regulations in tourism and related sectors;

(c) enhancing the cooperation on research related to the development of tourism in form of seminars and joint studies;

(d) encouraging mutual investment in the tourism industry of each Party;

(e) strengthening cooperation on travellers protections and providing greater convenience and high quality services to the travellers;

(f) exploring possibility of tourism related human resources development cooperation; and

(g) facilitating tourism destination promotion.

## Article 127. Fisheries and Agriculture Cooperation

The Parties, recognizing the importance of fisheries and agriculture sectors for their respective economies, will consider to seek greater cooperation in areas of mutual interests in fisheries and agriculture sectors under the current bilateral cooperation frameworks between their competent authorities.

## Article 128. Industry Cooperation

The Parties, recognizing that there are opportunities for sharing knowledge and experiences in the development of industrial activities and in enhancing the competitiveness and trade of manufactured goods, will endeavor to explore cooperation through, among others:

(a) encouraging public and private sector collaboration in value addition, technology transfer and industrial research, especially in the mechanization and commercialization of traditional manufacturing industries; and

(b) sharing experiences of SME development of the Parties in the manufacturing and industrial sector.

## Article 129. Traditional Medicine Cooperation

1. The Parties agree to strengthen communication and cooperation between competent authorities and relevant institutions in the area of traditional medicine, and agree to explore the possibility of establishing a working mechanism to promote specific cooperation and exchange in the area.

2. The Parties encourage and support the cooperation in the areas of tourism, health care and training programs in relation to traditional medicine.

### Article 130. Financial Cooperation

The Parties, recognizing the facilitative role that financial services play in trade, investment and economic development, agree to explore cooperation in the sector by, inter alia:

(a) enhancing communication and experience sharing between the competent authorities of the Parties;

(b) facilitating dialogue between financial services firms of the Parties in identifying areas of mutual gain and enhancing cooperation in the financial sector;

(c) promoting financial intermediation and cross border payment services to facilitate trade and investment between the Parties; and

(d) exploring the potential for human resource and capacity development cooperation in the financial sector.

### Article 131. Taxation Cooperation

The Parties recognizing the importance of taxation for their respective economies, will endeavor for greater cooperation in taxation through, inter alia:

(a) strengthening communication and exchanges between competent authorities of the Parties;

(b) building dialogue mechanism between competent authorities of the Parties to facilitate tax dispute settlement.

### Article 132. Research, Science and Technology Cooperation

The Parties, acknowledging the role of the advancement of research, science and technology in the promotion of trade, investment and economic growth, will endeavor towards further cooperation through, inter alia:

(a) encouraging cooperation between higher education and research institutions of the Parties;

(b) facilitating the sharing of scientific knowledge and research in the areas of mutual interest; and

(c) supporting collaborations in research projects, seminars and workshops.

### Article 133. Cooperation In Capacity Building

The Parties, realizing the importance of capacities of institutions and human resources for the realization of the full benefits of this Agreement, agree to support and encourage capacity building cooperation in areas jointly identified, namely but not limited to SPS/TBT, Customs and Trade Facilitation and Trade Remedies.

## Chapter 11. TRANSPARENCY

### Article 134. 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, including on the Internet where feasible, 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:

(a) publish in advance any such laws, regulations, procedures and administrative rulings of general application 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 laws, regulations, procedures and administrative rulings of general application.

### Article 135. 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 legitimate interests under this Agreement.

2. On the request of the other Party, a Party shall, within 30 days of receipt of the request, where feasible, provide information and respond to questions pertaining to any actual or proposed measure that the other Party considers might materially affect the operation of this Agreement, whether or not the other Party has been previously notified of that measure.

3. The information referred to in this Article shall be considered to have been provided when it has been made available by appropriate notification to the WTO or when it has been made available on the official, public and fee-free accessible website of the Party concerned.

4. Any notification, request, or information in this Article shall be conveyed to the other Party through the contact points set out in Article 142.

### Article 136. Administrative Proceedings

1. Each Party shall ensure that all laws, regulations, procedures and administrative rulings of general application to which this Agreement applies are administered in a consistent, impartial, objective and reasonable manner.

2. With a view to administering in a consistent, impartial, objective and reasonable manner its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement, each Party shall ensure, in its administrative proceedings applying these measures to particular persons, goods or services of the other Party in specific cases that:

(a) wherever possible, persons of the other Party that are directly affected by a proceeding are provided with reasonable notice 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 controversy;

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

(c) it follows its procedures in accordance with its law.

### Article 137. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of the prompt review 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, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by the law of the Party, the record compiled by the administrative authority.

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

## Chapter 12. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

### Article 138. Establishment of the China-Maldives Free Trade Area Joint Commission

1. The Parties hereby establish the China-Maldives Free Trade Area Joint Commission ("FTA Joint Commission") comprising representatives of the Parties, which may meet in accordance with the provisions of this Agreement.

2. The Parties shall be represented by senior officials delegated for this purpose by:

(a) for China, the Ministry of Commerce; and

(b) for Maldives, the Ministry of Economic Development.

3. The FTA Joint Commission aims to ensure the effective operation and implementation of this Agreement and any other agreements or legal instruments concluded or to be concluded under this Agreement.

## Article 139. Functions of the FTA Joint Commission

1. The FTA Joint Commission shall:

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

(b) review the operation and implementation of this Agreement, consider any proposal to amend this Agreement or its Annexes and oversee the further elaboration of this Agreement;

(c) consider issues referred to it by the committees and other bodies established under this Agreement or by a Party;

(d) in accordance with the objectives of this Agreement, explore measures for the further expansion of trade and investment between the Parties;

(e) facilitate avoidance and settlement of any disputes that may arise regarding the interpretation or application of this Agreement; and

(f) consider any other matter that may affect the operation of this Agreement.

2. The FTA Joint Commission may:

(a) establish additional ad hoc or standing committees and other bodies as necessary and refer matters to any committee or body for advice;

(b) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(c) seek the advice of interested parties on any matter falling within its responsibilities where this would assist the FTA Joint Commission in discharging its responsibilities; and

(d) take such other action in the exercise of its functions as the Parties may agree.

## Article 140. Rules of Procedure of the FTA Joint Commission

1. The FTA Joint Commission shall establish its rules of procedure and take decisions on any matter within its functions as set out in Article 139 by mutual agreement.

2. The FTA Joint Commission shall convene the first session within 1 year from the entry into force of this Agreement and following regular sessions every 2 years after that or at other times as the Parties may agree.

3. Regular sessions of the FTA Joint Commission shall be held alternately in the territory of each Party and chaired alternatively by the hosting Party. Other sessions of the FTA Joint Commission shall be held at such location as the Parties may agree. The sessions may be held by any technological means available to the Parties. Communications of the FTA Joint Commission shall be made in a common working language.

4. The Party chairing a session of the FTA Joint Commission shall provide necessary administrative support for such session, and shall record any decisions and discussions of the FTA Joint Commission, copies of which will be provided to the other Party.

5. The FTA Joint Commission shall ordinarily meet at the level of senior officials, unless there is a request by a Party to convene the meeting at ministerial level. Each Party shall be responsible for the composition of its own delegation to the FTA Joint Commission.

6. The FTA Joint Commission shall, in accordance with this Article consider proposals for any amendments to this Agreement submitted by a Party and recommend to the Parties amendments for adoption. The Parties may negotiate modifications to this Agreement and its Annexes. The acceptance by a Party of any modification is subject to the completion of any necessary domestic legal procedures of that Party.

7. All decisions of the FTA Joint Commission shall be taken by consensus.

8. Each Party shall treat any confidential information exchanged in relation to meetings of the FTA Joint Commission, committees and other bodies established under this Agreement on the same basis as the Party providing the information.

### Article 141. Specialized Committees

1. The following committees and bodies are hereby established under the auspices of the FTA Joint Commission:

(a) The Committee on Trade in Goods;

(b) The Committee on Trade in Services;

(c) The Committee on Investment;

(d) The Committee on Economic and Technical Cooperation; and

(e) The Committee on Customs.

2. The committees may decide to establish their own sub-committees or any other bodies for the performance of their tasks.

3. All decisions made by the committees and other bodies shall be subject to the endorsement of the FTA Joint Commission.

### Article 142. Contact Points

1. For the purpose of facilitating communication between the Parties on any matter covered by this Agreement, the following contact points are designated:

(a) for China, the Ministry of Commerce; and

(b) for Maldives, the Ministry of Economic Development.

2. Upon request of a Party, the contact point of the other Party shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

## Chapter 13. DISPUTE SETTLEMENT

### Article 143. Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

### Article 144. Scope of Application

Unless otherwise provided in this Agreement, wherever a Party considers that the other Party has failed to carry out its obligations in this Agreement, the dispute settlement provisions of this Chapter shall apply.

### Article 145. Choice of Forum

1. Where a dispute arises under this Agreement and under other agreements including another free trade agreement to which the Parties are party or the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once the complaining Party has requested an Arbitral Tribunal under an agreement referred to in the paragraph 1, the forum selected shall be used to the exclusion of other fora.

### Article 146. Consultation

1. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of any dispute through consultations under this Article or other consultative provisions of this Agreement.

2. The request for consultations shall be submitted in writing and shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the Party complained against.

3. If a request for consultations is made, the Party complained against shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of not more than 30 days after the date of receipt of the request, with a view of reaching a mutually satisfactory solution. If the Party complained against does not respond within the aforesaid 10 days, or does not enter into consultations within the aforesaid 30 days, then the complaining Party may proceed directly to request the establishment of an Arbitral Tribunal.

4. The consultations shall be confidential and are without prejudice to the rights of any Party in any further proceedings.

## Article 147. Establishment of an Arbitral Tribunal

1. If the consultation referred to in Article 146 fails to resolve a matter within 60 days after receipt of the request for consultations, the complaining Party may request, in writing, the establishment of an Arbitral Tribunal to consider the matter.

2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measures at issue and provide brief summary of the legal basis of the complaining Party sufficient to present the problem clearly, and shall deliver the request to the other Party. An Arbitral Tribunal is established upon receipt of a request.

## Article 148. Composition of an Arbitral Tribunal

1. An Arbitral Tribunal shall be composed of three members.

2. Within 15 days after the establishment of an Arbitral Tribunal, each Party shall appoint one member of the Arbitral Tribunal respectively.

3. The Parties to the dispute shall designate by common agreement the appointment of the third arbitrator within 30 days after the establishment of an Arbitral Tribunal. The arbitrator thus appointed shall chair the Arbitral Tribunal.

4. If any member(s) of the Arbitral Tribunal has not been designated or appointed within 30 days after the establishment of an Arbitral Tribunal, at the request of any Party to the dispute, the Director-General of the WTO is expected to designate the member(s) within a further 30 days. If one or more members are designated according to this paragraph, the Director-General of the WTO is expected to designate the Chair of an Arbitral Tribunal.

5. The Chair of the Arbitral Tribunal shall not be a national of any of the Parties to the dispute, nor have his or her usual place of residence in the territory of any of the Parties to the dispute, nor be employed by any of the Parties to the dispute, nor have dealt with the matter in any capacity.

6. 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 judgment;

(c) be independent of, and not be affiliated with or take instructions from, any Party; and

(d) comply with a code of conduct in conformity with the rules established in the document WT/DSB/RC/1 of the WTO.

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed within 15 days in accordance with the selection procedure as prescribed for the appointment of the original arbitrator and the successor 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.

## Article 149. Functions of Arbitral Tribunal

1. The function of an Arbitral Tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement.

2. Where an Arbitral Tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the

Party complained against bring the measure into conformity with this Agreement.

3. The Arbitral Tribunal shall consider this Agreement in accordance with customary rules of interpretation of public international law. The Arbitral Tribunal, in their findings and recommendations, cannot add to or diminish the rights and obligations provided in this Agreement.

## Article 150. Rules of Procedure of an Arbitral Tribunal

1. Unless the Parties otherwise agree, the Arbitral Tribunal proceedings shall be conducted in accordance with the Rules of Procedure set out in Annex 9.

2. The Arbitral Tribunal shall, apart from the rules set out in this Article, regulate its own procedures in relation to the rights of the Parties to the dispute to be heard and its deliberations in consultation with the Parties to the dispute.

3. The Arbitral Tribunal shall take its decisions by consensus; provided that where an Arbitral Tribunal is unable to reach consensus it may take its decisions by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed. All opinions expressed in the Arbitral Tribunal report by individual arbitrators shall be anonymous.

4. Unless the Parties to the dispute otherwise agree within 20 days from the date of the establishment of the Arbitral Tribunal, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an Arbitral Tribunal pursuant to Article 147 and to make findings of law and fact together with the reasons therefore for the resolution of the dispute."

5. Unless otherwise agreed by the Parties, the remuneration of the arbitrators and other expenses of the Arbitral Tribunal shall be borne by the Parties to the dispute in equal shares.

## Article 151. Suspension or Termination of Proceedings

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

2. The Parties to the dispute may agree to terminate the proceedings of an Arbitral Tribunal.

## Article 152. Report of Arbitral Tribunal

1. The Arbitral Tribunal shall base its report on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute.

2. The Arbitral Tribunal shall present to the Parties an initial report within 90 days from the date of appointment of the final arbitrator. Each Party may submit written comments to the Arbitral Tribunal on its initial report within 14 days of receipt of the report.

3. In exceptional cases, if the Arbitral Tribunal considers it cannot present its initial report within 90 days, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will release its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.

4. Unless the Parties to the dispute otherwise agree, the Arbitral Tribunal shall present to the Parties a final report within 45 days of presentation of the initial report.

5. The Arbitral Tribunal's report is final and has no binding force except between the Parties to the dispute and in respect of that particular case to which the report is referred to.

6. The final report shall be made available to the public no later than 15 days after the issuance of the report, subject to the protection of confidential information, unless a Party to the dispute decides not to do so.

## Article 153. Implementation of Arbitral Tribunal's Report

1. If in its report the Arbitral Tribunal concludes that a Party has not conformed to its obligations under this Agreement, the

resolution, whenever possible, shall be to eliminate the non-conformity.

2. Unless the Parties to the dispute reach agreement on compensation or other mutually satisfactory solution, the Party complained against shall implement the recommendations contained in the report of the Arbitral Tribunal.

3. The Party complained against shall implement the recommendations contained in the report of the Arbitral Tribunal within a reasonable period of time if it is not practicable to comply immediately.

## Article 154. Reasonable Period of Time

1. The reasonable period of time shall be mutually determined by the Parties to the dispute, or where the Parties to the dispute fail to agree on the reasonable period of time within 45 days of the issuance of the Arbitral Tribunal's report, either Party may, to the extent possible, refer the matter to the original Arbitral Tribunal, which shall determine the reasonable period of time.

2. The Arbitral Tribunal shall provide its report to the Parties to the dispute within 60 days after the date of the referral of the matter to it. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.

3. The reasonable period of time normally shall not exceed 15 months from the date of issuance of the Arbitral Tribunal's report.

## Article 155. Compliance Review

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations of the Arbitral Tribunal, such dispute shall be referred to an Arbitral Tribunal proceeding, including wherever possible by resort to the original Arbitral Tribunal.

2. The Arbitral Tribunal shall provide its report to the Parties to the dispute within 60 days after the date of the referral of the matter to it. When the Arbitral Tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report. Any delay shall not exceed a further period of 30 days unless the Parties to the dispute otherwise agree.

3. Articles concerning procedure of Arbitral Tribunal in this Chapter shall apply mutatis mutandis to the procedure under this Article.

## Article 156. Suspension of Concessions or other Obligations

If the Arbitral Tribunal under the Article 155 finds that the Party complained against fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations of the Arbitral Tribunal within the reasonable period of time established, or the Party complained against express in writing that it will not implement the recommendations, and the Parties to the dispute fail to reach an agreement on compensation, within 20 days after entering into negotiations for compensation, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The complaining Party shall notify the Party complained against 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

The level of the suspension of concessions or other obligations shall be equivalent to the level of the nullification or impairment.

In considering what concessions or other obligations to be suspended:

the complaining Party shall first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the Arbitral Tribunal has found to be inconsistent with the obligations derived of this Agreement; and

if the complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s), it may suspend concessions or other obligations in other sectors. The communication in which it announces such a decision shall indicate the reasons on which it is based.

Upon written request of the Party concerned, the original Arbitral Tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2. If the Arbitral Tribunal

cannot be established with its original members, the proceeding set out in Article 148 shall be applied.

The Arbitral Tribunal shall present its determination within 60 days from the request made pursuant to paragraph 4, or if an Arbitral Tribunal cannot be established with its original members, from the date on which the last arbitrator is appointed.

The complaining Party may not suspend the application of concessions or other obligations before the issuance of the arbitral Tribunal's determination pursuant to this Article.

### Article 157. Post Suspension

Without prejudice to the procedures in Article 156, if the Party complained against considers that it has eliminated the non-conformity that the Arbitral Tribunal has found, it may provide written notice to the complaining Party with a description of how non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original Arbitral Tribunal within 60 days after receipt of such written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

The Arbitral Tribunal shall present its report within 60 days after the referral of the matter. If the Arbitral Tribunal concludes that the Party complained against has

eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

### Article 158. Private Rights

No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

## Chapter 14. CHAPTER 14 EXCEPTIONS

### Article 159. General Exceptions

1. For the purposes of Chapters 3 (Trade in Goods), 4 (Rules of Origin and Origin Implementation Procedures), 5 (Customs Procedures and Trade Facilitation), 6 (Technical Barriers to Trade and Sanitary and Phytosanitary Measures) and 7 (Trade Remedies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services), Article XIV of GATS, including its footnotes, is incorporated into and made part of this Agreement, mutatis mutandis.

### Article 160. Essential Security

Nothing in this Agreement shall be construed to:

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

(b) preclude a Party from applying measures that it considers in good faith necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

### Article 161. Taxation

1. For the purposes of this Article:

(a) tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which the Parties are party.

(b) taxation measures do not include:

(i) a customs duty defined in Article 4; or

(ii) the measures listed in subparagraphs (b) and (c) of the definition of customs duty set out in Article 4.

2. Except as otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

3. (a) Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention to which the Parties are party. In the event of any inconsistency relating to a taxation measure between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

(b) In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

4. This Agreement shall only grant rights or impose obligations with respect to taxation measures:

(a) where corresponding rights or obligations are also granted or imposed under the WTO Agreement;

(b) under Article 108.

5. For the purposes of this Article, competent authorities mean:

(a) for China, the Ministry of Finance and State Administration of Taxation; and

(b) for Maldives, the Maldives Inland Revenue Authority.

### Article 162. Disclosure of Information

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

### Article 163. Measures to Safeguard the Balance of Payments

Where the Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, adopt measures deemed necessary.

## Chapter 15. FINAL PROVISIONS

### Article 164. Annexes

The Annexes to this Agreement constitute an integral part of this Agreement.

### Article 165. Entry Into Force

This Agreement shall enter into force 30 days after the date on which the Parties exchange, through diplomatic channels, written notifications certifying that they have completed their respective necessary internal requirements, or on such other date as the Parties may agree.

### Article 166. Amendments

1. The Parties may agree in writing to amend this Agreement. Any amendment shall enter into force in accordance with the procedures required for entry into force of this Agreement.

2. If any provision of the WTO Agreement or any other agreement to which the Parties are party that has been incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement, unless this Agreement provides otherwise.

### Article 167. Termination

1. This Agreement shall remain in force unless either Party notifies the other Party in writing to terminate this Agreement. Such termination shall take effect 180 days following the date of receipt of the notification.

2. Within 30 days of a notification under paragraph 1, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect on a later date than provided under paragraph 1. Such

consultations shall commence within 30 days of a Party's delivery of such request.

## Article 168. Authentic Texts

This Agreement is done in duplicate in the Chinese and English languages. Both texts of this Agreement shall be equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Beijing, on December 7, 2017, in duplicate, each Party shall keep one copy in Chinese and English languages.

For the Government of The People's Republic of China

For the Government of The Republic of Maldives