AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP

THE EUROPEAN UNION and JAPAN (hereinafter referred to as "the Parties"),

CONSCIOUS of their longstanding and strong partnership based on common principles and values, and of their important economic, trade and investment relationship;

RECOGNISING the importance of strengthening their economic, trade and investment relations, in accordance with the objective of sustainable development in the economic, social and environmental dimensions, and of promoting trade and investment between them, mindful of the needs of the business communities of each Party, in particular small and medium-sized enterprises, and of high levels of environmental and labour protection through relevant internationally recognised standards and international agreements to which both Parties are party;

RECOGNISING that this Agreement contributes to enhancing consumer welfare through policies ensuring a high level of consumer protection and economic well-being;

REALISING that a dynamic and rapidly changing global environment brought about by globalisation and closer integration among economies in the world presents many new economic challenges and opportunities to the Parties;

RECOGNISING that their economies are endowed with conditions to complement each other and that this complementarity should contribute to further promoting the development of trade and investment between the Parties by making use of their respective economic strengths through bilateral trade and investment activities;

BELIEVING that creating a clearly established and secured trade and investment framework through mutually advantageous rules to govern trade and investment between the Parties would enhance the competitiveness of their economies, make their markets more efficient and vibrant and ensure predictable commercial environment for further expansion of trade and investment between them;

REAFFIRMING their commitment to the Charter of the United Nations and having regard to the principles articulated in the Universal Declaration of Human Rights;

RECOGNISING the importance of transparency in international trade and investment to the benefit of all stakeholders;

SEEKING to establish clear and mutually advantageous rules governing trade and investment between the Parties and to reduce or eliminate barriers thereto;

RESOLVED to contribute to the harmonious development and expansion of international trade and investment by removing obstacles thereto through this Agreement and to avoid creating new barriers to trade or investment between the Parties that could reduce the benefits of this Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements to which both Parties are party; and

DETERMINED to establish a legal framework for strengthening their economic partnership,

HAVE AGREED AS FOLLOWS:

Chapter 1. GENERAL PROVISIONS

Article 1.1. Objectives

The objectives of this Agreement are to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties.

Article 1.2. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) "Agreement on Agriculture" means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

(b) "Agreement on Anti-Dumping" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(c) "Agreement on Import Licensing Procedures" means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

(d) "Agreement on Safeguards" means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

(e) "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(f) "customs authority" means:

(i) for the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities empowered in the Member States of the European Union to apply and enforce customs legislation; and

(ii) for Japan, the Ministry of Finance;

(g) "customs legislation" means any laws and regulations of the European Union or Japan, governing the import, export and transit of goods and placing of goods under any other customs procedures, including measures of prohibitions, restrictions and controls falling under the competence of the customs authorities;

(h) "customs territory" means:

(i) for the European Union, the customs territory as referred to in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code; (1) and

(ii) for Japan, the territory with respect to which the customs legislation of Japan is in force;

(i) "days" means calendar days;

(j) "DSU" means the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement;

(k) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(l) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement; for the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(m) "GPA" means the Agreement on Government Procurement in Annex 4 to the WTO Agreement; (2)

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

(o) "IMF" means the International Monetary Fund;

(p) "measure" means any measure, whether in form of a law, regulation, rule, procedure, decision, practice, administrative action, or any other form;

(q) "natural person of a Party" means, for the European Union, a national of a Member State of the European Union, and for Japan, a national of Japan, in accordance with their respective applicable laws and regulations; (3)

(r) "person" means a natural person or a legal person;

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

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

(u) "TBT Agreement" means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

(v) "territory" means the area to which this Agreement applies in accordance with Article 1.3;

(w) "TFEU" means the Treaty on the Functioning of the European Union;

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

(y) "WIPO" means the World Intellectual Property Organization;

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

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

(1) For greater certainty, the "GPA" shall be understood to be the GPA as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012.

2For greater certainty, the "GPA" shall be understood to be the GPA as amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on 30 March 2012.

(3) For the purposes of Chapter 8, the definition of "natural person of a Party" also includes a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen passport.

Article 1.3. Territorial Application

1. This Agreement applies:

(a) for the European Union, to the territories in which the Treaty on European Union and the TFEU apply under the conditions laid down in those treaties; and

(b) for Japan, to its territory.

2. Unless otherwise specified, this Agreement also applies to all the areas beyond each Party's territorial sea, including the sea-bed and subsoil thereof, over which that Party exercises sovereign rights or jurisdiction in accordance with international law including the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 and its laws and regulations which are consistent with international law. (4)

3. As regards the provisions of this Agreement concerning the application of preferential tariff treatment to goods as well as Articles 2.9 and 2.10, this Agreement also applies to those areas of the customs territory of the European Union not covered by subparagraph 1(a) and to those areas provided for in Annexes 3-E and 3-F.

4. Each Party shall notify the other Party in the event that the respective scope of the territorial application of this Agreement as referred to in paragraphs 1 to 3 changes and promptly provide, on request of the other Party, supplementary information or clarification thereon.

(4) For greater certainty, for the European Union, the areas beyond each Party's territorial sea shall be understood as the respective areas of the Member States of the European Union.

Article 1.4. Taxation

1. For the purposes of this Article:

(a) "residence" means residence for tax purposes;

(b) "tax agreement" means an agreement for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation to which the European Union or its Member States or Japan is party; and

(c) "taxation measure" means a measure in application of the tax legislation of the European Union, of its Member States or of Japan.

2. This Agreement applies to taxation measures only in so far as such application is necessary to give effect to the provisions of this Agreement.

3. Nothing in this Agreement shall affect the rights and obligations of the European Union, of its Member States or of Japan under any tax agreement. In the event of any inconsistency between this Agreement and any such tax agreement, the tax agreement shall prevail to the extent of the inconsistency. With regard to a tax agreement between the European Union or its Member States and Japan, the relevant competent authorities under this Agreement and that tax agreement shall jointly determine whether an inconsistency exists between this Agreement and the tax agreement.

4. Any most-favoured-nation obligation in this Agreement shall not be applicable with respect to an advantage accorded by the European Union, by its Member States or by Japan pursuant to a tax agreement.

5. The Joint Committee established pursuant to Article 22.1 may decide on a different scope of the application of dispute settlement under Chapter 21 with respect to taxation measures.

6. Subject to the requirement that taxation measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by the European Union, by its Member States or by Japan of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes such as measures:

(a) distinguishing between taxpayers who are not in the same situation, in particular with regard to their place of residence or the place where their capital is invested; or

(b) preventing the avoidance or evasion of taxes pursuant to the provisions of any tax agreement or domestic tax legislation.

Article 1.5. Security Exceptions

1. Nothing in this Agreement shall be construed:

(a) as requiring a Party to provide any information the disclosure of which it considers contrary to its essential security interests;

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

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

(ii) relating to the production of or trade in arms, ammunition and implements of war as well as to the production of or trade in other goods and materials as carried out directly or indirectly for the purpose of supplying a military establishment;

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

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

(c) as preventing a Party from taking any action in pursuance of its obligations under the Charter of the United Nations for the purpose of maintaining international peace and security.

2. Notwithstanding paragraph 1,

(a) for the purposes of Chapter 10, Article III of the GPA applies; and

(b) for the purposes of Chapter 14, Article 14.54 applies.

Article 1.6. Confidential Information

1. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide confidential information the disclosure of which would impede the enforcement of its laws and regulations, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

2. When, under this Agreement, a Party provides the other Party with information which is considered as confidential under its laws and regulations, the other Party shall maintain the confidentiality of the information provided, unless the Party providing the information agrees otherwise.

Article 1.7. Fulfilment of Obligations and Delegated Authority

1. Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement.

2. Unless otherwise specified in this Agreement, each Party shall ensure that any person or entity to which the Party has delegated regulatory or administrative authority to fulfil the Party's obligations under this Agreement acts in accordance with those obligations in the exercise of such delegated authority.

3. For greater certainty, neither Party shall be released from its obligations under this Agreement in the event of non-compliance with the provisions of this Agreement by any of its governmental levels or non-governmental bodies in the exercise of powers delegated by the Party to them.

Article 1.8. Laws and Regulations and Their Amendments

Where reference is made in this Agreement to laws and regulations of a Party, those laws and regulations shall be understood to include amendments thereto, unless otherwise specified.

Article 1.9. Relation to other Agreements

1. The existing agreements between the European Union or its Member States and Japan are not superseded or terminated by this Agreement.

2. Nothing in this Agreement shall require either Party to act in a manner inconsistent with its obligations under the WTO Agreement.

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

4. Where international agreements (5) are referred to in or incorporated into this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on or after the date of signature of this Agreement. If any matter arises regarding the implementation or application of the provisions of this Agreement as a result of such amendments or successor agreements, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution to this matter as necessary.

(5) The international agreements referred to in or incorporated into this Agreement shall be understood to include their most recent amendments having entered into force for both Parties before the date of signature of this Agreement.

Chapter 2. TRADE IN GOODS

Section A. General Provisions

Article 2.1. Objective

The objective of this Chapter is to facilitate trade in goods between the Parties and to progressively liberalise trade in goods in accordance with the provisions of this Agreement.

Article 2.2. Scope

Unless otherwise provided for in this Agreement, this Chapter applies to trade in goods between the Parties.

Article 2.3. Definitions

For the purposes of this Chapter:

(a) "export licensing procedures" means administrative procedures, whether or not referred to as licensing, used by a Party for the operation of export licensing regimes requiring the submission of an application or other documentation, other than that required for customs procedures, to the relevant administrative body as a prior condition for exportation from that Party;

(b) "non-automatic import or export licensing procedures" means licensing procedures where approval of the application is not granted for all persons who fulfil the requirements of the Party concerned for engaging in import or export operations involving the goods subject to those licensing procedures; and

(c) "originating" means qualifying as originating in a Party under the provisions of Chapter 3.

Article 2.4. Customs Duty

Each Party shall reduce or eliminate customs duties pursuant to paragraph 1 of Article 2.8. For the purposes of this Chapter, "customs duties" means any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation, but does not include any:

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

(b) duty applied in accordance with Articles VI and XIX of GATT 1994, the Agreement on Anti-Dumping, the SCM Agreement, the Agreement on Safeguards and Article 22 of the DSU; and

(c) fees or other charges imposed in accordance with Article 2.16.

Article 2.5. Agricultural Safeguards

1. Agricultural goods qualifying as originating goods of a Party (hereinafter referred to as "originating agricultural goods") shall not be subject to any duties applied by the other Party pursuant to a special safeguard measure taken under the Agreement on Agriculture.

2. Agricultural safeguard measures on the originating agricultural goods under this Agreement may be applied in accordance with Section C of Part 3 of Annex 2-A.

Section B. National Treatment and Market Access for Goods

Article 2.6. Classification of Goods

1. The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

2. Each Party shall ensure consistency in applying its laws and regulations on tariff classification of originating goods of the other Party.

Article 2.7. National Treatment

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

Article 2.8. Reduction and Elimination of Customs Duties on Imports

1. Unless otherwise provided for in this Agreement, each Party shall reduce or eliminate customs duties on originating goods of the other Party in accordance with Annex 2-A.

2. Where a Party reduces its most-favoured-nation applied rate of customs duty, that duty rate shall apply to an originating good of the other Party if, and for as long as, it is lower than the customs duty rate on the same good calculated in accordance with Annex 2-A.

3. The treatment of originating goods of a Party classified under the tariff lines indicated with "S" in the Column "Note" in the Schedule of the European Union in Section B of Part 2 of Annex 2-A and in the Schedule of Japan in Section D of Part 3 of Annex 2-A, shall be subject to review by the Parties in the fifth year following the date of entry into force of this Agreement or in a year on which the Parties otherwise agree, whichever comes first. The review shall proceed with a view to improving market access conditions through, for example, measures such as faster reduction or elimination of custom duties,

streamlining of tendering processes and increasing of quota quantities, as well as addressing issues related to levies.

4. Where a Party grants a larger or faster tariff reduction, higher quota or any other more favourable treatment than that provided for under this Agreement to a third country based on an international agreement for goods covered by paragraph 3 which affects the balance in the European Union's or Japan's market of such goods, the Parties shall, with a view to ensuring that the other Party obtains at least the same preference, commence such a review within three months of the date of entry into force of the international agreement between the European Union and that third country or between Japan and that third country, and will conduct the review with the aim of concluding it within six months of the same date.

Article 2.9. Goods Re-entered after Repair and Alteration

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its customs territory after having been temporarily exported from its customs territory to the customs territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the customs territory of the former Party, provided that the good concerned re-enters the customs territory of that former Party within the period as specified in its laws and regulations. (6)

2. Paragraph 1 does not apply to a good in the customs territory of a Party under customs control without payment of import duties and taxes that is exported for repair or alteration and that does not re-enter the customs territory under customs control without payment of import duties and taxes.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair or alteration, provided that the good is re-exported from the customs territory of the importing Party within the period specified in its laws and regulations. (7)

4. For the purposes of this Article, "repair" or "alteration" means any operation or process undertaken on a good to remedy operational defects or material damage and entailing the re–establishment of the good to its original function, or to ensure its compliance with technical requirements for its use. Repair or alteration of a good includes restoring and maintenance regardless of a possible increase in the value of the good, but does not include an operation or process that:

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

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

(c) changes the function of a good.

(6) In the European Union, the outward processing procedure set out in Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code is used for the purpose of this paragraph.

(7) In the European Union, the inward processing procedure as laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code is used for the purpose of this paragraph.

Article 2.10. Temporary Admission of Goods

Each Party shall grant duty-free temporary admission into its customs territory for the following goods in accordance with its laws and regulations, provided that such goods do not undergo any change except normal depreciation due to the use made of them and that they are exported within the time period set by each Party:

(a) goods for display or use at exhibitions, fairs, meetings or similar events;

(b) professional equipment, including equipment for the press or for sound or television broadcasting, cinematographic equipment, ancillary apparatus for such equipment and accessories thereto;

(c) commercial samples and advertising films and recordings;

(d) containers and pallets in use or to be used in the shipment of goods in international traffic, accessories and equipment therefor;

(e) welfare materials for seafarers;

(f) goods imported exclusively for scientific purposes;

(g) goods imported for international sports contests, demonstrations or training;

(h) personal effects owned by temporarily visiting travellers; and

(i) tourist publicity materials.

Article 2.11. Customs Valuation

For the purpose of determining the customs value of goods traded between the Parties, the provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement shall apply, mutatis mutandis.

Article 2.12. Export Duties

A Party shall not adopt or maintain any duties, taxes, fees or other charges of any kind imposed on goods exported from that Party to the other Party, or any internal taxes or other charges on goods exported to the other Party that are in excess of those that would be imposed on like goods destined for domestic consumption. For the purpose of this Article, fees or other charges of any kind shall not include fees or other charges imposed in accordance with Article 2.16 that are limited to the amount of the approximate cost of service rendered.

Article 2.13. Standstill

1. Unless otherwise provided for in this Agreement, a Party shall not increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with Annex 2-A.

2. For greater certainty, a Party may raise a customs duty to the level set out in the Schedule of the European Union in Section B of Part 2 of Annex 2-A and in the Schedule of Japan in Section D of Part 3 of Annex 2-A for the respective year following a unilateral reduction of the customs duty.

Article 2.14. Export Competition

1. For the purposes of this Article, "export subsidies" means subsidies referred to in subparagraph (e) of Article 1 of the Agreement on Agriculture and other subsidies listed in Annex I to the SCM Agreement that may be applied to agricultural goods which are listed in Annex 1 to the Agreement on Agriculture.

2. The Parties affirm their commitment, expressed in the Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN(15)/45, WT/L/980) of the WTO, to exercise utmost restraint with regard to export subsidies and export measures with equivalent effect as set out in that decision.

Article 2.15. Import and Export Restrictions

1. A Party shall not adopt or maintain any prohibition or restriction other than customs duties on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the customs territory of the other Party, except in accordance with Article XI of GATT 1994. To that end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.

2. If a Party intends to adopt a prohibition or restriction on the exportation or sale for export of any good listed in Annex 2-B in accordance with paragraph 2 of Article XI or with Article XX of GATT 1994, the Party shall:

(a) seek to limit that prohibition or restriction to the extent necessary, giving due consideration to its possible negative effects on the other Party;

(b) provide the other Party with written notice thereof, wherever possible prior to the introduction of such prohibition or restriction and as far in advance as practicable, or, if not, no later than 15 days after the date of introduction, whereby that written notice shall include a description of the good involved, the introduced prohibition or restriction, including its nature, its reasons, and the date of introduction of such prohibition or restriction as well as its expected duration; and

(c) upon request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such prohibition or restriction.

Article 2.16. Fees and Formalities Connected with Importation and Exportation

1. Each Party shall ensure, in accordance with Article VIII of GATT 1994, that all fees and charges of whatever character, other than customs duties, export duties and taxes in accordance with Article III of GATT 1994, imposed by that Party on or in connection with importation or exportation are limited to the amount of the approximate cost of services rendered, which shall not be calculated on an ad valorem basis, and shall not represent an indirect protection to domestic goods or a taxation of imports for fiscal purposes.

2. A Party shall not require consular transactions, including related fees and charges. For the purposes of this paragraph, "consular transactions" means requirements by the consul of the importing Party located in the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation.

Article 2.17. Import and Export Licensing Procedures

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

2. Each Party shall adopt or maintain export licensing procedures in accordance with paragraphs 1 to 9 of Article 1 and with Article 3 of the Agreement on Import Licensing Procedures. To that end, those provisions of the Agreement on Import Licensing Procedures are incorporated into and made part of this Agreement, mutatis mutandis, and shall apply to export licensing procedures between the Parties. A Party may adopt or maintain export licensing procedures in accordance with Article 2 of the Agreement on Import Licensing Procedures. Paragraphs 2 to 8 apply to any good listed in Annex 2-B.

3. Each Party shall ensure that all export licensing procedures are neutral in application and administered in a fair, equitable, non-discriminatory and transparent manner.

4. Each Party shall adopt or maintain import or export licensing procedures only when other appropriate procedures to achieve an administrative purpose are not reasonably available.

5. A Party shall not adopt or maintain non-automatic import or export licensing procedures unless necessary to implement a measure that is consistent with this Agreement. A Party adopting non-automatic licensing procedures shall clearly indicate the measure being implemented through such licensing procedure.

6. Each Party shall respond, within 60 days, to any enquiry from the other Party regarding import or export licensing procedures which the former Party intends to adopt, has adopted or maintains, as well as the criteria for granting or allocating import or export licenses.

7. In applying export restrictions to a good in the form of a quota, a Party shall aim at a distribution of trade in that good approaching as closely as possible the shares which would be expected in the absence of that restriction.

8. If a Party adopts or maintains export licensing procedures, the Parties shall hold consultations, on request of the other Party, on any issues related to the implementation of those procedures, and give due consideration to the results of those consultations.

Article 2.18. Remanufactured Goods

1. Unless otherwise provided for in this Agreement, each Party shall provide that remanufactured goods are treated as new goods. Each Party may require that remanufactured goods be identified as such for distribution or sale.

2. For the purposes of this Article, "remanufactured goods" means goods classified under heading 40.12, Chapters 84 to 90 or heading 94.02 of the Harmonized System that: (8)

(a) are entirely or partially composed of parts obtained from used goods;

(b) have a similar life expectancy and performance compared to such goods, when new; and

(c) have a factory warranty similar to that applicable to such goods, when new.

(8) For greater certainty, the references to the tariff classification number of the Harmonized System in this Chapter are based on the Harmonized System, as amended on 1 January 2017.

Article 2.19. Non-tariff Measures

1. Specific commitments relating to non-tariff measures on goods by each Party are set out in Annexes 2-C and 2-D.

2. After 10 years from the date of entry into force of this Agreement, or on request of a Party, the Parties shall evaluate whether issues resulting from non-tariff measures on goods can be addressed effectively within the framework of this Agreement. As a result of this evaluation, the Parties shall enter into consultations to consider broadening the scope of existing commitments or undertaking additional commitments of mutual interest on non-tariff measures on goods, including on cooperation. On the basis of those consultations, the Parties may agree to enter into negotiations of mutual interest. In implementing this paragraph, the Parties shall take into account the experience gained during the preceding period of implementation of this Agreement.

Article 2.20. Restrictions to Safeguard the Balance of Payments

1. Nothing in this Agreement shall be construed as preventing a Party from taking any measures for balance-of-payments purposes. A Party taking such measures shall do so in accordance with the conditions established in Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

2. Nothing in this Agreement shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

Article 2.21. Origin Marking

Unless otherwise provided for in this Agreement, where a Party applies obligatory country of origin marking requirements to goods other than food, agricultural or fishery goods as defined in the laws and regulations of that Party, the marking "Made in Japan" or a similar marking in the local language of the importing country, for the European Union, and the marking "Made in EU" or a similar marking in Japanese, for Japan, shall be accepted as fulfilling those requirements. Chapter 3 does not apply to this Article.

Article 2.22. General Exceptions

1. For the purposes of this Chapter, Article XX of GATT 1994 is hereby incorporated into and made part of this Agreement, mutatis mutandis.

2. If a Party intends to take any measures in accordance with subparagraphs (i) and (j) of Article XX of GATT 1994, the Party shall:

(a) provide the other Party with all relevant information; and

(b) upon request, provide the other Party with a reasonable opportunity for consultation with respect to any matter related to such measure, with a view to seeking a mutually acceptable solution.

3. The Parties may agree on any means needed to put an end to the matters subject to consultation referred to in subparagraph 2(b).

4. If exceptional and critical circumstances requiring immediate action make prior provision of information or examination impossible, the Party intending to take the measures concerned may apply immediately the measures necessary to deal with the circumstances and shall immediately inform the other Party thereof.

Section C. Facilitation of Wine Product Export

Article 2.23. Scope

The provisions of this Section do not apply to any goods other than wine products classified under the heading 22.04 of the Harmonized System.

Article 2.24. General Principle

Unless otherwise provided for in Articles 2.25 to 2.28, the importation and sale of wine products traded between the Parties covered by this Section shall be conducted in compliance with the laws and regulations of the importing Party.

Article 2.25. Authorisation of Oenological Practices – Phase One

1. From the date of entry into force of this Agreement, the European Union shall authorise the importation and sale of wine products for human consumption in the European Union originating in Japan and produced in accordance with:

(a) product definitions and oenological practices authorised and restrictions applied in Japan for the sale of Japan wine as referred to in Section A of Part 2 of Annex 2-E provided that they comply with product definitions and oenological practices and restrictions as referred to in Section A of Part 1 of Annex 2-E; and

(b) the oenological practices as referred to in Section B of Part 2 of Annex 2-E.

2. From the date of entry into force of this Agreement, Japan shall authorise the importation and sale of wine products for human consumption in Japan originating in the European Union and produced in accordance with:

(a) product definitions and oenological practices authorised and restrictions applied in the European Union as referred to in Section A of Part 1 of Annex 2-E provided that they comply with product definitions and oenological practices and restrictions as referred to in Section A of Part 2 of Annex 2-E; and

(b) the oenological practices as referred to in Section B of Part 1 of Annex 2-E.

3. On the date of entry into force of this Agreement, the Parties shall exchange notifications confirming that their procedures for the authorisation of oenological practices referred to in Section B of Part 1 and Section B of Part 2 of Annex 2-E, respectively, have been completed.

Article 2.26. Authorisation of Oenological Practices - Phase Two

1. The European Union shall expeditiously take necessary steps with a view to authorising the oenological practices as referred to in Section C of Part 2 of Annex 2-E and notify Japan that its procedures for that authorisation have been completed.

2. Japan shall expeditiously take necessary steps with a view to authorising the oenological practices as referred to in Section C of Part 1 of Annex 2-E and notify the European Union that its procedures for that authorisation have been completed.

3. The authorisation referred to in paragraphs 1 and 2 shall enter into force on the date of the latter notification by either Party.

Article 2.27. Authorisation of Oenological Practices – Phase Three

1. The European Union shall take necessary steps with a view to authorising the oenological practices as referred to in Section D of Part 2 of Annex 2-E and notify Japan that its procedures for that authorisation have been completed.

2. Japan shall take necessary steps with a view to authorising the oenological practices as referred to in Section D of Part 1 of Annex 2-E and notify the European Union that its procedures for that authorisation have been completed.

3. The authorisation referred to in paragraphs 1 and 2 shall enter into force on the date of the latter notification by either Party.

Article 2.28. Self-certification

1. A certificate authenticated in conformity with the laws and regulations of Japan, including a self-certificate established by a producer authorised by the competent authority of Japan, shall suffice as documentation serving as evidence that the requirements for the importation and sale in the European Union of wine products originating in Japan referred to in Article 2.25, 2.26 or 2.27 have been fulfilled.

2. The Working Group on Wine established pursuant to Article 22.4 shall adopt, upon the entry into force of this Agreement, by decision, the modalities:

(a) for the implementation of paragraph 1, in particular the forms to be used and the information to be provided on the certificate; and

(b) for the cooperation between the contact points designated by the European Union for each of its Member States and by Japan.

3. No certificate or other equivalent documentation is required as evidence that the requirements for the importation and

sale in Japan of wine products originating in the European Union referred to in Article 2.25, 2.26 or 2.27 have been fulfilled.

Article 2.29. Review, Consultations and Temporary Suspension of Self-certification

1. The Parties shall review the implementation of:

(a) Article 2.26 regularly and at least once a year during the two years after the date of entry into force of this Agreement; and

(b) Article 2.27 no later than three years after the date of entry into force of this Agreement.

2. If the Parties find, in the process of review of the implementation of Article 2.26, that the notifications provided for in Article 2.26 have not been exchanged within two years of the date of entry into force of this Agreement, the Parties shall enter into consultations with a view to agreeing on a practical solution.

3. Where the notification referred to in paragraph 2 of Article 2.26 has not been sent within two years of the date of entry into force of this Agreement and the notification referred to in paragraph 1 of Article 2.26 has been sent, the European Union may temporarily suspend the acceptance of self-certification of wine products provided for in Article 2.28, if a practical solution as referred to in paragraph 2 is not agreed upon within three months of the initiation of the consultations referred to in paragraph 2.

4. The temporary suspension of the acceptance of the self-certification referred to in paragraph 3 shall be immediately terminated when Japan sends the notification provided for in paragraph 2 of Article 2.26 to the European Union.

5. If the Parties find, in the process of review on the implementation of Article 2.27 referred to in paragraph 1, that the notifications provided for in Article 2.27 have not been exchanged within five years of the date of entry into force of this Agreement, the Parties shall enter into consultations.

6. Nothing in this Article shall affect the rights and obligations of a Party under the SPS Agreement.

Article 2.30. Standstill

1. For matters covered by Articles 2.25 to 2.28, a Party shall not impose less favourable conditions than those provided for in this Section or in its laws and regulations in force on the date of signature of this Agreement.

2. Paragraph 1 shall be without prejudice to the right of the Parties to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of the SPS Agreement.

Article 2.31. Amendments

The Joint Committee established pursuant to Article 22.1 may adopt decisions amending Annex 2-E, to add, delete or modify references to oenological practices, restrictions and other elements, in accordance with paragraph 3 of Article 23.2.

Section D. Other Provisions

Article 2.32. Exchange of Information

1. For the purpose of monitoring the functioning of this Agreement and for the period of 10 years after the entry into force of this Agreement, the Parties shall annually exchange import statistics for the period covering the most recent calendar year available. The period may be extended by the Committee on Trade in Goods established pursuant to Article 22.3 for another five years.

2. The exchange of import statistics referred to in paragraph 1 shall cover, to the extent possible, data pertaining to the period covering the most recent calendar year available, including value and volume, based on the nomenclature of the Party, of imports of goods of the other Party benefitting from preferential tariff treatment under this Agreement and those that do not receive preferential tariff treatment.

Article 2.33. Special Measures Concerning the Management of Preferential Tariff Treatment

1. The Parties recognise that breaches of their customs legislation relating to the preferential tariff treatment under this Agreement could adversely affect the domestic industry and agree to cooperate on preventing, detecting and combating such breaches in accordance with the relevant provisions of Chapter 3 and the Agreement between the European Community and the Government of Japan on Co-operation and Mutual Administrative Assistance in Customs Matters, done at Brussels on 30 January 2008 (hereinafter referred to as "CMAA").

2. A Party may, in accordance with the procedure laid down in paragraphs 4 to 7, temporarily suspend the preferential tariff treatment under this Agreement for the goods concerned which are related to the systematic breaches referred to in subparagraph (a), if the Party has made a finding, on the basis of objective, compelling and verifiable information, that:

(a) systematic breaches in its customs legislation related to the preferential tariff treatment under this Agreement for a certain good have been committed; and

(b) the other Party has systematically and unjustifiably refused or has otherwise failed to conduct the cooperation referred to in paragraph 1 in relation to the systematic breaches referred to in subparagraph (a).

3. Notwithstanding paragraph 2, the temporary suspension shall not be applied to traders who fulfil the compliance criteria agreed by the Parties through the consultations referred to in paragraph 4.

4. The Party which has made the finding referred to in paragraph 2 shall, without undue delay, notify the other Party of that finding with sufficient information to justify the initiation of consultations, including the summary of essential facts related to subparagraphs 2(a) and (b) and enter into consultations with the other Party in the Committee on Trade in Goods with a view to reaching a solution acceptable to both Parties and agreeing on the compliance criteria with regard to the requirements of this Agreement and the relevant customs legislation.

5. The Party which has made the finding referred to in paragraph 2 shall, before a final decision is made, inform all interested parties of its intention to apply a temporary suspension, and shall ensure that they have a full opportunity for defending their interests. A temporary suspension shall not be applied to interested parties, provided that they objectively and satisfactorily demonstrate to the Party which has made the finding that they are not involved in the systematic breaches referred to in subparagraph 2(a).

6. Following the processes referred to in paragraphs 4 and 5, if the Parties have failed to agree on an acceptable solution within six months of the notification, the Party which has made the finding may decide to suspend temporarily the preferential tariff treatment under this Agreement for the goods concerned, duly taking into account the exception provided for in paragraph 3. A temporary suspension shall be notified to the other Party without undue delay.

7. A temporary suspension shall be applied only for the period necessary to counteract the breaches and no longer than six months. If a Party has made a finding that the conditions that gave rise to the initial suspension persist at the expiry of the temporary suspension, that Party may decide to renew the temporary suspension, after notifying the other Party of such a finding with sufficient information to justify the renewal. Any temporary suspension shall be terminated on a date no later than two years from the initial suspension unless it has been demonstrated to the Committee on Trade in Goods that the conditions that gave rise to the initial suspension still persist at the expiry of the period of each renewal.

8. The applied temporary suspensions shall be subject to periodic consultations in the Committee on Trade in Goods.

9. The Party which has made the finding referred to in paragraph 2 or 7 shall publish, in accordance with its internal procedures, notices to importers about any notification and decision concerning temporary suspensions referred to in paragraphs 4 to 7.

10. A temporary suspension shall not apply to traders other than the traders referred to in paragraph 3 and the interested parties referred to in paragraph 5, provided that they objectively and satisfactorily demonstrate to the Party which has made the finding referred to in paragraph 2 or 7 that they are not involved in the systematic breaches referred to in subparagraph 2(a).

11. For greater certainty, nothing in this Article shall be construed as preventing traders or interested parties from claiming compensation for damage illegally incurred by the measures referred to in paragraph 6, against the Party which has made the finding referred to in paragraph 2 or 7, in accordance with its laws and regulations.

Article 2.34. Committee on Trade In Goods

1. The Committee on Trade in Goods established pursuant to Article 22.3 (hereinafter referred to in this Article as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) reporting the findings of the Committee to the Joint Committee; and

(c) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.

3. The Committee shall hold meetings at such times and venues or by means, as may be agreed by the representatives of the Parties.

Article 2.35. Working Group on Wine

1. The Working Group on Wine established pursuant to paragraph 1 of Article 22.4 shall be responsible for the effective implementation and operation of Section C and Annex 2-E.

2. The Working Group on Wine shall have the following functions:

(a) adopting the modalities concerning the self-certification referred to in paragraph 2 of Article 2.28;

(b) monitoring the implementation of Articles 2.25 to 2.29, including the review and consultations under Article 2.29; and

(c) considering amendments of Annex 2-E and making recommendations to the Joint Committee regarding the adoption of a decision with respect to those amendments.

3. The Working Group on Wine shall hold its first meeting on the date of entry into force of this Agreement.

Chapter 3. RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A. Rules of Origin

Article 3.1. Definitions

For the purposes of this Chapter:

(a) "aquaculture" means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings, larvae, parr, smolts or other immature fish at a post-larval stage by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

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

(c) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;

(d) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

(e) "material" means any matter or substance used in the production of a product, including any components, ingredients, raw materials or parts;

(f) "non-originating material" means a material which does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;

(g) "preferential tariff treatment" means the rate of customs duties applicable to an originating good in accordance with paragraph 1 of Article 2.8;

(h) "product" means any matter or substance resulting from production, even if it is intended for use as a material in the production of another product, and shall be understood as a good referred to in Chapter 2; and

(i) "production" means any kind of working or processing including assembly.

Article 3.2. Requirements for Originating Products

1. For the purpose of the application of preferential tariff treatment by a Party to an originating good of the other Party in accordance with paragraph 1 of Article 2.8, the following products, if they satisfy all other applicable requirements of this Chapter, shall be considered as originating in the other Party:

(a) wholly obtained or produced products as provided for in Article 3.3;

(b) products produced exclusively from materials originating in that Party; or

(c) products produced using non-originating materials provided they satisfy all applicable requirements of Annex 3-B.

2. For the purposes of this Chapter, the territorial scope of a Party does not include the sea, seabed and subsoil beyond its territorial sea.

3. If a product has acquired originating status, the non-originating materials used in the production of the product shall not be considered non-originating when that product is incorporated as material into another product.

4. The requirements set out in this Chapter relating to the acquisition of originating status shall be satisfied without interruption in a Party.

Article 3.3. Wholly Obtained Products

1. For the purposes of Article 3.2, a product is wholly obtained in a Party if it is:

(a) a plant or plant product, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a product obtained from a live animal raised there;

(d) a product obtained from a slaughtered animal born and raised there;

(e) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(f) a product obtained from aquaculture there;

(g) a mineral or other naturally occurring substance, not included in subparagraphs (a) to (f), extracted or taken there;

(h) fish, shellfish or other marine life taken by a Party's vessel from the sea, seabed or subsoil beyond the territorial sea of each Party and, in accordance with international law, beyond the territorial sea of third countries;

(i) a product produced exclusively from products referred to in subparagraph (h) on board a Party's factory ship beyond the territorial sea of each Party and, in accordance with international law, beyond the territorial sea of third countries;

(j) a product other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil beyond the territorial sea of each Party, and beyond areas over which third countries exercise jurisdiction provided that that Party or a person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(k) a product that is:

(i) waste or scrap derived from production there; or

(ii) waste or scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials; or

(l) a product produced there, exclusively from products referred to in subparagraphs (a) to (k) or from their derivatives.

2. "A Party's vessel" in subparagraph 1(h) or "a Party's factory ship" in subparagraph 1(i) means respectively a vessel or a factory ship which:

(a) is registered in a Member State of the European Union or in Japan;

(b) flies the flag of a Member State of the European Union or of Japan; and

(c) satisfies one of the following requirements:

(i) it is at least 50 per cent owned by one or more natural persons of a Party; or

(ii) it is owned by one or more juridical persons: (9)

(A) which have their head office and their main place of business in a Party; and

(B) in which at least 50 per cent of the ownership belongs to natural persons or juridical persons of a Party.

(9) For the purposes of this Chapter, "juridical person" means any legal entity duly constituted or otherwise organised under the 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.

Article 3.4. Insufficient Working or Processing

1. Notwithstanding subparagraph 1(c) of Article 3.2, a product shall not be considered as originating in a Party if solely one or more of the following operations are conducted on non-originating materials in the production of the product in that Party:

(a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the product remains in good condition during transport and storage;

(b) changes of packaging;

(c) breaking-up or assembly of packages;

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

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

(f) simple painting or polishing operations;

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

(h) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form;

(i) peeling, stoning or shelling of fruits, nuts or vegetables;

(j) sharpening, simple grinding or simple cutting;

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

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

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

(n) simple mixing of products, (10) whether or not of different kinds;

(o) simple addition of water, dilution, dehydration or denaturation (11) of products;

(p) simple collection or assembly of parts to constitute a complete or finished article, or an article falling to be classified as complete or finished pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System; disassembly of products in parts; or

(q) slaughter of animals.

2. For the purpose of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

(10) For the purpose of this Article, simple mixing of products covers mixing of sugar.

(11) For the purpose of this Article, denaturation covers in particular making products unfit for human consumption by the addition of toxic or foul-tasting substances.

Article 3.5. Accumulation

1. A product that qualifies as originating in a Party shall be considered as originating in the other Party if used as a material in the production of another product in the other Party.

2. Production carried out in a Party on a non-originating material may be taken into account for the purpose of determining whether a product is originating in the other Party.

3. Paragraphs 1 and 2 do not apply if the production carried out in the other Party does not go beyond one or more of the operations referred to in subparagraphs 1(a) to (q) of Article 3.4.

4. In order for an exporter to complete the statement on origin referred to in subparagraph 2(a) of Article 3.16 for a product referred to in paragraph 2, the exporter shall obtain from its supplier information as provided for in Annex 3-C.

5. The information referred to in paragraph 4 shall apply to a single consignment or multiple consignments for the same material that is supplied within a period that does not exceed 12 months from the date on which the information was provided.

Article 3.6. Tolerances

1. If a non-originating material used in the production of a product does not satisfy the requirements set out in Annex 3-B, the product shall be considered as originating in a Party, provided that:

(a) for a product classified under Chapters 1 to 49 or Chapters 64 to 97 of the Harmonized System, (12) the value of all those non-originating materials does not exceed 10 per cent of the ex-works or free on board price of the product;

(b) for a product classified under Chapters 50 to 63 of the Harmonized System, tolerances apply as stipulated in Notes 6 to 8 of Annex 3-A.

2. Paragraph 1 does not apply if the value of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value of non-originating materials as specified in the requirements set out in Annex 3-B.

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article 3.3. If Annex 3-B requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 apply.

(12) For greater certainty, the references to the tariff classification number of the Harmonized System in this Chapter are based on the Harmonized System, as amended on 1 January 2017.

Article 3.7. Unit of Qualification

1. The unit of qualification for the application of the provisions of this Chapter shall be the particular product which is considered as the basic unit when classifying the product under the Harmonized System.

2. When a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each individual product shall be taken into account when applying the provisions of this Chapter.

Article 3.8. Accounting Segregation

1. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating status.

2. For the purpose of this Article, "fungible materials" means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.

3. Notwithstanding paragraph 1, originating and non-originating fungible materials may be used in the production of a product without being physically segregated during storage provided that an accounting segregation method is used.

4. The accounting segregation method referred to in paragraph 3 shall be applied in conformity with an inventory management method under accounting principles which are generally accepted in the Party.

5. A Party may require, under conditions set out in its laws and regulations, that the use of an accounting segregation method is subject to prior authorisation by the customs authority of that Party. The customs authority of the Party shall monitor the use of the authorisation and may withdraw the authorisation if the holder makes improper use of the accounting segregation method or fails to fulfil any of the other conditions laid down in this Chapter.

6. The accounting segregation method shall be any method that ensures that at any time no more materials receive originating status than would be the case if the materials had been physically segregated.

Article 3.9. Sets

A set, classified pursuant to Rules 3(b) and (c) of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating in a Party when all of its components are originating under this Chapter. Where the set is composed of originating and non-originating components, it shall as a whole be considered as originating in a Party, provided that the value of the non-originating components does not exceed 15 per cent of the ex-works or free on board price of the set.

Article 3.10. Non-alteration

1. An originating product declared for home use in the importing Party shall not have, after exportation and prior to being declared for home use, been altered, transformed in any way or subjected to operations other than to preserve them in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.

2. Storage or exhibition of a product may take place in a third country provided that it remains under customs supervision in that third country.

3. Without prejudice to Section B, the splitting of consignments may take place in a third country if it is carried out by the exporter or under its responsibility and provided that they remain under customs supervision in that third country.

4. In case of doubt as to whether the requirements provided for in paragraphs 1 to 3 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

Article 3.11. Returning Products

If an originating product of a Party exported from that Party to a third country returns to that Party, it shall be considered as non-originating unless it can be demonstrated to the satisfaction of the customs authority of that Party that the returning product:

(a) is the same as that exported; and

(b) has not undergone any operation other than that necessary to preserve it in good condition while in that third country or while being exported.

Article 3.12. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. For the purposes of this Article, accessories, spare parts, tool and instructional or other information materials are covered if:

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

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

2. In determining whether a product is wholly obtained, or satisfies a production process or change in tariff classification requirement as set out in Annex 3-B, accessories, spare parts, tools and instructional or other information materials shall be disregarded.

3. In determining whether a product meets a value requirement set out in Annex 3-B, the value of accessories, spare parts,

tools and instructional or other information materials shall be taken into account as originating or non-originating materials, as the case may be, in the calculation for the purpose of the application of the value requirement to the product.

4. A product's accessories, spare parts, tools and instructional or other information materials shall have the originating status of the product with which they are delivered.

Article 3.13. Neutral Elements

In order to determine whether a product is originating in a Party, it shall not be necessary to determine the originating status of the following elements:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the product;

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

(d) machines, 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 material that is not incorporated into the product but the use of which in the production of the product can reasonably be demonstrated to be a part of that production.

Article 3.14. Packing Materials and Containers for Shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining the originating status of a product.

Article 3.15. Packaging Materials and Containers for Retail Sale

1. Packaging materials and containers in which a product is packaged for retail sale, if classified with the product, shall be disregarded in determining whether all the non-originating materials used in the production of the product have undergone the applicable change in tariff classification or a production process set out in Annex 3-B or whether the product is wholly obtained.

2. If a product is subject to a value requirement set out in Annex 3-B, the value of the packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be taken into account as originating or non-originating, as the case may be, in the calculation for the purpose of application of the value requirement to the product.

Section B. Origin Procedures

Article 3.16. Claim for Preferential Tariff Treatment

1. The importing Party shall, on importation, grant preferential tariff treatment to a product originating in the other Party on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and compliance with the requirements provided for in this Chapter.

2. A claim for preferential tariff treatment shall be based on:

(a) a statement on origin that the product is originating made out by the exporter; or

(b) the importer's knowledge that the product is originating.

3. A claim for preferential tariff treatment and its basis as referred to in subparagraph 2(a) or (b) shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party. The customs authority of the importing Party may request, to the extent that the importer can provide such explanation, the importer to provide an explanation, as part of the customs import declaration or accompanying it, that the product satisfies the requirements of this Chapter.

4 The importer making a claim for preferential tariff treatment based on a statement on origin referred to in subparagraph 2(a) shall keep the statement on origin and, when required by the customs authority of the importing Party, provide a copy thereof to that authority.

5. Paragraphs 2 to 4 do not apply in the cases specified in Article 3.20.

Article 3.17. Statement on Origin

1. A statement on origin may be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including information on the originating status of materials used in the production of the product. The exporter is responsible for the correctness of the statement on origin and of the information provided.

2. A statement on origin shall be made out using one of the linguistic versions of the text set out in Annex 3-D on an invoice or on any other commercial document that describes the originating product in sufficient detail to enable its identification. The importing Party shall not require the importer to submit a translation of the statement on origin.

3. The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin or for the sole reason that an invoice was issued in a third country.

4. A statement on origin shall be valid for 12 months from the date it was made out.

5. A statement on origin may apply to:

(a) a single shipment of one or more products imported into a Party; or

(b) multiple shipments of identical products imported into a Party within any period specified in the statement on origin not exceeding 12 months.

6. If, on request of the importer, unassembled or disassembled products within the meaning of Rule 2(a) of the General Rules for the Interpretation of the Harmonized System falling within Sections XV to XXI of the Harmonized System are imported by instalments, a single statement on origin for such products may be used in accordance with the requirements laid down by the customs authority of the importing Party.

Article 3.18. Importer's Knowledge

The importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.

Article 3.19. Record Keeping Requirements

1. An importer making a claim for preferential tariff treatment for a product imported into the importing Party shall, for a minimum of three years after the date of importation of the product, keep:

(a) if the claim was based on a statement on origin, the statement on origin made out by the exporter; or

(b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements to obtain originating status.

2. An exporter who has made out a statement on origin shall, for a minimum of four years after the making out of that statement on origin, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.

3. The records to be kept in accordance with this Article may be held in electronic format.

4. Paragraphs 1 to 3 do not apply in the cases specified in Article 3.20.

Article 3.20. Small Consignments and Waivers

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products provided that such products are not imported by way of trade, (13) have been declared as satisfying the requirements of this Chapter and if there is no doubt as to the veracity of such a declaration.

2. Provided that the importation does not form part of importations that may reasonably be considered to have been

made separately for the purpose of avoiding the requirement for a statement on origin, the total value of the products referred to in paragraph 1 shall not exceed:

(a) for the European Union, 500 euros in the case of small packages or 1,200 euros in the case of products forming part of travellers' personal luggage. The amounts to be used in other currency of a Member State of the European Union shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October of each year. The amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October of each year, and shall apply from 1 January of the following year. The European Commission shall notify Japan of the relevant amounts.

(b) for Japan, 100,000 yen or such amount as Japan may establish.

3. Each Party may provide that the basis for the claim as referred to in paragraph 2 of Article 3.16 shall not be required for an importation of a product for which the importing Party has waived the requirements.

(13) The imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view.

Article 3.21. Verification

1. For the purposes of verifying whether a product imported into a Party is originating in the other Party or whether the other requirements of this Chapter are satisfied, the customs authority of the importing Party may conduct a verification based on risk assessment methods, which may include random selection, by means of a request for information from the importer who made the claim referred to in Article 3.16. The customs authority of the importing Party may conduct a verification either at the time of the customs import declaration, before the release of products, or after the release of the products.

2. The information requested pursuant to paragraph 1 shall cover no more than the following elements:

(a) if a statement on origin was the basis of the claim referred to in subparagraph 2(a) of Article 3.16, that statement on origin;

(b) the tariff classification number of the product under the Harmonized System and origin criteria used;

(c) a brief description of the production process;

(d) if the origin criterion was based on a specific production process, a specific description of that process;

(e) if applicable, a description of the originating and non-originating materials used in the production process;

(f) if the origin criterion was "wholly obtained", the applicable category (such as harvesting, mining, fishing and place of production);

(g) if the origin criterion was based on a value method, the value of the product as well as the value of all the non-originating or, as appropriate to establish compliance with the value requirement, originating materials used in the production;

(h) if the origin criterion was based on weight, the weight of the product as well as the weight of the relevant non-originating or, as appropriate to establish compliance with the weight requirement, originating materials used in the product;

(i) if the origin criterion was based on a change in tariff classification, a list of all the non-originating materials including their tariff classification number under the Harmonized System (in two-, four- or six- digit format depending on the origin criteria); or

(j) the information relating to the compliance with the provision on non-alteration referred to in Article 3.10.

3. When providing the requested information, the importer may add any other information that it considers relevant for the purpose of verification.

4. If the claim for preferential tariff treatment was based on a statement on origin referred to in subparagraph 2(a) of Article 3.16, the importer shall inform the customs authority of the importing Party when the requested information may be

provided in full or in relation to one or more data elements by the exporter directly.

5. If the claim for preferential tariff treatment was based on the importer's knowledge referred to in subparagraph 2(b) of Article 3.16, after having first requested information in accordance with paragraph 1 of this Article, the customs authority of the importing Party conducting the verification may request information from the importer if that customs authority considers that additional information is necessary in order to verify the originating status of the product. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.

6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, release of the product shall be offered to the importer subject to appropriate precautionary measures including guarantees. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the originating status of the product concerned or the fulfilment of the other requirements of this Chapter has been ascertained by the customs authority of the importing Party.

Article 3.22. Administrative Cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and in compliance with the other requirements provided for in this Chapter.

2. If the claim for preferential tariff treatment was based on a statement on origin referred to in subparagraph 2(a) of Article 3.16, after having first requested information in accordance with paragraph 1 of Article 3.21, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products if the customs authority of the importing Party conducting the verification considers that additional information is necessary in order to verify the originating status of the product. The request for information should include the following information:

(a) the statement on origin;

(b) the identity of the customs authority issuing the request;

(c) the name of the exporter;

(d) the subject and scope of the verification; and

(e) if applicable, any relevant documentation.

In addition to this information, the customs authority of the importing Party may request the customs authority of the exporting Party for specific documentation and information, where appropriate.

3. The customs authority of the exporting Party may, in accordance with its laws and regulations, request documentation or examination by calling for any evidence or by visiting the premises of the exporter to review records and observe the facilities used in the production of the product.

4. Without prejudice to paragraph 5, the customs authority of the exporting Party receiving the request referred to in paragraph 2 shall provide the customs authority of the importing Party with the following information:

(a) the requested documentation, where available;

(b) an opinion on the originating status of the product;

(c) the description of the product subject to examination and the tariff classification relevant to the application of this Chapter;

(d) a description and explanation of the production process sufficient to support the originating status of the product;

(e) information on the manner in which the examination was conducted; and

(f) supporting documentation, if appropriate.

5. The customs authority of the exporting Party shall not provide the information referred to in paragraph 4 to the customs authority of the importing Party if that information is deemed confidential by the exporter.

6. Each Party shall notify the other Party of the contact details, including postal and email addresses, and telephone and facsimile numbers of the customs authorities and shall notify the other Party of any modification regarding such

information within 30 days after the date of the modification.

Article 3.23. Mutual Assistance In the Fight Against Fraud

In case of a suspected breach of the provisions of this Chapter, the Parties shall provide each other with mutual assistance, in accordance with the CMAA.

Article 3.24. Denial of Preferential Tariff Treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

(a) within three months after the date of the request for information pursuant to paragraph 1 of Article 3.21:

(i) no reply is provided; or

(ii) if the claim for preferential tariff treatment was based on the importer's knowledge as referred to in subparagraph 2(b) of Article 3.16, the information provided is inadequate to confirm that the product is originating;

(b) within three months after the date of the request for information pursuant to paragraph 5 of Article 3.21:

(i) no reply is provided; or

(ii) the information provided is inadequate to confirm that the product is originating;

(c) within 10 months after the date of the request for information pursuant to paragraph 2 of Article 3.22:

(i) no reply is provided; or

(ii) the information provided is inadequate to confirm that the product is originating; or

(d) following a prior request for assistance pursuant to Article 3.23 and within a mutually agreed period, in respect of products which have been the subject of a claim as referred to in paragraph 1 of Article 3.16:

(i) the customs authority of the exporting Party fails to provide the assistance; or

(ii) the result of that assistance is inadequate to confirm that the product is originating.

2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements of this Chapter other than those relating to the originating status of the products.

3. If the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1, in cases where the customs authority of the exporting Party has provided an opinion pursuant to subparagraph 4(b) of Article 3.22 confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the preferential tariff treatment within two months after the date of receipt of that opinion. If such notification is made, consultations shall be held on request of a Party, within three months after the date of the notification. The period for consultation may be extended on a case by case basis by mutual agreement between the Parties. The consultation may take place in accordance with the procedure set out by the Committee on Rules of Origin and Customs–Related Matters established pursuant to Article 22.3. Upon the expiry of the period for consultation, the customs authority of the importing Party may deny the preferential tariff treatment solely on the basis of sufficient justification and after having granted the importer the right to be heard.

Article 3.25. Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of any information provided to it by the other Party pursuant to this Chapter, and shall protect that information from disclosure.

2. Information obtained by the authorities of the importing Party pursuant to this Chapter may only be used by those authorities for the purposes of this Chapter.

3. Confidential business information obtained from the exporter by the customs authority of the exporting Party or of the importing Party through the application of Articles 3.21 and 3.22 shall not be disclosed, unless otherwise provided for in this

Chapter.

4. Information obtained by the customs authority of the importing Party pursuant to this Chapter shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is granted by the exporting Party in accordance with its laws and regulations.

Article 3.26. Administrative Measures and Sanctions

Each Party shall impose administrative measures and, where appropriate, sanctions, in accordance with its laws and regulations, on any person who draws up a document, or causes a document to be drawn up, which contains incorrect information provided for the purpose of obtaining preferential tariff treatment for a product, who does not comply with the requirements set out in Article 3.19, or who does not provide the evidence or refuses the visit referred to in paragraph 3 of Article 3.22.

Section C. Miscellaneous

Article 3.27. Application of this Chapter to Ceuta and Melilla

1. For the purposes of this Chapter, in the case of the European Union, "Party" does not include Ceuta and Melilla.

2. Products originating in Japan, when imported into Ceuta or Melilla, shall in all respects be subject to the same customs treatment under this Agreement as that which is applied to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Union. Japan shall apply to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs treatment under this Agreement as that which is applied to products imported from and originating in the European Union.

3. The rules of origin and origin procedures under this Chapter apply mutatis mutandis to products exported from Japan to Ceuta and Melilla and to products exported from Ceuta and Melilla to Japan.

4. Article 3.5 applies to the import and export of products between the European Union, Japan and Ceuta and Melilla.

5. Ceuta and Melilla shall be considered as a single territory.

6. The customs authority of the Kingdom of Spain shall be responsible for the application of this Article in Ceuta and Melilla.

Article 3.28. Committee on Rules of Origin and Customs-Related Matters

1. The Committee on Rules of Origin and Customs-Related Matters established pursuant to Article 22.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this Chapter, in addition to the other responsibilities specified in paragraph 1 of Article 4.14.

2. For the purposes of this Chapter, the Committee shall have the following functions:

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee established pursuant to Article 22.1 on:

(i) the implementation and operation of this Chapter; and

(ii) any amendments of the provisions of this Chapter proposed by a Party;

(b) adopting explanatory notes to facilitate the implementation of the provisions of this Chapter;

(c) setting the consultation procedure referred to in paragraph 3 of Article 3.24; and

(d) considering any other matter related to this Chapter as the representatives of the Parties may agree.

Article 3.29. Transitional Provisions for Products In Transit or Storage

The provisions of this Agreement may be applied to products which comply with the provisions of this Chapter and which on the date of entry into force of this Agreement are either in transit from the exporting Party to the importing Party or under customs control in the importing Party without payment of import duties and taxes, subject to the making of a claim for

preferential tariff treatment referred to in Article 3.16 to the customs authority of the importing Party, within 12 months of that date.

Chapter 4. CUSTOMS MATTERS AND TRADE FACILITATION

Article 4.1. Objectives

The objectives of this Chapter are to:

(a) promote trade facilitation for goods traded between the Parties while ensuring effective customs controls, taking into account the evolution of trade practices;

(b) ensure transparency of each Party's customs legislation and other trade-related laws and regulations and consistency thereof with applicable international standards;

(c) ensure predictable, consistent and non-discriminatory application by each Party of its customs legislation and other trade-related laws and regulations;

(d) promote simplification and modernisation of each Party's customs procedures and practices;

(e) further develop risk management techniques to facilitate legitimate trade while securing the international trade supply chain; and

(f) enhance cooperation between the Parties in the field of customs matters and trade facilitation.

Article 4.2.

1. This Chapter applies to matters relating to each Party's customs legislation, other traderelated laws and regulations and general administrative procedures related to trade, including their application to goods traded between the Parties, as well as the cooperation between the Parties.

2. Nothing in this Chapter shall affect the rights and obligations of a Party under Chapters 6 and 7.

3. In the event of any inconsistency between this Chapter and Chapter 6 or 7, Chapter 6 or 7 shall prevail to the extent of the inconsistency.

4. This Chapter applies without prejudice to the fulfilment of each Party's legitimate policy objectives and its obligations under international agreements to which it is a party, regarding the protection of:

(a) public morals;

(b) human, animal or plant life or health;

(c) national treasures of artistic, historic or archaeological value; or

(d) the environment.

5. This Chapter shall be implemented by each Party in accordance with its laws and regulations. Each Party shall use its available resources in an appropriate way to implement this Chapter.

Article 4.3. Transparency

1. Each Party shall ensure that its customs legislation and other trade-related laws and regulations as well as its general administrative procedures and relevant information of general application related to trade are published and readily available to any interested person in an easily accessible manner, including, as appropriate, through the Internet.

2. Each Party shall publish and make readily available its customs legislation, other trade-related laws and regulations and general administrative procedures related to trade as early as possible before their entry into force, in order to enable any interested person to become acquainted with them, except in the case:

(a) of urgent circumstances;

(b) of minor changes to such laws, regulations or general administrative procedures;

(c) the effectiveness of such laws and regulations or their enforcement is undermined as a result of prior publication; or

(d) of measures having relieving effects.

3. Each Party shall designate one or more enquiry points to answer reasonable enquiries from any interested persons on the matters covered by paragraph 1. Enquiry points shall answer such enquiries and provide any relevant forms and documents within a reasonable time period set by each Party.

4. Each Party shall, as appropriate, provide for regular consultations between its customs authority and other trade-related agencies and traders or other stakeholders located within its territory.

5. Information on fees and charges shall be published in accordance with paragraphs 1 and 2. That information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made. Such fees and charges shall not be applied until information on them has been published.

Article 4.4. Procedures for Import, Export and Transit

1. Each Party shall apply its customs legislation and other trade-related laws and regulations in a predictable, consistent, transparent and non-discriminatory manner.

2. Each Party shall ensure that its customs procedures:

(a) are consistent with international standards and recommended practices applicable to each Party in the area of customs procedures such as those made under the auspices of the World Customs Organization (14) (hereinafter referred to as "the WCO"), including the substantive elements of the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures, done at Brussels on 26 June 1999, the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, and the Framework of Standards to Secure and Facilitate Global Trade of the WCO (hereinafter referred to as "the SAFE Framework");

(b) aim at facilitating legitimate trade, taking into account the evolution of trade practices, while securing compliance with its laws and regulations;

(c) provide for effective enforcement in case of breaches of its laws and regulations concerning customs procedures, including duty evasion and smuggling; and

(d) do not include mandatory use of customs brokers or preshipment inspections.

3. Each Party shall adopt or maintain measures granting favourable treatment with respect to customs controls prior to the release of goods to traders or operators fulfilling criteria specified in its laws and regulations.

4. Each Party shall promote the development and use of advanced systems, including those based on information and communications technology, to facilitate the exchange of electronic data between traders or operators and its customs authority and other trade-related agencies.

5. Each Party shall work towards further simplification and standardisation of data and documentation required by its customs authority and other trade-related agencies.

(14) For greater certainty, the WCO was established in 1952 as the Customs Co-operation Council (CCC).

Article 4.5. Release of Goods

Each Party shall adopt or maintain customs procedures that:

(a) provide for the prompt release of goods within a period that is not longer than necessary to ensure compliance with its laws and regulations;

(b) allow for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods; and

(c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, subject to the provision of a guarantee, if required by its laws and regulations, in order to secure their final payment.

Article 4.6. Simplification of Customs Procedures

1. Each Party shall work towards simplification of its requirements and formalities for customs procedures in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises.

2. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such simplification may allow periodical declaration for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of the goods.

3. Each Party shall adopt or maintain programmes which enable operators fulfilling criteria specified in its laws and regulations to benefit further from or have easier access to the simplification referred to in paragraph 2.

Article 4.7. Advance Rulings

1. Each Party shall issue, through its customs authority, an advance ruling that sets forth the treatment to be provided to the goods concerned. That ruling shall be issued in a reasonable, timebound manner to the applicant that has submitted a written request, including in electronic format, containing all necessary information in accordance with the laws and regulations of the issuing Party.

2. An advance ruling shall cover tariff classification of the goods, origin of goods including their qualification as originating goods under Chapter 3 or any other matter as the Parties may agree, in particular regarding the appropriate method or criteria to be used for the customs valuation of the goods.

3. Subject to any confidentiality requirements in its laws and regulations, a Party may publish its advance rulings, including through the Internet.

Article 4.8. Appeal and Review

1. Each Party shall guarantee the right of appeal or review to any person to whom an administrative decision has been addressed by the customs authority or other trade-related agencies of that Party.

2. Appeal or review shall include:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; or

(b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, if the decision on appeal or review referred to in subparagraph 2(a) is not issued within a period of time provided for in its laws and regulations or without undue delay, the person referred to in paragraph 1 has the right to further administrative or judicial appeal or review.

4. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision to enable that person to have recourse to appeal or review procedures when necessary.

Article 4.9. Risk Management

1. Each Party shall adopt or maintain a risk management system that enables its customs authority to concentrate inspection activities on high-risk consignments and that expedites the release of low-risk consignments.

2. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

3. A Party may also select, on a random basis, consignments for inspection activities referred to in paragraph 1 as part of its risk management.

4. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

Article 4.10. Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain postclearance audit to ensure compliance with its customs legislation and other trade-related laws and regulations. The customs authority of each Party

shall use the results of post-clearance audit performed by it when applying the risk management referred to in Article 4.9. A Party may provide that its customs authority uses the results of the post-clearance audit performed by other trade-related agencies when applying risk management, and vice-versa.

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

Article 4.11. Transit and Transhipment

Each Party shall adopt or maintain procedures to facilitate the movement of goods from or to the other Party that are in transit through or in transhipment within its customs territory, while maintaining appropriate control.

Article 4.12. Customs Cooperation

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Chapter in accordance with the CMAA, notwithstanding Article 1.6.

2. The customs authorities of the Parties shall enhance cooperation on the matters referred to in this Chapter with a view to further developing trade facilitation while ensuring compliance with their respective customs legislation and improving supply chain security, in the following areas:

(a) cooperation on further simplification of customs procedures, taking into account the evolution of trade practices;

(b) cooperation on harmonisation of data requirements for customs purposes, in line with applicable international standards such as the WCO standards;

(c) cooperation on further development of the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the SAFE Framework;

(d) cooperation on improvement of their risk management techniques, including sharing best practices and, if appropriate, risk information and control results;

(e) cooperation with a view to further developing the measures referred to in paragraph 3 of Article 4.4 and paragraph 2 of Article 4.6 or the programmes referred to in paragraph 3 of Article 4.6, including the possibility of cooperation with a view to allowing traders or operators of a Party to benefit from the measures or the programmes of the other Party;

(f) cooperation and coordination in international organisations such as the WTO and the WCO, on matters of common interest, including tariff classification, customs valuation and origin, with a view to establishing, if possible, common positions; and

(g) cooperation on enforcement against the trafficking of prohibited goods.

3. The customs authorities of the Parties shall ensure the exchange of information necessary for the purposes of paragraph 2.

Article 4.13. Temporary Admission

For the temporary admission of goods referred to in Article 2.10 and regardless of their origin, each Party shall, in accordance with the procedures laid down in international agreements concerning temporary admissions and applied by the Party, accept A.T.A. carnets (15) issued in the other Party.

(15) "A.T.A. carnet" has the same meaning as in the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on 6 December 1961 or the Convention on Temporary Admission, done at Istanbul on 26 June 1990.

Article 4.14. Committee on Rules of Origin and Customs-Related Matters

1. The Committee on Rules of Origin and Customs-Related Matters established pursuant to Article 22.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this

Chapter and the customs-related matters of Chapter 2 and of Article 14.51, in addition to the other responsibilities specified in paragraph 1 of Article 3.28. (16)

2. The Committee shall hold joint meetings with the Joint Customs Co-operation Committee (hereinafter referred to in this Chapter as "the JCCC") established pursuant to the CMAA, unless such joint meetings are not necessary to ensure consistency in the implementation and operation of the provisions referred to in paragraph 1 and in the CMAA. (17)

3. The Parties shall ensure that the composition of their delegations to meetings of the Committee corresponds to the agenda items.

4. Without prejudice to the functions of the JCCC, the Committee shall have the following functions:

(a) addressing all issues arising from the implementation and operation of the provisions referred to in paragraph 1;

(b) identifying areas for improvement in the implementation and operation of the provisions referred to in paragraph 1;

(c) functioning as a mechanism to expeditiously reach mutually agreed solutions with regard to any matters covered by the provisions referred to in paragraph 1;

(d) formulating resolutions, recommendations or opinions regarding actions or measures which it considers necessary for the attainment of the objectives and effective functioning of this Chapter;

(e) deciding on the actions to be taken or the measures to be implemented by a Party or the Parties, in the areas referred to in paragraph 2 of Article 4.12, which it considers necessary for the attainment of the objectives and effective functioning of this Chapter; and

(f) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.

(16) For greater certainty, nothing in this Article shall affect the rights and obligations of the Parties with regard to the Committee on Trade in Goods relating to Chapter 2, nor the Committee on Intellectual Property relating to Chapter 14.

(17) For greater certainty, nothing in this Article shall be construed to prevent the JCCC from holding a meeting solely within the framework of the CMAA.

Chapter 5. TRADE REMEDIES

Section A. General Provisions

Article 5.1. Definitions

For the purposes of this Chapter:

(a) "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

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

(c) "threat of serious injury" means serious injury that is clearly imminent in accordance with the investigation referred to in paragraph 3 of Article 5.4. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

(d) "transition period" means, in relation to a particular originating good, the period beginning on the date of entry into force of this Agreement and ending 10 years after the date of completion of tariff reduction or elimination on that good in accordance with Annex 2-A.

Section B. Bilateral Safeguard Measures

Article 5.2. Application of Bilateral Safeguard Measures

1. If, as a result of the elimination or reduction of a customs duty in accordance with Article 2.8, an originating good from

one Party is being imported into the other 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 a domestic industry, the other Party may adopt the measures provided for in paragraph 2 to the extent necessary to prevent or remedy the serious injury to the domestic industry of the other Party and to facilitate the adjustment of the domestic industry.

2. Bilateral safeguard measure may consist of:

(a) the suspension of any further reduction of the rate of customs duty on the originating good provided for in Chapter 2; or

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

(i) most-favoured-nation applied rate of customs duty in effect on the day when the bilateral safeguard measure is applied; and

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

Article 5.3. Conditions and Limitations

1. No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate the adjustment of the domestic industry, provided that such period of time shall not exceed a period of two years. However, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, shall not exceed four years.

2. Bilateral safeguard measures may only be applied during the transition period.

3. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular intervals during the period of application.

4. No bilateral safeguard measure shall be applied to the import of a particular originating good which has already been subject to such a bilateral safeguard measure for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

5. Upon the termination of a bilateral safeguard measure, the rate of customs duty for the originating good subject to the measure shall be the rate which would have been in effect but for the bilateral safeguard measure.

Article 5.4. Investigation

1. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by its competent authority (18) in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards.

2. The investigation shall in all cases be completed within one year following its date of initiation.

3. In the investigation to determine whether the increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry, the competent authority which carries out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry. Those factors include, in particular, the rate and amount of the increase in imports of the originating good in absolute and relative terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

4. The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between the increased imports of the originating good and the serious injury or threat of serious injury to the domestic industry. In this determination, factors other than the increased imports of the originating good which are also causing injury to the domestic industry at the same time shall be taken into consideration.

(18) For greater certainty, nothing in this Article shall be construed to prevent the JCCC from holding a meeting solely within the framework of the CMAA.

Article 5.5. Notification

1. A Party shall immediately notify the other Party in writing when it:

(a) initiates an investigation referred to in paragraph 1 of Article 5.4 relating to serious injury, or threat of serious injury, and the reasons for it;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports; and

(c) takes a decision to apply or extend a bilateral safeguard measure.

2. The notifying Party referred to in paragraph 1 shall provide the other Party with all pertinent information, which shall include:

(a) in the case of a notification referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading under the Harmonized System, the expected duration of the investigation and the date of initiation of the investigation; and

(b) in the case of a notification referred to in subparagraphs 1(b) and (c), evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading under the Harmonized System, a precise description of the proposed bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

Article 5.6. Consultations and Compensations

1. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in paragraph 1 of Article 5.4, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation as provided for in this Article.

2. A Party proposing to apply or extend a bilateral safeguard measure shall provide the other Party with mutually agreed adequate means of trade compensation in the form of concessions of customs duties, the value of which is substantially equivalent to that of the additional customs duties expected to result from the bilateral safeguard measure.

3. If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultations, the Party to whose originating good the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties under this Agreement, the value of which is substantially equivalent to that of the additional customs duties resulting from the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

4. Notwithstanding paragraph 3, the right of suspension referred to in that paragraph shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an absolute increase in imports and that such a safeguard measure conforms to the provisions of this Agreement.

Article 5.7. Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, which shall take the form of a measure set out in subparagraph 2(a) or (b) of Article 5.2, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good of the other Party have caused or are threatening to cause serious injury to a domestic industry of the Party proposing to apply the provisional bilateral safeguard measure.

2. A Party shall notify the other Party in writing of its proposed provisional bilateral safeguard measure no later than at the date of application thereof. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied. The notification shall contain evidence of the existence of critical circumstances, evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed provisional bilateral safeguard measure and its subheading under the Harmonized System, and a precise description of the proposed provisional bilateral safeguard measure.

3. The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Article 5.4 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as part of the period referred to in paragraph 1 of Article 5.3.

4. Paragraph 5 of Article 5.3 shall apply, mutatis mutandis, to a provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 1 of Article 5.4 does not determine that the increased imports of the originating good subject to the provisional bilateral safeguard measure have caused or threatened to cause serious injury to a domestic industry.

Article 5.8. Miscellaneous

The notifications referred to in paragraph 1 of Article 5.5 and paragraph 2 of Article 5.7 and any other communication between the Parties under this Section shall be made in English.

Section C. Global Safeguard Measures

Article 5.9. General Provisions

1. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards.

2. The provisions of this Section shall not be subject to dispute settlement under Chapter 21.

Article 5.10. Application of Safeguard Measures

A Party shall not apply or maintain, with respect to the same good, at the same time:

(a) a bilateral safeguard measure set out in Section B;

(b) a measure under Article XIX of GATT 1994 and the Agreement on Safeguards ; or

(c) a safeguard measure set out in Section C of Part 3 of Annex 2-A

Section D. Anti-dumping and Countervailing Measures

Article 5.11. General Provisions

1. The Parties maintain their rights and obligations under the Agreement on Anti-Dumping and the SCM Agreement.

2. The provisions of this Section shall not be subject to dispute settlement under Chapter 21.

3. Chapter 3 shall not apply to anti-dumping and countervailing measures under this Agreement.

Article 5.12. Transparency and Disclosure of Essential Facts

1. Each Party shall conduct anti-dumping and countervailing duty investigations in a fair and transparent manner, and based on the Agreement on Anti-Dumping and the SCM Agreement.

2. Each Party shall ensure, before or immediately after any imposition of provisional measures referred to in Article 7 of the Agreement on Anti-Dumping and Article 17 of the SCM Agreement, and in any case before a final determination is made, full disclosure of the essential facts under consideration which form the basis for the decision on whether to apply provisional and definitive measures. The full disclosure of essential facts is without prejudice to the requirements on confidentiality referred to in Article 6.5 of the Agreement on Anti-Dumping and Article 12.4 of the SCM Agreement. Such disclosure shall be made in writing, and should take place in sufficient time for interested parties to defend their interests.

3. The disclosure of the essential facts, which is made in accordance with paragraph 2 shall contain in particular:

(a) in the case of an anti-dumping investigation, the margins of dumping established, a sufficiently detailed explanation of the basis and methodology upon which normal values and export prices were established, and of the methodology used in the comparison of the normal values and export prices including any adjustments;

(b) in the case of a countervailing duty investigation, the determination of countervailable subsidisation, including sufficient details on the calculation of the amount and methodology followed to determine the existence of subsidisation; and

(c) information relevant to the determination of injury, including information concerning the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like goods, the detailed methodology used in the calculation of price undercutting, the consequent impact of the dumped imports on the domestic industry, and the demonstration of a causal relationship including the examination of factors other than the dumped imports as referred to in Article 3.5 of the Agreement on Anti-Dumping.

4. In cases in which an investigating authority (19) of a Party intends to make use of the facts available pursuant to Article 6.8 of the Agreement on Anti-Dumping, the investigating authority shall inform the interested party concerned of its intentions and give a clear indication of the reasons which may lead to the use of the facts available. If, after having been given the opportunity to provide further explanations within a reasonable time period, the explanations given by the interested party concerned are considered by the investigating authority as not being satisfactory, the disclosure of essential facts shall contain a clear indication of the facts available that the investigating authority has used instead.

(19) For the purposes of this Section, for Japan, an investigating authority includes its relevant investigating authorities.

Article 5.13. Consideration of Public Interest

When conducting anti-dumping and countervailing duty investigations on a good, the investigating authority of the importing Party shall, in accordance with its laws and regulations, provide opportunities for producers in the importing Party of the like good, for importers of the good, for industrial users of the good and for representative consumer organisations in cases where the good is commonly sold at the retail level, to submit their views in writing with regard to the anti-dumping and countervailing duty investigation, including concerning the potential impact of a duty on their situation.

Article 5.14. Anti-dumping Investigation

When the investigating authority of the importing Party has received a written application by or on behalf of its domestic industry for the initiation of an anti-dumping investigation in respect of a good from the exporting Party, the importing Party shall notify, at least 10 days in advance of the initiation of such investigation, the exporting Party of such application.

Chapter 6. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health through the development, adoption and enforcement of sanitary and phytosanitary measures while minimising their negative effects on trade between the Parties;

(b) promote cooperation between the Parties on the implementation of the SPS Agreement; and

(c) provide means for improving communication and cooperation between the Parties, a framework for addressing matters related to the implementation of sanitary and phytosanitary measures, and means for achieving mutually acceptable solutions.

Article 6.2. Scope of Application

This Chapter applies to all sanitary and phytosanitary measures of the Parties under the SPS Agreement that may, directly or indirectly, affect trade between the Parties.

Article 6.3. Definitions

1. For the purposes of this Chapter, the definitions set out in Annex A to the SPS Agreement apply.

2. For the purposes of this Chapter:

(a) "import conditions" means any sanitary or phytosanitary measures that are required to be fulfilled for the import of

products; and

(b) "protected zone" means an officially defined geographical part of the territory of each Party in which a specific regulated pest is not established in spite of favourable conditions for its establishment and its presence in other parts of the territory of the Party.

3. In addition, the Committee on Sanitary and Phytosanitary Measures established pursuant to Article 22.3 may agree on other definitions for the application of this Chapter taking into consideration the glossaries and definitions developed by relevant international organisations, such as the Codex Alimentarius Commission (hereinafter referred to as "Codex Alimentarius"), the World Organisation for Animal Health (hereinafter referred to as "OIE") and the relevant international organisations operating within the framework of the International Plant Protection Convention (hereinafter referred to as "IPPC"). In the event of an inconsistency between the definitions agreed by the Committee on the Sanitary and Phytosanitary Measures and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.

Article 6.4. Relation to the WTO Agreement

The Parties affirm their rights and obligations relating to sanitary and phytosanitary measures under the SPS Agreement. Nothing in this Chapter shall affect the rights and obligations of each Party under the SPS Agreement.

Article 6.5. Competent Authorities and Contact Points

1. As of the date of entry into force of this Agreement, each Party shall provide the other Party with a description of the competent authorities for the implementation of this Chapter and a contact point for communication on all matters covered by this Chapter.

2. Each Party shall inform the other Party of any significant changes in the structure, organisation and division of responsibilities of their competent authorities and ensure that the information on contact points is kept up to date.

Article 6.6. Risk Assessment

The Parties shall ensure that their sanitary and phytosanitary measures are based on risk assessment in accordance with Article 5 and other relevant provisions of the SPS Agreement.

Article 6.7. Import Conditions, Import Procedures and Trade Facilitation

1. Import conditions shall be established by the importing Party in order to achieve the appropriate level of protection, subject to and taking into account consultations between the Parties when necessary.

2. Without prejudice to the rights and obligations of each Party under the SPS Agreement, the importing Party should, if requested by the exporting Party, apply the import conditions for products to the entire territory of the exporting Party in a consistent manner.

3. Paragraphs 1 and 2 shall not affect the import conditions existing between the Parties on the date of entry into force of this Agreement. The Parties shall give consideration to any request for a review of those import conditions.

4. Each Party shall ensure, with respect to any import procedures to check and ensure the fulfilment of sanitary or phytosanitary measures, including those for the approval and clearance, that:

(a) such procedures are simplified, expedited and completed without undue delay, in accordance with the SPS Agreement;

(b) such procedures are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party;

(c) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; and

(d) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for the approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs.

5. Taking into account the applicable standards developed under the IPPC, the Parties shall maintain adequate information

on their pest status, including surveillance, eradication and containment programmes and their results, in order to support the categorisation of pests and to justify phytosanitary import conditions.

6. Each Party shall establish lists of regulated pests for commodities (20) where phytosanitary concerns exist. The lists shall contain, as appropriate:

(a) the quarantine pests not known to occur within any part of its territory;

(b) the quarantine pests which are known to occur within any part of its territory but are not widely distributed and under official control; and

(c) any other regulated pest for which phytosanitary measures may be taken.

For commodities for which phytosanitary concerns exist, import conditions shall be limited to measures ensuring the absence of regulated pests of the importing Party. The importing Party shall make available its list of regulated commodities and the phytosanitary import requirements for all regulated commodities. This information shall include, as appropriate, the specific quarantine pests and additional declarations on phytosanitary certificates as prescribed by the importing Party.

7. Where it is necessary to establish import conditions to respond to a request of the exporting Party:

(a) the importing Party shall take all necessary steps to allow the import of the products concerned without undue delay;

(b) the exporting Party shall:

(i) provide all relevant information required by the importing Party; and

(ii) give reasonable access to the importing Party for audit and other relevant procedures.

8. Where a range of alternative sanitary or phytosanitary measures are available to attain the appropriate level of protection of the importing Party, the Parties shall, on request of the exporting Party, consider selecting a more practicable and less trade-restrictive solution.

9. Where a certificate issued by the exporting Party is required for sanitary or phytosanitary objectives, the format of the certificate and its contents shall be agreed by the Parties, taking into account international standards, guidelines or recommendations of the Codex Alimentarius, OIE or IPPC.

10. Each Party shall promote the implementation of electronic certification and other technologies to facilitate trade.

11. The purpose of the verifications by officials of the importing Party in the territory of the exporting Party should be to facilitate new trade. Those verifications should not become a permanent measure. The importing Party shall replace an existing verification measure by an alternative measure which verifies compliance with the agreed requirements for phytosanitary measures by the exporting Party, if so requested by the exporting Party and accepted without undue delay by the importing Party.

12. Consignments of regulated commodities shall be accepted on the basis of adequate assurances by the exporting Party, without specific import authorisations in the form of a licence or permit, except where an official consent for import is necessary, based on the relevant standards, guidelines and recommendations of the IPPC.

13. Pest risk analysis shall begin as promptly as possible and shall be concluded without undue delay.

14. Any fees imposed for the procedures on imported products from the exporting Party shall be equitable in relation to any fees charged on like domestic products and should be no higher than the actual cost of the service in accordance with subparagraph 1(f) of Annex C to the SPS Agreement.

(20) For the purposes of this Chapter, "commodities" is understood in accordance with the Glossary of Phytosanitary Terms (International Standards for Phytosanitary Measures No.5) produced by the Secretariat of the IPPC.

Article 6.8. Audit

1. In order to attain and maintain confidence in the effective implementation of this Chapter, the Parties shall assist each other to carry out audits of:

(a) all or parts of the exporting Party's inspection and certification system; and

(b) the results of the controls carried out under the exporting Party's inspection and certification system.

The Parties shall carry out those audits in accordance with the provisions of the SPS Agreement, taking into account the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE or IPPC.

2. The importing Party may conduct audits by requesting information from the exporting Party or by audit visits to the exporting Party.

3. An audit visit shall be carried out under the conditions agreed in advance by the Parties.

4. The importing Party shall provide the exporting Party with the opportunity to comment in writing on the findings of the audit. The importing Party shall take any such comments into account before reaching its conclusions and taking any action thereon. The importing Party shall, without undue delay, provide the exporting Party with a written report setting out its conclusions.

5. The costs for an audit visit shall be borne by the importing Party unless otherwise agreed by the Parties.

Article 6.9. Procedure for Listing of Establishments or Facilities

1. When required by the importing Party, the competent authorities of the exporting Party shall ensure that lists of establishments and facilities which comply with the importing Party's import conditions are drawn up, kept updated and communicated to the importing Party.

2. The importing Party may request the exporting Party to provide information which is necessary to consider the lists referred to in paragraph 1. Unless additional information is required to verify the entries on the lists, the importing Party shall take the necessary measures to allow imports from the listed establishments and facilities without undue delay. Without prejudice to Article 6.13, such measures shall not include prior inspection unless such inspection is required by each Party's laws and regulations or otherwise agreed by the Parties.

3. The importing Party may conduct audits in accordance with Article 6.8.

4. The importing Party shall make the lists referred to in paragraph 1 publicly available as appropriate.

5. A Party shall notify the other Party of its intention to introduce new laws and regulations within the scope of this Article and allow the other Party to provide comments thereon.

Article 6.10. Adaptation to Regional Conditions

1. With regard to animals, animal products and animal by-products, the Parties recognise the concept of zone and compartment specified in the OIE Terrestrial Animal Health Code and the OIE Aquatic Animal Health Code.

2. When establishing or maintaining sanitary import conditions on the request of the exporting Party, the importing Party shall recognise the zones or compartments established by the exporting Party as a basis for consideration towards the determination of allowing or maintaining the import.

3. The exporting Party shall identify its zones or compartments referred to in paragraph 2 and, on request of the importing Party, provide a full explanation and supporting data based on the OIE Terrestrial Animal Health Code or the OIE Aquatic Animal Health Code, or in other ways as deemed appropriate by the Parties on the basis of the knowledge acquired through experience of the exporting Party's competent authorities.

4. Each Party shall ensure that the procedures and obligations established by paragraphs 2 and 3 are carried out without undue delay.

5. Unless the Parties agree otherwise, the Parties will, through the Committee on Sanitary and Phytosanitary Measures, exchange information on a way to establish and maintain mutual recognition of health status, based on the OIE Terrestrial Animal Health Code and recommendations adopted by the OIE.

6. Each Party may establish the zones or compartments referred to in paragraph 2 for diseases not covered by the OIE Terrestrial Animal Health Code or the OIE Aquatic Animal Health Code and agree with the other Party to apply such zones or compartments in the trade between the Parties.

7. With regard to plants and plant products, the Parties recognise the concepts of pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence specified in the International Standards for Phytosanitary Measures developed under the IPPC, as well as the concept of protected zones which the Parties agree to

apply in trade between them.

8. When establishing or maintaining phytosanitary import conditions on request of the exporting Party, the importing Party shall recognise the pest free areas, pest free places of production, pest free production sites, areas of low pest prevalence and protected zones established by the exporting Party as a basis for consideration towards the determination to allow or maintain the import.

9. The exporting Party shall identify its pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence or protected zones. If requested by the importing Party, the exporting Party shall provide a full explanation and supporting data based on the relevant International Standards for Phytosanitary Measures developed under the IPPC, or in other ways as deemed appropriate by the Parties, based on the knowledge acquired through experience of the exporting Party's relevant phytosanitary authorities.

10. In implementing paragraphs 7 to 9, technical consultations and audits may be carried out. Technical consultations shall take place in accordance with Article 6.12. The audits shall be carried out in accordance with Article 6.8, taking into account the biology of the pest and the commodity concerned.

11. Each Party shall ensure that the procedures and obligations set out in paragraphs 8 to 10 are carried out without undue delay.

12. Whenever a quarantine pest is detected in a protected zone, the exporting Party shall immediately notify the importing Party and, on request of the importing Party, immediately suspend the relevant export. The exporting Party may resume the export provided that the importing Party is satisfied with the assurances provided by the exporting Party.

Article 6.11. Transparency and Exchange of Information

1. Each Party shall, in accordance with Article 7 of the SPS Agreement and Annexes B and C to the SPS Agreement:

(a) ensure transparency as regards:

(i) sanitary and phytosanitary measures, including import conditions; and

(ii) control, inspection and approval procedures, including complete details about the mandatory administrative steps, expected timelines and the authorities in charge of receiving import applications and of processing them;

(b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and their application; and

(c) on a reasonable request of the other Party and as soon as possible, provide information on its sanitary and phytosanitary measures and their application, including:

(i) import conditions that apply to the import of specific products;

(ii) the state of progress of applications for authorisation of specific products;

(iii) the frequency of import checks carried out on products from the other Party; and

(iv) matters related to the development and application of its sanitary and phytosanitary measures, including the progress concerning new available scientific evidence, that affect or may affect trade between the Parties with a view to minimising their negative effects.

2. When the information referred to in subparagraphs 1(a) and (c) has been made available by notification of a Party under the SPS Agreement, or when such information has been made available on an official, publicly accessible and free of charge website of that Party, the information referred to in subparagraphs 1(a) and (c) shall be considered to have been provided.

Article 6.12. Technical Consultations

1. Where a Party has significant concerns regarding human, animal or plant life or health, or measures proposed or implemented by the other Party, that Party may request technical consultations.

2. The other Party shall respond to such a request without undue delay and shall engage in the technical consultations to address those concerns.

3. Each Party shall endeavour to provide the information necessary to avoid a disruption in trade or to reach a mutually acceptable solution.

4. Where the Parties have already established other mechanisms than those referred to in this Article to address the concerns, they shall make use of them to the extent possible in order to avoid unnecessary duplication.

5. Each Party shall seek to resolve any concerns with respect to sanitary and phytosanitary measures of the other Party referred to in paragraph 1 through technical consultations pursuant to this Article prior to initiating dispute settlement proceedings under this Agreement.

6. Each Party may terminate technical consultations by notifying the other Party in writing at any time no less than 90 days after the date of receipt of the response by the other Party referred to in paragraph 2, or any other time period as agreed by the Parties.

Article 6.13. Emergency Measures

1. A Party may adopt emergency measures that are necessary for the protection of human, animal or plant life or health. When adopting such emergency measures the competent authority of that Party shall:

(a) immediately notify the competent authorities of the other Party of such emergency measures;

(b) allow the other Party to submit comments in writing;

(c) engage, if necessary, in technical consultations as referred to in Article 6.12; and

(d) take into account the comments referred to in subparagraph (b) and the results of technical consultations referred to in subparagraph (c).

2. In order to avoid unnecessary disruptions to trade, the importing Party shall consider information provided in a timely manner by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties.

3. The importing Party shall ensure that any emergency measure referred to in paragraph 1 is not maintained without scientific evidence. In cases where scientific evidence is insufficient, the importing Party may provisionally adopt emergency measures on the basis of available pertinent information, including that from the relevant international organisation. The importing Party shall review the emergency measure with a view to minimising its negative effect on trade by either repealing that measure or replacing it by a permanent measure.

Article 6.14. Equivalence

1. The importing Party shall accept sanitary and phytosanitary measures of the exporting Party as equivalent if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of protection. For that purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

2. The Parties shall, on request of either Party, enter into consultations with the aim of achieving arrangements determining the equivalence of specified sanitary and phytosanitary measures.

3. In determining the equivalence of sanitary and phytosanitary measures, the Parties shall take into account the relevant guidance of the WTO Committee on Sanitary and Phytosanitary Measures, in particular its Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures (21) and international standards, guidelines and recommendations of the Codex Alimentarius, OIE or IPPC.

4. Where equivalence has been determined, the Parties may agree on alternative import conditions and simplified certificates, taking into account international standards, guidelines or recommendations of the Codex Alimentarius, OIE or IPPC.

(21) WTO Document G/SPS/19/Rev.2, dated 23 July 2004.

Article 6.15. Committee on Sanitary and Phytosanitary Measures

1. The Committee on Sanitary and Phytosanitary Measures established pursuant to Article 22.3 shall be responsible for the effective implementation and operation of this Chapter.

2. The objectives of the Committee on Sanitary and Phytosanitary Measures are to:

(a) enhance each Party's implementation of this Chapter;

(b) consider sanitary and phytosanitary matters of mutual interest; and

(c) enhance communication and cooperation on sanitary and phytosanitary matters of mutual interest.

3. The Committee on Sanitary and Phytosanitary Measures:

(a) shall provide a forum to improve the Parties' understanding of sanitary and phytosanitary matters that relate to the implementation of the SPS Agreement;

(b) shall provide a forum to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the related regulatory processes;

(c) shall monitor, review and exchange information on the implementation and operation of this Chapter;

(d) shall serve as a forum to address the concerns referred to in paragraph 1 of Article 6.12 with a view to reaching mutually acceptable solutions provided that the Parties have first attempted to address them through the technical consultations pursuant to Article 6.12 and other topics agreed by the Parties;

(e) shall determine the appropriate means, which may include ad hoc working groups, to undertake specific tasks related to the functions of the Committee on Sanitary and Phytosanitary Measures;

(f) may identify and consider technical cooperation projects between the Parties in relation to the development, implementation, and application of sanitary and phytosanitary measures; and

(g) may consult on matters and positions for the meetings of the WTO Committee on Sanitary and Phytosanitary Measures and meetings held under the auspices of the Codex Alimentarius, OIE and IPPC.

4. The Committee on Sanitary and Phytosanitary Measures shall be composed of representatives of the Parties who are in charge of sanitary and phytosanitary measures with the relevant expertise.

5. The Committee on Sanitary and Phytosanitary Measures shall establish its rules of procedure and may revise those rules as necessary.

6. The Committee on Sanitary and Phytosanitary Measures shall hold the first meeting within one year of the date of entry into force of this Agreement.

Article 6.16. Dispute Settlement

1. Article 6.6, subparagraphs 4(b) to (d) of Article 6.7 and paragraphs 1 and 2 of Article 6.14 shall not be subject to dispute settlement under Chapter 21.

2. In a dispute under this Chapter involving scientific or technical issues, unless the Parties decide otherwise, a panel shall seek advice from experts chosen by the panel in consultation with the Parties. To this end, the panel shall on request of a Party establish an advisory technical expert group or consult the relevant international organisations.

Chapter 7. TECHNICAL BARRIERS TO TRADE

Article 7.1. Objectives

The objectives of this Chapter are to facilitate and to increase trade in goods between the Parties by:

(a) ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) enhancing joint cooperation between the Parties, including on the implementation of the TBT Agreement; and

(c) pursuing appropriate ways to reduce unnecessary negative effects on trade by measures within the scope of this Chapter.

Article 7.2. Scope

1. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures of central government bodies, as defined in the TBT Agreement, that may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to encourage the observance of the provisions of Articles 7.5 to 7.11 by local government bodies within its territory on the level directly below that of the central government, which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

3. This Chapter does not apply to:

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

(b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement.

Article 7.3. Incorporation of Certain Provisions of the TBT Agreement

1. The Parties affirm their rights and obligations under the TBT Agreement.

2. Articles 2 to 9 of the TBT Agreement and Annexes 1 and 3 to the TBT Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

3. Where a dispute arises regarding a particular measure of a Party which the other Party alleges to be exclusively in breach of the provisions of the TBT Agreement referred to in paragraph 2, that other Party shall, notwithstanding paragraph 1 of Article 21.27, select the dispute settlement mechanism under the WTO Agreement.

Article 7.4. Definitions

For the purposes of this Chapter, the terms and definitions set out in Annex 1 to the TBT Agreement apply.

Article 7.5. Technical Regulations

1. The Parties recognise the importance of good regulatory practices with regard to the preparation, adoption and application of technical regulations, in particular of the work carried out

by the WTO Committee on Technical Barriers to Trade on good regulatory practices. In this context, each Party undertakes to:

(a) when developing a technical regulation:

(i) assess, in accordance with its laws and regulations or administrative guidelines, the available regulatory or non-regulatory alternatives to the proposed technical regulation that may fulfil its legitimate objective, in order to ensure that the proposed technical regulation is not more trade-restrictive than necessary to fulfil its legitimate objective, in accordance with paragraph 2 of Article 2 of the TBT Agreement; nothing in this provision shall affect the rights of each Party to prepare, adopt and apply measures without delay where urgent problems including safety, health, environmental protection or national security arise or threaten to arise;

(ii) endeavour to systematically carry out impact assessments for technical regulations with significant effect on trade, including an assessment of their impact on trade; and

(iii) specify, wherever appropriate, technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics; and

(b) review, without prejudice to paragraph 3 of Article 2 of the TBT Agreement, adopted technical regulations at appropriate intervals, preferably not exceeding five years, in particular with a view to increasing their convergence with relevant international standards. In undertaking this review, each Party shall, inter alia, take into account any new development in the relevant international standards and whether the circumstances giving rise to divergences of that Party's technical regulations from any relevant international standard continue to exist. The outcome of this review shall be communicated and explained to the other Party on its request.

2. When a Party considers that its technical regulation and a technical regulation of the other Party that have the same objectives and product coverage are equivalent, that Party may request in writing, providing detailed reasons, that the other Party recognise those technical regulations as equivalent. The requested Party shall give positive consideration to accepting

those technical regulations as equivalent, even if they differ, provided that it is satisfied that the technical regulation of the requesting Party adequately fulfils the objectives of its own technical regulation. If the requested Party does not accept a technical regulation of the requesting Party as equivalent, the requested Party shall, on request of the requesting Party, explain the reasons for its decision.

3. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the requested Party shall, to the extent practicable, provide the requesting Party with relevant information, including studies or documents, except for confidential information, on which it has relied in developing its technical regulation.

4. Each Party shall uniformly and consistently apply requirements relating to the placement of products on the market which are established in technical regulations applicable to its whole territory. If a Party has substantiated reasons to believe that any of these requirements are not applied uniformly and consistently in the territory of the other Party, and that this situation leads to significant impact on bilateral trade, that Party may notify the other Party of those substantiated reasons with a view to clarifying the issue, and, if appropriate, addressing it in a timely manner by the contact point referred to in Article 7.14 or by other appropriate bodies established under this Agreement.

Article 7.6. International Standards

1. For the purposes of applying this Chapter and the TBT Agreement, standards issued by international organisations such as the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU), the Codex Alimentarius Commission, the International Civil Aviation Organisation (ICAO), the World Forum for Harmonisation of Vehicle Regulations (WP.29) within the framework of the United Nations Economic Commission for Europe (UNECE), the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS), and the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) shall be considered as relevant international standards as referred to in this Chapter, Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement, provided that in their development, the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement (22) have been followed, except when such standards or relevant parts of them would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.

2. With a view to harmonising standards on as wide a basis as possible, the Parties shall encourage regional or national standardising bodies within their territories to:

(a) play a full part, within the limits of their resources, in the preparation by relevant international standardising bodies of international standards;

(b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

(c) avoid duplication of, or overlap with, the work of international standardising bodies; and

(d) review their standards which are not based on relevant international standards at appropriate intervals, preferably not exceeding five years, with a view to increasing their convergence with relevant international standards.

3. When developing technical regulations or conformity assessment procedures:

(a) each Party shall use relevant international standards, guides or recommendations, or the relevant parts of them, to the extent provided for in paragraph 4 of Article 2 and in paragraph 4 of Article 5 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures and avoid deviations from the relevant international standards or additional requirements when compared to those standards, except when the Party developing the technical regulation or conformity assessment procedure can demonstrate, based on relevant information, including available scientific or technical evidence, that such international standards would be ineffective or inappropriate for the fulfilment of legitimate objectives pursued, as referred to in paragraph 2 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement; and

(b) if a Party does not use relevant international standards, guides or recommendations, or the relevant parts of them, as referred to in paragraph 1, as a basis for its technical regulations or conformity assessment procedures, that Party shall, on request of the other Party, explain the reasons why it considers such international standards to be ineffective or inappropriate for the fulfilment of legitimate objectives pursued, as referred to in paragraph 2 of Article 2 and paragraph 4

of Article 5 of the TBT Agreement, and provide the relevant information, including available scientific or technical evidence on which this assessment is based, as well as identify the parts of the technical regulation or conformity assessment procedure concerned which in substance deviate from the relevant international standards, guides or recommendations.

4. Each Party shall encourage its regional or national standardising bodies within its territory to cooperate with the relevant standardising bodies of the other Party in international standardising activities. Such cooperation may take place in international standardising bodies of which both Parties or standardising bodies of both Parties are members. Such bilateral cooperation could aim, inter alia, at promoting the development of international standards, facilitating the development of common standards for both Parties in areas of shared interest where there are no international standards, in particular as regards new products or technologies, or further enhancing the exchange of information between the standardising bodies of the Parties.

(22) Annex 4 to WTO Document G/TBT/9, dated 13 November 2000

Article 7.7. Standards

1. The Parties affirm their obligations under paragraph 1 of Article 4 of the TBT Agreement to ensure that regional or national standardising bodies within their territories accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the TBT Agreement.

2. The Parties recall that, pursuant to the definition of a standard in Annex 1 to the TBT Agreement, compliance with standards is not mandatory. Where compliance with a standard is required in a Party through incorporation of, or reference to, that standard in a technical regulation or conformity assessment procedure, the Party shall, in developing the draft technical regulation or conformity assessment procedure, comply with the transparency obligations set out in paragraph 9 of Article 2 or paragraph 6 of Article 5 of the TBT Agreement, and in Article 7.9.

3. Each Party shall encourage, subject to its laws and regulations, its regional or national standardising bodies to ensure adequate participation of interested persons within the territory of that Party in the standard development process and to allow persons of the other Party to participate in consultation procedures, which are available to the general public, on terms no less favourable than those accorded to its own persons.

4. The Parties undertake to exchange information on:

(a) each Party's use of standards in support of demonstrating or facilitating compliance with technical regulations;

(b) their standard setting processes, in particular the manner and extent to which international or regional standards are used as a basis for their regional or national standards; and

(c) cooperation agreements or arrangements on standardisation with third parties or international organisations.

Article 7.8. Conformity Assessment Procedures

1. With respect to the preparation, adoption and application of technical regulations, subparagraphs 1(a)(i), 1(a)(ii) and 1(b) of Article 7.5 also apply, mutatis mutandis, to conformity assessment procedures.

2. In conformity with paragraph 1.2 of Article 5 of the TBT Agreement, each Party shall ensure that conformity assessment procedures are not stricter or are not applied more strictly than is necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking into account the risks associated with products, including the risks that non-conformity would create.

3. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures. Such mechanisms may include:

(a) mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

(b) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the Parties;

(c) plurilateral and multilateral recognition agreements or arrangements to which both Parties are participants;

(d) the use of accreditation to qualify conformity assessment bodies;

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

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

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

4. The Parties shall exchange information regarding the mechanisms covered by paragraph 3.

A Party shall, on request of the other Party, provide information on:

(a) the mechanisms referred to in paragraph 3 and similar mechanisms with a view to facilitating the acceptance of the results of conformity assessment procedures;

(b) factors, including assessment and management of risk, considered when selecting appropriate conformity assessment procedures for specific products; and

(c) accreditation policy, including on international standards for accreditation, and international agreements and arrangements in the field of accreditation, including those of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF), to the extent possible and used by a Party in a specific area.

5. With regard to those mechanisms each Party shall:

(a) use, whenever possible and in accordance with its laws and regulations, a supplier's declaration of conformity as assurance of conformity with the applicable technical regulations;

(b) use accreditation with authority derived from government or performed by government, as appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies;

(c) if accreditation is established by law as a necessary separate step to qualify conformity assessment bodies, ensure that accreditation activities are independent from conformity assessment activities and that there are no conflicts of interest between accreditation bodies and the conformity assessment bodies they accredit; the Parties may comply with this obligation by means of the separation of conformity assessment bodies from accreditation bodies; (23)

(d) consider joining or, as applicable, not prohibit testing, inspection and certification bodies from joining, international agreements or arrangements for the facilitation of acceptance of conformity assessment results; and

(e) if two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing a product on the market, not prohibit economic operators from choosing among conformity assessment bodies.

6. The Parties shall cooperate in the field of mutual recognition in accordance with the Agreement on Mutual Recognition between the European Community and Japan, done at Brussels on 4 April 2001. The Parties may also decide, in accordance with relevant provisions of that Agreement, to extend the coverage as regards to the products, the applicable regulatory requirements and the recognised conformity assessment bodies.

(23) Subparagraph (c) does not apply to the conformity assessment activities performed by a Party itself where that Party retains the final decision-making authority regarding the conformity of a product.

Article 7.9. Transparency

1. When developing a technical regulation or conformity assessment procedure which may have a significant effect on trade, each Party shall:

(a) carry out consultation procedures, subject to its laws and regulations, which are available to the general public and make the results of such consultation procedures and any existing impact assessments publicly available;

(b) allow persons of the other Party to participate in consultation procedures which are available to the general public on terms no less favourable than those accorded to its own persons;

(c) take into account the other Party's views when carrying out consultation procedures which are available to the general public and, on request of the other Party, provide written responses in a timely manner to the comments made by that Party;

(d) in addition to subparagraph 1(a)(ii) of Article 7.5, make publicly available the results of the impact assessment on a proposed technical regulation or conformity assessment procedure, if carried out, including of the impact on trade; and

(e) endeavour to provide, on request of the other Party, a summary in English of the impact assessment referred to in subparagraph (d).

2. Each Party shall, when making notifications in accordance with paragraph 9.2 of Article 2 or paragraph 6.2 of Article 5 of the TBT Agreement:

(a) allow in principle at least 60 days from the date of notification for the other Party to provide written comments to the proposal, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise and, where practicable, give appropriate consideration to reasonable requests for extending the comment period;

(b) provide the electronic version of the full notified text together with the notification;

(c) provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the notification format, as well as, if already available, a translation of the notified text in one of the official WTO languages;

(d) reply in writing to written comments received from the other Party on the proposal, no later than the date of publication of the final technical regulation or conformity assessment procedure;

(e) provide information on the adopted final text through an addendum to the original notification;

(f) allow a reasonable interval (24) between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt; and

(g) ensure that the enquiry points established in accordance with Article 10 of the TBT Agreement provide information and answers in one of the official WTO languages to reasonable enquiries from the other Party or from interested persons of the other Party on adopted technical regulations and conformity assessment procedures.

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

4. Each Party shall ensure that all adopted technical regulations and conformity assessment procedures are publicly and freely available on official websites and, if already available, in English.

(24) For the purposes of this subparagraph, "reasonable interval" means normally a period of not less than six months, unless this would be ineffective for the fulfilment of the legitimate objectives pursued.

Article 7.10. Market Surveillance

1. For the purposes of this Article, "market surveillance" is a public authority function separate from and carried out after conformity assessment procedures, and means activities conducted and measures taken by public authorities on the basis of procedures of a Party to enable that Party to monitor or address compliance of products with the requirements set out in its laws and regulations.

2. Each Party shall, *inter alia*:

(a) exchange information with the other Party on market surveillance and enforcement activities, for example on the authorities responsible for market surveillance and enforcement, or on measures taken against dangerous products;

(b) ensure the independence of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest; (25) and

(c) ensure that there are no conflicts of interest between market surveillance authorities and the persons concerned, subject to control or supervision, including the manufacturer, the importer and the distributor.

(25) For greater certainty, this subparagraph does not apply to authorisation functions performed by a Party itself when it retains the final decision-making authority regarding the conformity of a product. A Party may comply with this obligation by means of separation of market surveillance authorities from conformity assessment bodies.

Article 7.11. Marking and Labelling

1. The Parties note that a technical regulation may include or deal exclusively with marking or labelling requirements. Accordingly, if a Party develops marking or labelling requirements in the form of a technical regulation, that Party shall ensure that such requirements are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade and are not more trade restrictive than necessary to fulfil legitimate objectives as referred to in paragraph 2 of Article 2 of the TBT Agreement.

2. In particular, the Parties agree that, if a Party requires marking or labelling of product in the form of a technical regulation:

(a) information required for such marking or labelling of products shall be limited to what is relevant for persons concerned, including consumers, users of the product or authorities, for indicating the product's compliance with regulatory requirements;

(b) a Party shall not require any prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objective;

(c) if that Party requires the use of a unique identification number for marking or labelling of products, it shall issue such number to the persons concerned, including the manufacturer, the importer and the distributor, without undue delay and on a non-discriminatory basis;

(d) provided that it is not misleading, contradictory or confusing, or that the Party's legitimate objectives are not compromised, the Party shall permit the following in relation to the information required in the country of destination of the goods:

(i) information in other languages in addition to the language required in the country of destination of the goods;

(ii) international nomenclatures, pictograms, symbols or graphics; and

(iii) information in addition to that required in the country of destination of the goods;

(e) the Party shall accept that labelling and corrections to labelling take place in customs warehouses at the point of import as an alternative to labelling in the exporting Party unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and

(f) the Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

Article 7.12. Cooperation

1. The Parties shall strengthen their cooperation in the field of technical regulations, standards and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. The Parties recognise that existing regulatory cooperation dialogues are important means to strengthen such cooperation.

2. The Parties shall seek to identify, develop and promote trade facilitating initiatives of mutual interest.

3. The initiatives referred to in paragraph 2 may include:

(a) improving the quality and effectiveness of their respective technical regulations, standards and conformity assessment procedures, and promoting good regulatory practices through regulatory cooperation between the Parties, including the exchange of information, experience and data;

(b) where appropriate, simplifying their respective technical regulations, standards and conformity assessment procedures;

(c) increasing the convergence of their respective technical regulations, standards and conformity assessment procedures with relevant international standards, guides or recommendations;

(d) ensuring efficient interaction and cooperation of their respective regulatory authorities at international, regional or national level;

(e) promoting or enhancing cooperation between organisations in the Parties in charge of standardisation, accreditation and conformity assessment procedures; and

(f) exchanging information, to the extent possible, about international agreements and arrangements regarding technical barriers to trade to which one or both Parties are party.

Article 7.13. Committee on Technical Barriers to Trade

1. The Committee on Technical Barriers to Trade established pursuant to Article 22.3 shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee on Technical Barriers to Trade shall have the following functions:

(a) reviewing the implementation and operation of this Chapter;

(b) reviewing the cooperation in the development and improvement of technical regulations, standards and conformity assessment procedures as provided for in Article 7.12;

(c) reviewing this Chapter in light of any developments under the WTO Committee on Technical Barriers to Trade established under Article 13 of the TBT Agreement, and if necessary, developing recommendations for amendments to this Chapter;

(d) taking any steps which the Parties may consider to be of assistance in their implementation of this Chapter and the TBT Agreement and in facilitating trade between the Parties;

(e) discussing any matter covered by this Chapter, on request of a Party;

(f) promptly addressing any issue that a Party raises related to the development, adoption or application of technical regulations, standards or conformity assessment procedures of the other Party under this Chapter and the TBT Agreement;

(g) establishing, if necessary to achieve the objectives of this Chapter, ad hoc technical working groups to deal with specific issues or sectors with a view to identifying a solution;

(h) exchanging information on the work in regional and multilateral fora engaged in activities relating to technical regulations, standards and conformity assessment procedures and on the implementation and operation of this Chapter;

(i) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1; and

(j) reporting to the Joint Committee, as it considers appropriate, on the implementation and operation of this Chapter.

3. The Committee on Technical Barriers to Trade and any ad hoc technical working group under its auspices shall be coordinated by:

(a) for the European Union, the European Commission; and

(b) for Japan, the Ministry of Foreign Affairs.

4. The authorities referred to in paragraph 3 shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are invited to the meetings of the Committee on Technical Barriers to Trade as necessary.

5. On request of a Party, the Committee on Technical Barriers to Trade and any ad hoc technical working group under its auspices shall meet at such times and places to be agreed between the representatives of the Parties. The meetings may take place by video conference or by other means.

Article 7.14. Contact Points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

2. The functions of the contact point shall include:

(a) exchanging information on technical regulations, standards and conformity assessment procedures of each Party or

any other matters covered by this Chapter;

(b) providing any information or explanation requested by a Party pursuant to this Chapter, in print or electronically, within a reasonable period of time agreed between the Parties and, if possible, within 60 days of the date of receipt of the request; and

(c) promptly clarifying and addressing, where possible, any issue that a Party raises relating to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Chapter and the TBT Agreement.

Chapter 8. Trade In Services, Investment Liberalisation and Electronic Commerce

Section A. General Provisions

Article 8.1. Scope

1. The Parties, affirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive and reciprocal liberalisation of trade in services and investment and for cooperation on electronic commerce.

2. For the purposes of this Chapter, the Parties affirm their right to adopt within their territories regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

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

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits accrued under this Chapter.

Article 8.2. Definitions

For the purposes of this Chapter:

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

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

(c) "covered enterprise" means an enterprise in the territory of a Party established in accordance with subparagraph (i), directly or indirectly, by an entrepreneur of the other Party, in existence on the date of entry into force of this Agreement or established thereafter, in accordance with the applicable law;

(d) "cross-border trade in services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

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

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

(f) "economic activity" means any service or activity of an industrial, commercial or professional character or activities of craftsmen, except for services supplied or activities performed in the exercise of governmental authority;

(g) "enterprise" means a juridical person or branch or representative office;

(h) "entrepreneur of a Party" means a natural or juridical person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (i), in the territory of the other Party;

(i) "establishment" means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in the European Union or in Japan respectively, with a view to establishing or maintaining lasting economic links; (26)

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

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

(l) "juridical person" means any legal entity duly constituted or otherwise organised under the 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;

(m) a juridical person is:

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

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

(n) "juridical person of a Party" means:

(i) for the European Union, a juridical person constituted or organised under the laws and regulations of the European Union or of one of its Member States and engaged in substantive business operations (27) in the territory of the European Union; and

(ii) for Japan, a juridical person constituted or organised under the laws and regulations of Japan and engaged in substantive business operations in the territory of Japan;

Notwithstanding subparagraphs (i) and (ii), shipping companies established outside the European Union or Japan and controlled by nationals of a Member State of the European Union or of Japan, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with their respective legislation, in a Member State of the European Union or in Japan and fly the flag of that Member State of the European Union or of Japan;

(o) "measures by a Party" means measures adopted or maintained by:

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

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

(p) "operation" means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of an enterprise;

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

(r) "services" means any service in any sector except services supplied in the exercise of governmental authority;

(s) "services supplied or activities performed in the exercise of governmental authority" means services or activities which are supplied or performed neither on a commercial basis nor in competition with one or more economic operators;

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

(u) "service supplier of a Party" means any natural or juridical person of a Party that seeks to supply or supplies a service.

(26) Expansion is understood by the Parties as being covered through the definition of establishment in the form of establishment by a covered enterprise.

(27) In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

Article 8.3. General Exceptions

1. For the purposes of Section B, Article XX of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis. (28)

2. 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 establishment or trade in services, nothing in Sections B to F shall be construed as preventing a Party from adopting or enforcing measures which are:

(a) necessary to protect public security or public morals or to maintain public order; (29)

(b) necessary to protect human, animal or plant life or health; (30)

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

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

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

(iii) safety; or

(d) inconsistent with paragraph 1 of Article 8.8 and paragraph 1 of Article 8.16 provided that the difference in treatment is aimed at ensuring the equitable or effective (31) imposition or collection of direct taxes in respect of economic activities, entrepreneurs, services or service suppliers of the other Party.

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

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

(30) The Parties understand that the measures referred to in subparagraph (b) include environmental measures necessary to protect human, animal or plant life or health

(31) 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:
(a) apply to non-resident entrepreneurs and 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;
(b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
(c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
(d) 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;
(e) distinguish entrepreneurs and service suppliers subject to tax on worldwide taxable items from other entrepreneurs and service suppliers, in recognition of the difference in the nature of the tax base between them; or
(f) 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 2(d), including 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 8.4. Committee on Trade In Services, Investment Liberalisation and Electronic Commerce

1. The Committee on Trade in Services, Investment Liberalisation and Electronic Commerce established pursuant to Article 22.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) reviewing and monitoring the implementation and operation of this Chapter and the nonconforming measures set out in each Party's Schedules in Annexes I to IV to Annex 8B;

(b) exchanging information on any matters related to this Chapter;

(c) examining possible improvements to this Chapter;

(d) discussing any issue related to this Chapter as may be agreed upon between the representatives of the Parties; and

(e) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.

3. The Committee shall be composed of representatives of the Parties including officials of relevant ministries or agencies in charge of the issues to be addressed. The Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

Article 8.5. Review

1. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its respective Schedules in Annexes I to IV to Annex 8-B.

2. With a view to introducing possible improvements to the provisions of this Chapter, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services, investment liberalisation, electronic commerce and investment environment, including this Agreement, in accordance with Article 23.1.

Section B. Investment Liberalisation

Article 8.6. Scope

1. This Section applies to measures by a Party with regard to the establishment or operation of economic activities by:

(a) entrepreneurs of the other Party;

(b) covered enterprises; and

(c) for the purposes of Article 8.11, any enterprise in the territory of the Party adopting or maintaining the measure.

2. This Section does not apply to:

(a) cabotage in maritime transport services; (32)

(b) air services or related services in support of air services, (33) other than the following:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

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

(iii) computer reservation system (CRS) services; and

(iv) ground handling services; and

(c) audio-visual services.

(32) For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport services under this Section covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in a Member State of the European Union.

(33) For greater certainty, this Section does not apply to a service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 8.7. Market Access

A Party shall not maintain or adopt, with regard to market access through establishment or operation by an entrepreneur of the other Party or by a covered enterprise, either on the basis of a territorial subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on: (34)

(i) the number of enterprises, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

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

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

(v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which an entrepreneur of the other Party may perform an economic activity.

(34) Subparagraphs (a)(i) to (iii) do not cover measures taken in order to limit the production of an agricultural good

Article 8.8. National Treatment

1. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own entrepreneurs and to their enterprises, with respect to establishment in its territory.

2. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own entrepreneurs and to their enterprises, with respect to operation in its territory.

3. For greater certainty, paragraphs 1 and 2 shall not be construed as preventing a Party from prescribing statistical formalities or information requirements, in connection with the covered enterprises, provided that those formalities or requirements do not constitute a means to circumvent that Party's obligations pursuant to this Article.

Article 8.9. Most-favoured-nation Treatment

1. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to entrepreneurs of a third country and to their enterprises, with respect to establishment in its territory.

2. Each Party shall accord to entrepreneurs of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to entrepreneurs of a third country and to their enterprises, with respect to operation in its territory.

3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to entrepreneurs of the other Party and to covered enterprises the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or

(b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of its Annex on Financial Services.

4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.

5. Substantive provisions in other international agreements concluded by a Party with a third country (35) do not in themselves constitute treatment under this Article. For greater certainty, actions or inactions of a Party in relation to those provisions can constitute treatment (36) and thus can give rise to a breach of this Article to the extent that the breach is not established solely based on the said provisions.

(35) For greater certainty, the mere transposition of those provisions into domestic legislation does not change their qualification as international law provisions and consequently their coverage under this paragraph.

(36) For greater certainty, the entrepreneurs of the other Party or their covered enterprises would be entitled to receive that treatment even in the absence of enterprises established by entrepreneurs of the third country at the time when the comparison is made.

Article 8.10. Senior Management and Boards of Directors

A Party shall not require a covered enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.

Article 8.11. Prohibition of Performance Requirements

1. A Party shall not impose or enforce any of the following requirements or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory: (37)

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;

(e) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;

(f) to restrict exportation or sale for export;

(g) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;

(h) to locate the headquarters of such enterprise for a specific region or the world market in its territory;

(i) to hire a given number or percentage of its nationals;

(j) to achieve a given level or value of research and development in its territory;

(k) to supply one or more of the goods produced or services supplied by the enterprise to a specific region or to the world market exclusively from its own territory; or

(l) to adopt:

(i) a rate or amount of royalty below a certain level; or

(ii) a given duration of the term of a licence contract; (38)

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or juridical person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of nonjudicial governmental authority of a Party. (39)

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from natural or juridical persons or any other entity in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;

(d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

(e) to restrict exportation or sale for export.

3. Nothing in paragraph 2 shall be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Subparagraphs 1(a) to (c), 2(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

5. Subparagraphs 1(g) and (l) do not apply when:

(a) the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court, administrative tribunal or competition authority in order to remedy a violation of competition law; or

(b) a Party authorises use of an intellectual property right in accordance with Article 31 or 31bis of the TRIPS Agreement, or measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

6. Subparagraph 1(l) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.

7. Subparagraphs 2(a) and (b) do not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. This Article is without prejudice to the obligations of a Party under the WTO Agreement.

(37) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

(38) A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(39) For greater certainty, subparagraph (l) does not apply when the licence contract is concluded between the enterprise and a Party.

Article 8.12. Non-conforming Measures and Exceptions

1. Articles 8.7 to 8.11 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at a level of:

(i) for the European Union:

(A) the European Union, as set out in its Schedule in Annex I to Annex 8-B;

(B) the central government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B;

(C) a regional government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B; or

(D) a local government, other than that referred to in subparagraph (C); and

(ii) for Japan:

(A) the central government, as set out in its Schedule in Annex I to Annex 8-B;

(B) a prefecture, as set out in its Schedule in Annex I to Annex 8-B; or

(C) a local government other than a prefecture;

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

(c) an amendment of, or modification to, any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure with Articles 8.7 to 8.11 as it existed immediately before the amendment or modification.

2. Articles 8.7 to 8.11 do not apply to any measure by a Party with respect to sectors, sub-sectors or activities as set out in its Schedule in Annex II to Annex 8-B.

3. A Party shall not require, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex II to Annex 8-B, an entrepreneur of the other Party, by reason of its nationality, to sell or otherwise dispose of an enterprise that exists at the time the measure becomes effective.

4. Articles 8.8 and 8.9 do not apply to any measure that constitutes an exception to, or a derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of the TRIPS Agreement.

5. Articles 8.7 to 8.11 do not apply to any measure by a Party with respect to government procurement.

6. Articles 8.7 to 8.10 do not apply to subsidies granted by the Parties.

Article 8.13. Denial of Benefits

A Party may deny the benefits of this Section to an entrepreneur of the other Party that is a juridical person of the other Party and to its covered enterprise if that juridical person is owned or controlled by a natural or juridical person of a third country and the denying Party adopts or maintains measures with respect to the third country that:

(a) are related to the maintenance of international peace and security, including the protection of human rights; and

(b) prohibit transactions with that juridical person or its covered enterprise, or would be violated or circumvented if the benefits of this Section were accorded to them.

Section C. Cross-border Trade In Services

Article 8.14. Scope

1. This Section applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party. Those measures include among others measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

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

(c) the access to and the use of services offered to the public generally in connection with the supply of a service.

2. This Section does not apply to:

(a) cabotage in maritime transport services; (40)

(b) air services or related services in support of air services, (41) other than the following:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

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

(iii) computer reservation system (CRS) services; and

(iv) ground handling services;

(c) government procurement;

(d) audio-visual services; and

(e) subsidies, as defined and provided for in Chapter 12.

(40) For the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national cabotage in maritime transport services under this Section covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in a Member State of the European Union

(41) For greater certainty, this Section does not apply to a service using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 8.15. Market Access

A Party shall not maintain or adopt, either on the basis of a territorial subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; (42)

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

(iii) the total number of service operations or 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;(43) or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(42) Subparagraph (a)(i) includes measures by a Party which require a service supplier of the other Party to establish or maintain any form of enterprise or to be resident in the territory of the Party as a condition for the cross-border supply of a service.

(43) Subparagraph (a)(iii) does not cover measures by a Party which limit inputs for the supply of services

Article 8.16. National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to its own like services and service suppliers.

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

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

4. Nothing in this Article shall be construed as requiring either Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services or service suppliers.

Article 8.17. Most-favoured-nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a third country.

2. Paragraph 1 shall not be construed as obliging a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:

(a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or

(b) existing or future measures providing for recognition of qualifications, licences or prudential measures as referred to in Article VII of GATS or paragraph 3 of its Annex on Financial Services.

Article 8.18. Non-conforming Measures

1. Articles 8.15 to 8.17 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at a level of:

(i) for the European Union:

(A) the European Union, as set out in its Schedule in Annex I to Annex 8-B;

(B) the central government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B;

(C) a regional government of a Member State of the European Union, as set out in its Schedule in Annex I to Annex 8-B; or

(D) a local government, other than that referred to in subparagraph (C); and

(ii) for Japan:

(A) the central government, as set out in its Schedule in Annex I to Annex 8-B;

(B) a prefecture, as set out in its Schedule in Annex I to Annex 8-B; or

(C) a local government other than a prefecture;

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

(c) an amendment of, or modification to, any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure with Articles 8.15 to 8.17 as it existed immediately before the amendment or modification.

2. Articles 8.15 to 8.17 do not apply to any measure by a Party with respect to sectors, subsectors or activities as set out in its Schedule in Annex II to Annex 8-B.

Article 8.19. Denial of Benefits

A Party may deny the benefits of this Section to a service supplier of the other Party that is a juridical person of the other Party and to services of that service supplier if that juridical person is owned or controlled by a natural or juridical person of

a third country and the denying Party adopts or maintains measures with respect to the third country that:

(a) are related to the maintenance of international peace and security, including the protection of human rights; and

(b) prohibit transactions with the service supplier, or would be violated or circumvented if the benefits of this Section were accorded to the service supplier or to its services.

Section D. Entry and Temporary Stay of Natural Persons

Article 8.20. General Provisions and Scope

1. This Section reflects the strengthened trade relationship between the Parties as well as the desire of the Parties to facilitate entry and temporary stay of natural persons for business purposes on a reciprocal basis, and to ensure transparency of the process.

2. This Section applies to measures by a Party affecting the entry into that Party by natural persons of the other Party, who are business visitors for establishment purposes, intra-corporate transferees, investors, contractual service suppliers, independent professionals and short-term business visitors, and to measures affecting their business activities during their temporary stay in the former Party.

3. To the extent that commitments are not undertaken in this Section, all requirements provided for in the laws and regulations of a Party regarding the entry and temporary stay shall continue to apply, including regulations concerning the length of stay.

4. Notwithstanding the provisions of this Section, all requirements provided for in the laws and regulations of a Party regarding work and social security measures shall continue to apply, including regulations concerning minimum wages and collective wage agreements.

5. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

Article 8.21. Definitions

For the purposes of this Section:

(a) "business visitors for establishment purposes" means natural persons of a Party working in a senior position who are responsible for setting up an enterprise, do not offer nor provide services, do not engage in any economic activity other than what is required for establishment purposes and do not receive remuneration within the other Party;

(b) "contractual service suppliers" means:

(i) in respect of the entry and temporary stay in the European Union, natural persons employed by a juridical person of Japan which is itself not an agency for placement and supply services of personnel and is not acting through such an agency, has not established in the territory of the European Union and has concluded a bona fide contract to supply services to a final consumer in the European Union, requiring the presence on a temporary basis of its employees in the European Union in order to fulfil the contract to supply services; (44)

(ii) in respect of the entry and temporary stay in Japan, natural persons of the European Union who are employees of a juridical person of the European Union that has not established in Japan provided that the following requirements are satisfied:

(A) a service contract between a juridical person of Japan and a juridical person of the European Union that has not established in Japan has been concluded;

(B) a competent immigration authority of Japan determines, in the context of the service contract referred to in subparagraph (A), that a labour contract between the natural person of the European Union and the juridical person of Japan has been concluded; and

(C) the service contract referred to in subparagraph (A) does not fall under the scope of service contract for the placement and supply services of personnel (CPC872), and the labour contract as referred to in subparagraph (B) complies with the relevant laws and regulations of Japan;

(c) "independent professionals" means:

(i) in respect of the entry and temporary stay in the European Union, natural persons who are engaged in the supply of a service and established as self-employed in the territory of Japan, have not established in the territory of the European Union and have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) to supply services to a final consumer in the European Union, requiring their presence on a temporary basis in the European Union in order to fulfil the contract to supply services; 45 and

(ii) in respect of the entry and temporary stay in Japan, natural persons of the European Union who will engage in business activities of supplying services during their temporary stay in Japan on the basis of a personal contract with a juridical person of Japan;

(d) "intra-corporate transferees" means natural persons who have been employed by a juridical person of a Party or have been partners in it, for a period of not less than one year immediately preceding the date of their application for the entry and temporary stay in the other Party, and who are temporarily transferred to an enterprise, in the territory of the other Party, which forms part of the same group of the former juridical person including its representative office, subsidiary, branch or head company, provided that the following conditions are met:

(i) the natural person concerned must belong to one of the following categories:

(A) managers: persons working in a senior position, who primarily direct the management of the enterprise, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:

(1) directing the enterprise or a department thereof;

(2) supervising and controlling the work of other supervisory, professional or managerial employees; or

(3) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions; or

(B) specialists: persons who possess specialised knowledge essential to the enterprise's production, research equipment, techniques, processes, procedures or management; and

(ii) for the European Union, in assessing the knowledge referred to in subparagraph (i)(B), account shall be taken not only of knowledge specific to the enterprise, but also of whether the natural person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession; and

(e) "investors" means natural persons who establish an enterprise, and develop or administer the operation of that enterprise in the other Party in a capacity that is supervisory or executive, and to which that person or the juridical person employing that person has committed, or is in the process of committing, a substantial amount of capital.

(44) The contract to supply services referred to in subparagraph (b)(i) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

(45) The contract to supply services referred to in subparagraph (c)(i) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

Article 8.22. General Obligations

1. A Party shall grant the entry and temporary stay to natural persons of the other Party for business purposes in accordance with this Section, and Annexes III and IV to Annex 8-B, provided that those persons comply with the immigration laws and regulations of the former Party applicable to the entry and temporary stay.

2. Each Party shall apply its measures relating to the provisions of this Section consistently with the desire of the Parties set out in paragraph 1 of Article 8.20, and, in particular, shall apply those measures so as to avoid unduly impairing or delaying trade in goods or services, or establishment or operation under this Agreement.

3. The measures taken by each Party to facilitate and expedite procedures related to the entry and temporary stay of natural persons of the other Party for business purposes shall be consistent with Annex 8-C.

Article 8.23. Transparency

1. A Party shall make publicly available information relating to the entry and temporary stay by natural persons of the other Party, referred to in paragraph 2 of Article 8.20.

2. The information referred to in paragraph 1 shall include, where applicable, the following information:

(a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file, such as consular offices or online;

(d) application fees and an indicative timeframe of the processing of an application;

(e) the maximum length of stay under each type of authorisation described in subparagraph (a);

(f) conditions for any available extension or renewal;

(g) rules regarding accompanying dependents;

(h) available review or appeal procedures; and

(i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into, temporary stay in and, where applicable, permission to work in the former Party.

Article 8.24. Obligations In other Sections

1. This Agreement does not impose any obligation on a Party regarding its immigration measures, except as specifically provided for in this Section.

2. Without prejudice to any decision to grant entry to a natural person of the other Party within the terms of this Section, including the permissible length of stay pursuant to any such grant:

(a) the obligations of Articles 8.7 to 8.11 subject to:

(i) Article 8.6; and

(ii) Article 8.12 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,

are hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of business visitors for establishment purposes, intracorporate transferees and investors, as defined in Article 8.21;

(b) the obligations of Articles 8.15 and 8.16 subject to:

(i) Article 8.14; and

(ii) Article 8.18 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,

are hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

(i) contractual service suppliers and independent professionals, as defined in Article 8.21, for all sectors listed in Annex IV to Annex 8-B; and

(ii) short-term business visitors, referred to in Article 8.27, in accordance with Annex III to Annex 8-B; and

(c) the obligation of Article 8.17 subject to:

(i) Article 8.14; and

(ii) Article 8.18 to the extent that the measure affects the treatment of natural persons for business purposes present in the territory of the other Party,

is hereby incorporated into and made part of this Section and apply to the measures affecting treatment of natural persons for business purposes present in the territory of the other Party under the categories of:

(i) contractual service suppliers and independent professionals, as defined in Article 8.21; and

(ii) short-term business visitors, referred to in Article 8.27.

3. For greater certainty, the obligations referred to in paragraph 2 do not apply to measures relating to the granting of entry into a Party to natural persons of that Party or of a third country.

Article 8.25. Business Visitors for Establishment Purposes, Intra-corporate Transferees and Investors

1. Each Party shall grant entry and temporary stay to business visitors for establishment purposes, intra-corporate transferees and investors of the other Party in accordance with Annex III to Annex 8-B.

2. A Party shall not adopt or maintain limitations on the total number of natural persons granted entry in accordance with paragraph 1, in a specific sector or sub-sector, in the form of numerical quotas or the requirement of an economic needs test either on the basis of a territorial subdivision or on the basis of its entire territory.

Article 8.26. Contractual Service Suppliers and Independent Professionals

1. Each Party shall grant entry and temporary stay to contractual service suppliers and independent professionals of the other Party in accordance with Annex IV to Annex 8-B.

2. Unless otherwise specified in Annex IV to Annex 8-B, a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party granted entry, in the form of numerical quotas or the requirement of an economic needs test.

Article 8.27. Short-term business Visitors

1. Each Party shall grant entry and temporary stay of short-term business visitors of the other Party in accordance with Annex III to Annex 8-B, subject to the following conditions:

(a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;

(b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and

(c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has not established in the territory of the Party where they are staying temporarily, and a consumer there, except as provided for in Annex III to Annex 8-B.

2. Unless otherwise specified in Annex III to Annex 8-B, each Party shall grant entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

Article 8.28. Contact Points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the effective implementation and operation of this Section and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Section E. Regulatory Framework

Subsection 1. Domestic Regulation

Article 8.29. Scope and Definitions

1. This Sub-Section applies to measures by a Party relating to licensing requirements and procedures, qualification requirements and procedures and technical standards (46) that affect:

(a) cross-border trade in services as defined in subparagraph (d) of Article 8.2;

(b) establishment as defined in subparagraph (i) of Article 8.2 or operation as defined in subparagraph (p) of Article 8.2; or

(c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party, in accordance with Article 8.24.

2. This Sub-Section does not apply to licensing requirements and procedures, qualification requirements and procedures and technical standards:

(a) pursuant to a measure that does not conform with Article 8.7 or 8.8 and is referred to in subparagraphs 1(a) to (c) of Article 8.12 or with Article 8.15 or 8.16 and is referred to in subparagraphs 1(a) to (c) of Article 8.18; or

(b) pursuant to a measure referred to in paragraph 2 of Article 8.12 or paragraph 2 of Article 8.18.

3. For the purposes of this Sub-Section, a "competent authority" is a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation to supply a service, including through establishment, or concerning the authorisation to establish an enterprise in order to engage in an economic activity other than a service.

(46) For greater certainty, as far as measures relating to technical standards are concerned, this Sub-Section applies only to such measures affecting trade in services.

Article 8.30. Conditions for Licensing and Qualification

Measures relating to licensing requirements and procedures, and qualification requirements and procedures of each Party shall be based on the following criteria:

(a) clarity;

(b) objectivity;

(c) transparency;

(d) advance public availability; and

(e) accessibility.

Article 8.31. Licensing and Qualification Procedures

1. Licensing and qualification procedures shall be clear, made public in advance and be such as to ensure that the applications are dealt with objectively and impartially.

2. Licensing and qualification procedures shall be as simple as possible and shall not in themselves be a restriction on the supply of a service or the pursuit of any other economic activity. Any authorisation fee (47) which the applicants may incur from their application should be reasonable, transparent and shall not in themselves restrict the supply of a service or the pursuit of any other economic activity.

3. The procedures used by, and the decisions of, the competent authority in the authorisation process shall be impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and should not be accountable to any person supplying the services or carrying out the economic activities for which the authorisation is required.

4. If a specific period of time for applications exists, the competent authority shall allow an applicant a reasonable period of time for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, the competent authority should accept an application in electronic format under the same conditions of authenticity as an application in paper format.

5. The competent authority shall complete the processing of an application, including reaching a final decision, within a reasonable period of time from the submission of a complete application. Each Party shall endeavour to establish an

indicative timeframe for the processing of an application and shall make publicly available that timeframe, when established.

6. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, and, to the extent feasible, identify the additional information required to complete the application and provide the opportunity to correct deficiencies.

7. The competent authority should, where possible, accept authenticated copies in place of original documents.

8. If the competent authority rejects an application by an applicant, it shall inform the applicant, in principle in writing, and without undue delay. It shall also, on request of the applicant, inform the applicant of the reasons for rejection of the application and the timeframe for an appeal against that decision.

9. The competent authority shall grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions for obtaining it.

10. The competent authority shall ensure that an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

(47) Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

Article 8.32. Technical Standards

Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body designated to develop technical standards to use open and transparent processes.

Subsection 2. Provisions of General Application

Article 8.33. Administration of Measures of General Application

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

2. Paragraph 1 does not apply to:

(a) the aspects of a measure that do not conform with Article 8.7 or 8.8 and are referred to in subparagraphs 1(a) to (c) of Article 8.12 or with Article 8.15 or 8.16 and are referred to in subparagraphs 1(a) to (c) of Article 8.18; or

(b) a measure referred to in paragraph 2 of Article 8.12 or paragraph 2 of Article 8.18.

Article 8.34. Review Procedures for Administrative Decisions

1. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, upon request of an affected entrepreneur or service supplier of the other Party, for a prompt review of, and where justified, appropriate remedies for, administrative decisions that affect:

(a) cross-border trade in services as defined in subparagraph (d) of Article 8.2;

(b) establishment as defined in subparagraph (i) of Article 8.2 or operation as defined in subparagraph (p) of Article 8.2; or

(c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party, in accordance with Article 8.24.

2. If the procedures referred to in paragraph 1 are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

Article 8.35. Mutual Recognition

1. Nothing in this Section shall prevent a Party from requiring that natural persons must possess the necessary qualifications or professional experience specified in the territory where the service is supplied, for the sector of activity

concerned.

2. Each Party shall encourage the relevant professional bodies in its territory to provide joint recommendations on mutual recognition to the Committee, for the purpose of the fulfilment, in whole or in part, by entrepreneurs and service suppliers of the criteria applied by that Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers and, in particular in the sector of professional services.

3. On receipt of a joint recommendation referred to in paragraph 2, the Committee shall, within a reasonable period of time, review that recommendation with a view to ensuring its consistency with this Agreement and, on the basis of the information contained therein, assess in particular:

(a) the extent to which the standards and criteria applied by each Party for the authorisation, licensing, operation and certification referred to in paragraph 2 are converging; and

(b) the potential economic value of a mutual recognition agreement for the authorisation, licensing, operation and certification referred to in paragraph 2.

4. Where those requirements are satisfied, the Committee shall establish the necessary steps to negotiate. Thereafter the Parties shall enter into negotiations, through their competent authorities, of a mutual recognition agreement for the authorisation, licensing, operation and certification referred to in paragraph 2.

5. Any mutual recognition agreement that the Parties may conclude shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

Subsection 3. Postal and Courier Services

Article 8.36. Scope and Definitions

1. This Sub-Section sets out the principles of the regulatory framework for the supply of postal and courier services, and applies to measures by a Party affecting trade in postal and courier services.

2. For the purposes of this Sub-Section:

(a) "licence" means an authorisation that an independent regulatory authority of a Party may require of an individual supplier, in accordance with the laws and regulations of the Party, in order for that supplier to offer postal and courier services; and

(b) "universal service" means the permanent supply of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

Article 8.37. Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. That obligation will not be regarded per se as anti-competitive, provided that it is administered in a transparent, non-discriminatory and competitively neutral manner and is not more burdensome than necessary for the kind of universal service defined by the Party, with regard to all suppliers subject to the obligation.

2. Within the framework of its postal legislation or by other customary means, each Party shall set out the scope of the universal service obligation, fully taking into account the needs of the users and national conditions, including market forces, of that Party.

3. Each Party shall ensure that a supplier of postal and courier services in its territory which is subject to a universal service obligation under its laws and regulations does not engage in the following practices:

(a) excluding the business activities of other enterprises by cross-subsidising, with revenues derived from the supply of the universal service, the supply of express mail services (EMS) (48) or any non-universal service in a way which constitutes a private monopolisation in contravention of Article 3 of the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54 of 1947) of Japan or an abuse of a dominant market position in contravention of the competition law of the European Union respectively; (49) or

(b) unjustifiably differentiating among customers, such as large volume mailers or consolidators, where like conditions prevail with respect to charges and the provisions concerning acceptance, delivery, redirection, return and the number of days required for delivery for the supply of a service subject to a universal service obligation.

(48) For the purposes of this subparagraph, "express mail services (EMS)" means services referred to in subparagraph 1.3 of Article 1 of the Universal Postal Convention, done at Istanbul on 6 October 2016.

(49) For greater certainty, the enforcement of each Party's competition law and the related decisions by competition authority shall be covered by the provisions of Chapter 11.

Article 8.38. Border Procedures

1. The border procedures for international postal services and international courier services (50) are enforced in accordance with related international agreements and the laws and regulations of each Party.

2. Without prejudice to paragraph 1, each Party shall not unduly accord less favourable treatment with respect to border procedures to international courier services than it accords to international postal services.

(50) For the purposes of this Article, "international postal services" means services that designated operators referred to in subparagraph 1.12 of Article 1 of the Universal Postal Convention supply in accordance with the Acts of the Universal Postal Union. "International courier services" means services consisting of the collection, sorting, transport and delivery of documents, printed matter, parcels and goods for foreign destinations, not regulated by the Acts of the Universal Postal Union.

Article 8.39. Licences

1. Each Party may require a licence for the supply of a service covered by this Sub-Section.

2. If a Party requires a licence, it shall make publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of licences.

3. If a licence application is rejected by the competent authority, it shall upon request inform the applicant of the reasons for the rejection of the licence. Each Party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. That procedure shall be transparent, non-discriminatory, and based on objective criteria.

Article 8.40. Independence of the Regulatory Body

Each Party shall ensure that:

(a) its regulatory body (51) for the services covered by this Sub-Section is legally separated from, and not accountable to, any supplier of those services; and,

(b) subject to the laws and regulations of each Party, decisions of, and procedures used by, its regulatory body are impartial.

(51) For the purposes of this Article, "international postal services" means services that designated operators referred to in subparagraph 1.12 of Article 1 of the Universal Postal Convention supply in accordance with the Acts of the Universal Postal Union. "International courier services" means services consisting of the collection, sorting, transport and delivery of documents, printed matter, parcels and goods for foreign destinations, not regulated by the Acts of the Universal Postal Union

Subsection 4. Telecommunications Services

Article 8.41. Scope

1. This Sub-Section sets out the principles of the regulatory framework for all telecommunications services and applies to measures by a Party affecting trade in telecommunications services, which consist in the conveyance of signals including, inter alia, transmission of video and audio signals (irrespective of the types of protocols and technologies used)

through public telecommunications transport networks.

2. This Sub-Section does not apply to measures affecting:

(a) broadcasting services as defined in the laws and regulations of each Party; and

(b) services providing, or exercising editorial control over, content transmitted using telecommunications transport networks and services.

3. Notwithstanding subparagraph 2(a), a supplier of broadcasting services shall be considered as a supplier of public telecommunications transport services and its networks as public telecommunications transport networks, when and to the extent that such networks are also used for providing public telecommunications transport services.

4. Nothing in this Sub-Section shall be construed as requiring a Party:

(a) to authorise a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in this Agreement; or

(b) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally, or to oblige a service supplier under its jurisdiction to do so.

Article 8.42. Definitions

For the purposes of this Sub-Section:

(a) "associated facilities" means services and infrastructures associated with public telecommunications transport networks or services which are necessary for the provision of services via those networks or services, such as buildings (including entries and wiring), ducts and cabinets as well as masts and antennae;

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

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

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

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

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

(e) "interconnection" means linking (52) with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with the users of another supplier or to access services provided by any supplier who has access to the network;

(f) "international mobile roaming service" means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enables an end user to use its home mobile handset or other device for voice, data or messaging services while outside the territory in which the end user's home public telecommunications transport network is located;

(g) "leased circuits" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user, irrespective of the technology used;

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

(i) control over essential facilities; or

(ii) use of its position in the market;

(i) "non-discriminatory" means treatment no less favourable than that accorded, under like circumstances, to other service suppliers and users of like public telecommunications transport networks or services;

(j) "number portability" means the ability of an end user of public telecommunications transport services who requests to retain, at the same location, the same telephone numbers without impairment of quality or reliability when switching between the same category of suppliers of like public telecommunications transport services;

(k) "public telecommunications transport network" means public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

(l) "public telecommunications transport service" means any telecommunications transport service offered to the public generally that may include, inter alia, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

(m) "regulatory authority" means the body or bodies of a Party responsible for the regulation of telecommunications;

(n) "telecommunications" means the transmission and reception of signals by wire, radio, optical or any other electromagnetic means; and

(o) "users" means end users, or suppliers of public telecommunications transport networks or services that are consumers of, or subscribers to, a public telecommunications transport network or service.

(52) For greater certainty, linking may include physical or logical linking, as appropriate.

Article 8.43. Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that a Party may determine how to implement its obligations under this Sub-Section.

2. In that respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market; or

(b) rely on the role of market forces, particularly with respect to market segments that are competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities.

3. For greater certainty, a Party that refrains from engaging in regulation in accordance with subparagraph 2(b) remains subject to the obligations under this Sub-Section. Nothing in this Article shall prevent a Party from applying regulation to telecommunications services.

Article 8.44. Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to, and use of, public telecommunications transport networks and services on terms and conditions which are reasonable, non-discriminatory and no less favourable than those which the supplier of those public telecommunications transport networks and services provides for its own like services under like circumstances. This obligation shall be applied, inter alia, through paragraphs 2 to 6.

2. Each Party shall ensure that service suppliers of the other Party are accorded access to, and use of, any public telecommunications transport network or service offered within or across the borders of the former Party, including private leased circuits, and shall to that end ensure, subject to paragraphs 5 and 6, that such service suppliers are permitted to:

(a) purchase or lease, and attach, terminal or other equipment which interfaces with the network and which is necessary to supply their services;

(b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and

(c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications transport networks and services for the movement of information within and across the borders of the former Party, including for intra-corporate communications of such service suppliers, and for access to information contained in databases or otherwise stored in machine-readable form in either Party or in any other member of the WTO.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of messages subject to the requirement that those measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

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

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

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to, and use of, public telecommunications transport networks and services may include:

(a) restrictions on resale or shared use of those services;

(b) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with public telecommunications transport networks and services;

(c) requirements, if necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 8.55;

(d) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of that equipment to those networks;

(e) restrictions on inter-connection of private leased or owned circuits with public telecommunications transport networks or services, or with circuits leased or owned by other service suppliers; or

(f) notification, permit, registration and licensing.

Article 8.45. Number Portability

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

Article 8.46. Resale

If a Party requires a supplier of public telecommunications transport services to offer its public telecommunications transport services for resale, that Party shall ensure that such supplier does not impose unreasonable or discriminatory conditions or limitations on the resale of its public telecommunications transport services.

Article 8.47. Enabling Use of Network Facilities and Interconnection

1. The Parties recognise that enabling use of network facilities (53) and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers of public telecommunications transport networks or services concerned.

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services in its territory has a right and, if requested by a supplier of public telecommunications transport networks or services of the other Party, an obligation to negotiate interconnection for the purpose of providing public telecommunications transport networks or services. Each Party shall provide its regulatory authority with the power to require, where necessary, a supplier of public telecommunications transport networks or services to provide interconnection with suppliers of public telecommunications transport networks or services of the other Party.

3. A Party shall not adopt or maintain any measure which obliges suppliers of public telecommunications transport networks or services enabling use of network facilities or providing interconnection to offer different terms and conditions to different suppliers for like services or imposes obligations that are not related to the services provided.

(53) For the purposes of this Article, "enabling use of network facilities" means the making available of facilities or services to another supplier of public telecommunications transport networks or services under defined conditions, for the purpose of providing public telecommunications

transport services. It may include the use of active or passive network elements, associated facilities, virtual network services, co-location or other forms of associated facilities sharing, the use of leased circuits and the use of specified network facilities or elements, including the local loop, on an unbundled basis

Article 8.48. Obligations Relating to Major Suppliers

1 Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

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

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

(c) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them in order to provide services.

2 Each Party shall provide its regulatory authority with the power to require, where appropriate, that major suppliers in its territory accord to suppliers of public telecommunications transport networks or services of the other Party treatment no less favourable than that which the major supplier concerned accords in like circumstances to its subsidiaries or its affiliates, regarding:

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

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

3 Each Party shall ensure that major suppliers in its territory provide interconnection with suppliers of public telecommunications transport networks or services of the other Party at any technically feasible point in the network of the major supplier concerned and that the major supplier concerned provides such interconnection:

(a) under terms, conditions (including with respect to technical standards, specifications, quality and maintenance) and rates which are non-discriminatory and no less favourable than those provided for its own like services under like circumstances, and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

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

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

4. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications transport networks or services of the other Party with the opportunity to interconnect their facilities and equipment with those of a major supplier through:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications transport networks or services; or

(b) the terms and conditions of an interconnection agreement in effect.

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

6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or their reference interconnection offers.

7. Each Party shall ensure that major suppliers in its territory that acquire information from another supplier of public telecommunications transport networks or services in the process of negotiating arrangements on, and as a result of, the use of network facilities or interconnection, use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

8. Each Party shall ensure that major suppliers in its territory enable the use of network facilities, which may include, inter

alia, network elements and associated facilities, to suppliers of public telecommunications transport networks or services of the other Party on terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance) which are transparent, reasonable, non-discriminatory (including with respect to timeliness) and no less favourable than those provided for their own like services under like circumstances. (54)

(54) For greater certainty, nothing in this paragraph shall be construed as preventing a Party from allowing a major supplier in its territory to reject co-location where there is a reasonable ground for rejection, in particular with regard to technical feasibility.

Article 8.49. Regulatory Authority

1. Each Party shall ensure that its regulatory authority is legally distinct, and functionally independent (55) from any supplier of telecommunications services, telecommunications networks or telecommunications network equipment.

2. A Party that retains ownership or control of a supplier of public telecommunications transport networks or services shall ensure effective structural separation of the regulatory function of telecommunications from activities associated with the ownership or control.

3. Each Party shall provide its regulatory authority with the power to regulate the telecommunications sector, and to carry out the task assigned to it including enforcement of the measures relating to the obligations under this Sub-Section. The tasks to be undertaken by the regulatory authority shall be made publicly available in an easily accessible and clear form.

4. Each Party shall ensure that the decisions of, and the procedures used by, its regulatory authority are impartial with respect to all market participants.

5. Each Party shall ensure that its regulatory authority performs its tasks in a transparent manner and, to the extent practicable, without undue delay.

6. Each Party shall provide its regulatory authority with the power to request from suppliers of telecommunications networks and services all the information, including financial information, which is necessary to carry out its tasks in accordance with this Sub-Section. The regulatory authority shall not request more information than that which is necessary to perform its tasks and shall treat the information obtained from those suppliers in accordance with the laws and regulations of that Party relating to business confidentiality.

(55) For greater certainty, the regulatory authority of a Party shall not be regarded as not functionally independent solely based on the fact that an authority of that Party (other than the regulatory authority) holds shares or other equity interest in a supplier of telecommunications services, telecommunications networks or telecommunications network equipment.

Article 8.50. Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain. Those obligations are not be regarded as anti-competitive per se, provided that they are administered in a transparent, objective, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

2. All suppliers of telecommunications services should be eligible to provide universal service. Universal service suppliers shall be designated through a transparent, non-discriminatory and not unduly burdensome mechanism.

3. The regulatory authority of a Party may determine whether a mechanism is required in order to compensate the net cost of the suppliers designated to provide universal service, taking into account the market benefit, if any, accruing to those suppliers, or to share the net cost of the universal service obligations.

Article 8.51. Authorisation to Provide Telecommunications Networks and Services

1. Each Party shall authorise the provision of telecommunications networks or services, to the extent possible, upon simple notification or registration without requiring a prior explicit decision by its regulatory authority. The rights and obligations resulting from such authorisation shall be made publicly available in an easily accessible form.

2. If necessary, a Party may require a licence for the right of use for radio frequencies and numbers, in particular in order to:

(a) avoid harmful interference;

(b) ensure technical quality of service; and

(c) safeguard efficient use of spectrum.

3. If a Party requires a licence, that Party shall make publicly available:

(a) all the licensing criteria and a reasonable period of time normally required to reach a decision on a licence; and

(b) the terms and conditions of individual licences.

4. Each Party shall notify an applicant of the outcome of its application without undue delay after a decision on the licence has been taken. In case a decision is taken to deny an application for or revoke a licence, each Party shall make known to the applicant, in principle in writing, upon request, the reasons for the denial or revocation. In that case, the applicant shall be able to have recourse to an appeal body as referred to in Article 8.54.

5. Each Party shall ensure that any administrative fees imposed on suppliers of telecommunications networks or services are objective, transparent and commensurate with the administrative costs of its regulatory authority. Those administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

Article 8.52. Allocation and Use of Scarce Resources

1. Each Party shall carry out any procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, numbers and rights of way, in an open, objective, timely, transparent, non-discriminatory and not unduly burdensome manner.

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

3. Measures by a Party allocating and assigning spectrum and managing frequency are not per se inconsistent with Articles 8.7 and 8.15. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport services, provided that the Party does so in a manner consistent with the other provisions of this Agreement. That right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 8.53. Transparency

Each Party shall ensure that its measures relating to access to, and use of, public telecommunications transport networks and services are made publicly available, including measures relating to:

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

(b) specifications of technical interfaces;

(c) bodies responsible for the preparation, amendment and adoption of standards affecting the access and use;

(d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport networks; and

(e) notifications, permits, registrations or licensing requirements, if any.

Article 8.54. Resolution of Telecommunications Disputes

1. Each Party shall ensure, in accordance with its laws and regulations, that suppliers of public telecommunications transport networks or services of the other Party have timely recourse to the regulatory authority of the former Party to resolve disputes in relation to the rights and obligations of those suppliers arising from this Sub-Section. In such cases, the regulatory authority shall aim to issue a binding decision, as appropriate, in order to resolve the dispute without undue delay.

2. If the regulatory authority declines to initiate any action on a request to resolve a dispute, it shall, upon request and within a reasonable period of time, provide a written explanation for its decision.

3. The regulatory authority shall make the decision resolving the dispute available to the public in accordance with the

laws and regulations of the Party, having regard to the requirements of business confidentiality.

4. Each Party shall ensure that a supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its regulatory authority may obtain review of that determination or decision by either the regulatory authority or an independent appeal body which may or may not be a judicial authority.

5. Each Party shall ensure that a supplier of public telecommunications transport networks or services affected by a decision of its regulatory authority or independent appeal body, if the latter is not a judicial authority, may obtain further review of that decision by an independent judicial authority, except if the supplier has accepted a procedure where the regulatory authority or independent appeal body issues a final decision, in accordance with the laws and regulations of the Party.

6. A Party shall not permit an application for review by an appeal body or a judicial authority to constitute grounds for non-compliance with the determination or decision of the regulatory authority unless the relevant appeal body or judicial authority withholds, suspends or repeals such determination or decision.

7. The procedure referred to in paragraphs 1 to 3 shall not preclude either party concerned from bringing an action before the judicial authorities.

Article 8.55. Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications transport networks and services, and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 8.56. Confidentiality of Information

Each Party shall ensure the confidentiality of telecommunications and related traffic data of users over public telecommunications transport networks and services without unduly restricting trade in services.

Article 8.57. International Mobile Roaming (56)

1. Each Party shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services with a view to promoting the growth of trade between the Parties and enhancing consumer welfare.

2. Each Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers, when visiting the territory of a Party from the territory of the other Party, can access telecommunications services using the device of their choice.

3. Each Party shall encourage suppliers of public telecommunications transport services in its territory to make publicly available information on retail rates for international mobile roaming services for voice, data and text messages offered to their end users when visiting the territory of the other Party.

4. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

(56) This Article does not apply to intra-European Union roaming services, which are commercial mobile services provided pursuant to a commercial agreement between suppliers of public telecommunications transport services that enable an end user to use its home mobile handset or other device for voice, data or messaging services in a Member State of the European Union other than that in which the end user's home public telecommunications transport network is located

Subsection 5. Financial Services

Article 8.58. Scope

1. This Sub-Section applies to measures by a Party affecting trade in financial services.

2. For the purposes of the application of subparagraph (r) of Article 8.2 to this Sub-Section, "services supplied in the exercise of governmental authority" means the following:

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

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

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

3. For the purposes of the application of subparagraph (r) of Article 8.2 to this Sub-Section, if a Party allows any of the activities referred to in subparagraph 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include those activities.

4. Subparagraph (s) of Article 8.2 does not apply to services covered by this Sub-Section.

Article 8.59. Definitions

For the purposes of this Chapter:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party; financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance); financial services include the following activities:

(i) insurance and insurance-related services:

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

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

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

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

(ii) banking and other financial services (excluding insurance):

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

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

(C) financial leasing;

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

(E) guarantees and commitments;

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

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

(2) foreign exchange;

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

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

(5) transferable securities; and

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

(G) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or

privately, and provision of services related to such issues;

(H) money broking;

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

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

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

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) to (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

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

(c) "new financial service" means any service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

(d) "postal insurance entity" means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of a Party;

(e) "public entity" means:

(i) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or a monetary authority, when exercising those functions; and

(f) "self-regulatory organisation" means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.

Article 8.60. Financial Services New to the Territory of a Party

1. A Party shall permit financial service suppliers of the other Party established in its territory to offer in its territory any new financial service.

2. Notwithstanding subparagraph (b) of Article 8.7, a Party may determine the juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires an authorisation, it may refuse the authorisation for prudential reasons but not solely for the reason that the service is not supplied by any financial service supplier in its territory.

Article 8.61. Payment and Clearing Systems

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

Article 8.62. Self-regulatory Organisations

If a Party requires membership or participation in, or access to, a self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of that Party, or if that Party provides, directly or indirectly, the self-regulatory organisation privileges or advantages in supplying financial services, that Party shall ensure that the self-regulatory organisation observes the obligations contained in Article 8.8.

Article 8.63. Transfers of Information and Processing of Information

1. A Party shall not take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, if those transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.

2. Nothing in paragraph 1 restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as that right is not used to circumvent Sections B to D and this Sub-Section.

Article 8.64. Effective and Transparent Regulation

1. If a Party requires a licence for the supply of a financial service, it shall make the requirements and procedures for such a licence publicly available.

2. If a Party requires additional information from the applicant in order to process its application, it shall notify the applicant without undue delay.

3. A Party shall endeavour to ensure that the rules of general application adopted or maintained by self-regulatory organisations in the territory of that Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

Article 8.65. Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, including for:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

(b) ensuring the integrity and stability of the Party's financial system.

2. Where such measures do not conform with this Agreement, they shall not be used as a means of avoiding the Party's obligations under this Agreement.

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

Article 8.66. Supply of Insurance Services by Postal Insurance Entities

1. This Article sets out disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this Article do not include the supply of insurance services relating to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. A Party shall not adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services referred to in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

(a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or

(b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services referred to in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services referred to in paragraph 1 to publish an annual financial statement with respect to the supply of those services. The statement shall provide the level of detail and meet the auditing standards required under generally accepted accounting and auditing principles, internationally accepted accounting and auditing standards or equivalent rules, applied in the

Party's territory with respect to publicly traded private enterprises that supply like services.

5. Paragraphs 1 to 4 do not apply to a postal insurance entity in the territory of a Party:

(a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or

(b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market.

Article 8.67. Regulatory Cooperation on Financial Regulation

The Parties shall promote regulatory cooperation on financial regulation in accordance with Annex 8-A.

Subsection 6. International Maritime Transport Services

Article 8.68. Scope and Definitions

1. This Sub-Section sets out the principles of the regulatory framework for the provision of international maritime transport services pursuant to Sections B to D of this Chapter, and applies to measures by a Party affecting trade in international maritime transport services.

2. For the purposes of this Chapter:

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "freight forwarding services" means activities consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(e) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of a Party and a port of the other Party or a third country, and includes the direct contracting with suppliers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document, but does not include the right to supply such other transport services.

(f) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(g) "maritime auxiliary services" means maritime cargo handling services, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services and freight forwarding services;

(h) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge; and

(i) "storage and warehousing services" means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods including cotton, grain, wool, tobacco, other farm products and other household goods.

Article 8.69. Obligations

Without prejudice to non-conforming measures or other measures referred to in Articles 8.12 and 8.18, each Party shall:

(a) respect the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;

(b) accord to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that it accords to its own ships, with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading; (57)

(c) permit international maritime transport service suppliers of the other Party to establish and operate an enterprise in its territory under conditions of establishment and operation no less favourable than that it accords to its own service suppliers; and

(d) make available to international maritime transport suppliers of the other Party, on reasonable and non-discriminatory terms and conditions, the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth and berthing services, shore-based operational services essential to ship operations, including communications, water and electrical supplies.

(57) In applying the principles set out in subparagraphs (a) and (b), each Party shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Each Party shall terminate any such arrangement in any agreement in force or signed prior to the date of entry into force of this Agreement, upon the entry into force of this Agreement

Section F. Electronic Commerce

Article 8.70. Objective and General Provisions

1. The Parties recognise that electronic commerce contributes to economic growth and increases trade opportunities in many sectors. The Parties also recognise the importance of facilitating the use and development of electronic commerce.

2. The objective of this Section is to contribute to creating an environment of trust and confidence in the use of electronic commerce and to promote electronic commerce between the Parties.

3. The Parties recognise the importance of the principle of technological neutrality in electronic commerce.

4. This Section applies to measures by a Party affecting trade by electronic means.

5. This Section does not apply to gambling and betting services, broadcasting services, audio-visual services, services of notaries or equivalent professions, and legal representation services.

6. In the event of any inconsistency between the provisions of this Section and the other provisions of this Agreement, those other provisions shall prevail to the extent of the inconsistency.

Article 8.71. Definitions

For the purposes of this Section:

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

(b) "electronic signature" means data in electronic form which are attached to or logically associated with other electronic data and fulfil the following requirements:

(i) that it is used by a person to confirm that the electronic data to which it relates have been created or signed, in

accordance with each Party's laws and regulations, by that person; and

(ii) that it confirms that information in the electronic data has not been altered.

Article 8.72. Customs Duties

The Parties shall not impose customs duties on electronic transmissions.

Article 8.73. Source Code

1. A Party may not require the transfer of, or access to, source code of software owned by a person of the other Party. (58) Nothing in this paragraph shall prevent the inclusion or implementation of terms and conditions related to the transfer of or granting of access to source code in commercially negotiated contracts, or the voluntary transfer of or granting of access to source code for instance in the context of government procurement.

2. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;

(b) requirements by a court, administrative tribunal or administrative authority with respect to the protection and enforcement of intellectual property rights to the extent that source codes are protected by those rights; and

(c) the right of a Party to take measures in accordance with Article III of the GPA.

3. For greater certainty, nothing in this Article shall prevent a Party from adopting or maintaining measures (59) which are inconsistent with paragraph 1, in accordance with Articles 1.5, 8.3 and 8.65.

(58) For greater certainty, "source code of software owned by a person of the other Party" includes source code of software contained in a product.

(59) Those measures include measures to ensure security and safety, for instance in the context of a certification procedure

Article 8.74. Domestic Regulation

Each Party shall ensure that all its measures of general application affecting electronic commerce are administered in a reasonable, objective and impartial manner.

Article 8.75. Principle of No Prior Authorisation

1. The Parties will endeavour not to impose prior authorisation or any other requirement having equivalent effect on the provision of services by electronic means.

2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

Article 8.76. Conclusion of Contracts by Electronic Means

Unless otherwise provided for in its laws and regulations, a Party shall not adopt or maintain measures regulating electronic transactions that:

(a) deny the legal effect, validity or enforceability of a contract, solely on the grounds that it is concluded by electronic means; or

(b) otherwise create obstacles to the use of contracts concluded by electronic means.

Article 8.77. Electronic Authentication and Electronic Signature

1. Unless otherwise provided for in its laws and regulations, a Party shall not deny the legal validity of a signature solely on the grounds that the signature is in electronic form.

2. A Party shall not adopt or maintain measures regulating electronic authentication and electronic signature that would:

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

(b) prevent parties to electronic transactions from having the opportunity to establish before judicial or administrative authorities that their electronic transactions comply with any legal requirements with respect to electronic authentication and electronic signature.

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

Article 8.78. Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures applicable to electronic commerce as well as measures conducive to the development of consumer confidence in electronic commerce.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

3. The Parties recognise the importance of adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users.

Article 8.79. Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; and

(b) require the prior consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages.

2. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.

Article 8.80. Cooperation on Electronic Commerce

1. The Parties shall, where appropriate, cooperate and participate actively in multilateral fora to promote the development of electronic commerce.

2. The Parties agree to maintain a dialogue on regulatory matters relating to electronic commerce with a view to sharing information and experience, as appropriate, including on related laws, regulations and their implementation, and best practices with respect to electronic commerce, in relation to, inter alia:

(a) consumer protection;

(b) cybersecurity;

(c) combatting unsolicited commercial electronic messages;

(d) the recognition of certificates of electronic signatures issued to the public;

(e) challenges for small and medium-sized enterprises in the use of electronic commerce;

(f) the facilitation of cross-border certification services;

(g) intellectual property; and

(h) electronic government.

Article 8.81. Free Flow of Data

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.

Chapter 9. CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

Article 9.1. Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency, (60) and in accordance with the Articles of Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments which fall within the scope of this Agreement.

(60) For the purposes of this Chapter, "freely convertible currency" means a currency that can be freely exchanged against currencies that are widely traded in international foreign exchange markets and widely used in international transactions. For greater certainty, currencies that are widely traded in international foreign exchange markets and widely used in international transactions include freely usable currencies as designated by the IMF in accordance with the Articles of Agreement of the International Monetary Fund.

Article 9.2. Capital Movements

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions as provided for in Chapter 8.

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

Article 9.3. Application of Laws and Regulations Relating to Capital Movements, Payments or Transfers

1. Articles 9.1 and 9.2 shall not be construed as preventing a Party from applying its laws and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, or futures, options and other derivatives;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, or deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in adjudicatory proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an inequitable, arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

Article 9.4. Temporary Safeguard Measures

1. In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Those measures shall be limited to the extent that is strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between Japan and a third country in like situations.

2. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers:(61)

(a) in the event of serious balance of payments or external financial difficulties, or threat thereof; (62) or

(b) if, in exceptional circumstances, capital movements, payments or transfers cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies.

3. The measures referred to in paragraph 2 shall:

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

(b) not exceed those necessary to deal with the situations described in paragraph 2;

(c) be temporary and be phased out progressively as the situation described in paragraph 2 improves;

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

(e) be non-discriminatory compared to third countries in like situations.

4. In the case of trade in goods, each Party may adopt restrictive measures pursuant to Article 2.20 for balance-of-payments purposes.

5. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. Those measures shall be in accordance with the conditions set out in Article XII of GATS.

6. A Party maintaining or having adopted measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them.

7. If restrictions are adopted or maintained pursuant to this Article, the Parties shall promptly hold consultations in the Committee on Trade in Services, Investment Liberalisation and Electronic Commerce established pursuant to Article 22.3, unless consultations are held in other fora. The consultations shall assess the balance of payments or external financial difficulties or other macroeconomic difficulties that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

8. The consultations pursuant to paragraph 7 shall address the compliance of any restrictive measures with paragraphs 1 to 3. Those consultations shall be based on all available relevant findings of statistical or factual nature presented by the IMF, and the conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation or other macroeconomic difficulties of the Party concerned.

(61) In the case of the European Union, such measures may be taken by a Member State of the European Union in situations other than those referred to in paragraph 1 which affect the economy of that Member State.

(62) The Parties acknowledge that serious balance of payments or external financial difficulties, or threat thereof, as referred to in subparagraph 2(a) may be caused among other factors by serious macroeconomic difficulties related to monetary and exchange rate policies, or threat thereof, as referred to in subparagraph 2(b)

Chapter 10. GOVERNMENT PROCUREMENT

Article 10.1. Incorporation of the GPA

The GPA is incorporated into and made part of this Chapter, mutatis mutandis.

Article 10.2. Additional Scope of Application

The rules and procedures provided for in the provisions of the GPA specified in Part 1 of Annex 10 apply, mutatis mutandis, to procurement covered by Part 2 of Annex 10.

Article 10.3. Additional Rules

Each Party shall apply Articles 10.4 to 10.12 to both the procurement covered by its annexes to Appendix I to the GPA and the procurement covered by Part 2 of Annex 10.

Article 10.4. Publication of Notices

Notices of intended or planned procurement under Article VII of the GPA shall be directly accessible by electronic means free of charge through a single point of access on the Internet.

Article 10.5. Conditions for Participation

1. Further to Article VIII of the GPA, a procuring entity of a Party shall not exclude a supplier established in the other Party from participating in a tendering procedure on the basis of a legal requirement according to which the supplier must be:

(a) a natural person; or

(b) a legal person.

This provision does not apply to procurement within the scope of the Act on Promotion of Private Finance Initiative of Japan (Law No. 117 of 1999).

2. While a procuring entity of a Party may, in establishing the conditions for participation, require relevant prior experience where essential to meet the requirements of the procurement in accordance with subparagraph 2(b) of Article VIII of the GPA, that procuring entity shall not impose the condition that such prior experience must have been acquired within the territory of that Party.

Article 10.6. Qualification of Suppliers

1. If a Party maintains a supplier registration system under which interested suppliers are required to register and provide certain information, those suppliers may request their registration at any time. A procuring entity should inform those suppliers within a reasonably short period of time whether their registration has been granted.

2. When, in order to be allowed to submit a tender in view of a procurement for construction work in Japan, a supplier established in the European Union is required to undergo a Business Evaluation (Keieijikoshinsa) (also known as Keishin) under the Construction Business Law of Japan (Law No. 100 of 1949), Japan shall ensure that its authorities carrying out such evaluation:

(a) assess in a non-discriminatory manner and, where appropriate, recognise as equivalent to those in Japan, indicators of the supplier realised outside Japan, which may include:

(i) the number of technical staff;

(ii) the labour welfare conditions;

(iii) the number of operating years in the construction business;

(iv) the conditions of accounting in the construction business;

(v) the amount of research and development expenditure;

(vi) the acquisition of ISO9001 or ISO14001 certification;

(vii) the employment and development of young engineers and skilled workers;

(viii) the amount of sales for completed construction work; and

(ix) the amount of sales for completed construction work as a prime contractor; and

(b) take due account of indicators of the supplier realised outside Japan, which may include:

(i) the amount of equity capital;

(ii) the amount of earnings before interest, taxes, depreciation and amortization (EBITDA);

(iii) the ratio of net interest expense to sales amount;

(iv) the liabilities turnover period;

(v) the ratio of gross profit on sale to gross capital;

(vi) the ratio of recurring profit to sales amount;

(vii) the ratio of equity capital to fixed asset;

(viii) the equity ratio;

(ix) the amount of cash flows from operating activities; and

(x) the amount of accumulated earnings.

Article 10.7. Selective Tendering

1. If, in accordance with paragraphs 4 and 5 of Article IX of the GPA, a procuring entity limits the number of suppliers for a given procurement, the number of suppliers permitted to submit a tender shall be sufficient to ensure competition without affecting the operational efficiency of the procurement system.

2. For Japan, this Article applies only to central government entities.

Article 10.8. Technical Specifications

If a procuring entity applies environment-friendly technical specifications as set out for environmental labels or as defined by relevant laws and regulations in force within the European Union or Japan, each Party shall ensure that those specifications are:

(a) appropriate to define the characteristics of the goods or services that are the object of the contract;

(b) based on objectively verifiable and non-discriminatory criteria; and

(c) accessible to all interested suppliers.

Article 10.9. Test Reports

1. Each Party, including its procuring entities, may require that interested suppliers provide a test report issued by a conformity assessment body or a certificate issued by such a body as a means of proof of conformity with the requirements or the criteria set out in the technical specifications, the evaluation criteria or any other terms or conditions.

2. When requiring the submission of a test report or a certificate issued by a conformity assessment body, each Party, including its procuring entities, shall:

(a) accept the results of conformity assessment procedures that are conducted by the registered conformity assessment bodies of the other Party in accordance with paragraph 1 of Article 2 of the Agreement on Mutual Recognition between the European Community and Japan, done at Brussels on 4 April 2001; and

(b) duly take into consideration any future expansion of the scope of the agreement referred to in subparagraph (a), or any further agreement to be concluded between the Parties with the purpose of mutual recognition of conformity assessment procedures, once it has entered into force.

Article 10.10. Environmental Conditions

Procuring entities may lay down environmental conditions relating to the performance of a procurement, provided that those conditions are compatible with the rules established by this Chapter and are indicated in the notice of intended procurement or in another notice used as a notice of intended procurement or tender documentation.

Article 10.11. Treatment of Tenders and Awarding of Contracts

1 Further to paragraph 5 of Article XV of the GPA, and in accordance with the conditions set out in each Party's laws and regulations, each Party shall ensure that its procuring entities are entitled to choose between the two criteria referred to in subparagraphs (a) and (b) of paragraph 5 of Article XV of the GPA and that they are aware of the respective merits of those criteria.

2 Further to paragraph 6 of Article XV of the GPA, if a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may also verify with the supplier whether the price takes into account the grant of subsidies.

Article 10.12. Domestic Review Procedures

1. Where an impartial administrative authority is designated by a Party under paragraph 4 of Article XVIII of the GPA, that Party shall ensure that:

(a) the members of the designated authority are independent, impartial, and free from external influence during the term of appointment;

(b) the members of the designated authority are not dismissed against their will while they are in office, unless their dismissal is required by the provisions governing the designated authority; and

(c) with regard to the procuring entities covered under Annexes 1 and 3 of each Party to Appendix I to the GPA, as well as the central government entities and all other entities except the sub-central government entities covered under Part 2 of Annex 10, the President or at least one other member of the designated authority, has legal and professional qualifications equivalent to those necessary for judges, lawyers or other legal experts qualified under the laws and regulations of the Party.

2. Each Party shall adopt or maintain procedures that provide for rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures, provided for in subparagraph 7(a) of Article XVIII of the GPA, may result in suspension of the procurement process or, if a contract has been concluded by the procuring entity and if a Party has so provided, in suspension of performance of the contract. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing.

3. In case an interested or participating supplier has submitted a challenge with the designated authority referred to in paragraph 1, each Party shall, in principle, ensure that a procuring entity shall not conclude the contract until that authority has made a decision or recommendation on the challenge with regard to interim measures, corrective action or compensation for the loss or damages suffered as referred to in paragraphs 2, 5 and 6 in accordance with its rules, regulations and procedures. Each Party may provide that in unavoidable and duly justified circumstances, the contract can be nevertheless concluded.

4. Each Party may provide for:

(a) a standstill period between the contract award decision and the conclusion of a contract in order to give sufficient time to unsuccessful suppliers to assess whether it is appropriate to initiate a review procedure; or

(b) a sufficient period for an interested supplier to submit a challenge, which may constitute grounds for the suspension of the execution of a contract.

5. Corrective action under subparagraph 7(b) of Article XVIII of the GPA may include one or more of the following:

(a) the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or any other document relating to the tendering procedure and conduct of new procurement procedures;

(b) the repetition of the procurement procedure without changing the conditions;

(c) the setting aside of the contract award decision and the adoption of a new contract award decision;

(d) the termination of a contract or the declaration of its ineffectiveness; or

(e) the adoption of other measures with the aim to remedy a breach of this Chapter, for example an order to pay a particular sum until the breach has been effectively remedied.

6. In accordance with subparagraph 7(b) of Article XVIII of the GPA, each Party may provide for the award of compensation for the loss or damages suffered. In this regard, if the review body of the Party is not a court and a supplier believes that there has been a breach of the domestic laws and regulations implementing the obligations under this Chapter, the supplier may bring the matter before a court, including with a view to seeking compensation, in accordance with judicial procedures of the Party.

7. Each Party shall adopt or maintain the necessary procedures by which the decisions or recommendations made by

review bodies are effectively implemented, or the decisions by judicial review bodies are effectively enforced.

Article 10.13. Collection and Reporting of Statistics

Each Party shall communicate to the other Party available and comparable statistical data relevant to the procurement covered by Part 2 of Annex 10.

Article 10.14. Modifications and Rectifications to Coverage

1. A Party may modify or rectify its commitments under Part 2 of Annex 10.

2. If a modification or a rectification of a Party's annexes to Appendix I to the GPA becomes effective pursuant to Article XIX of the GPA, it shall automatically become effective for the purposes of this Agreement.

3. When a Party intends to modify its commitments under Part 2 of Annex 10, the Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

4. Notwithstanding subparagraph 3(b), a Party does not need to provide compensatory adjustments if the modification concerns a procuring entity over whose procurement the Party has effectively eliminated its control or influence.

5. In the event the Committee on Government Procurement established by Article XXI of the GPA adopts criteria pursuant to subparagraphs 8(b) and (c) of Article XIX of the GPA, those criteria shall be applicable also within the context of this Article.

6. If the other Party objects that:

(a) an adjustment proposed in accordance with subparagraph 3(b) is inadequate to maintain a comparable level of mutually agreed coverage; or

(b) the intended modification referred to in paragraph 4 concerns a procuring entity over whose procurement the Party has not effectively eliminated its control or influence,

it shall submit an objection in writing to the Party intending to modify its commitments within 45 days from the date of receipt of the notification referred to in subparagraph 3(a) or be deemed to have accepted the adjustment or modification.

7. The following changes to a Party's commitments under Part 2 of Annex 10 shall be considered a rectification:

(a) a change in the name of a procuring entity;

(b) a merger of two or more procuring entities listed in the same paragraph of Part 2 of Annex 10;

(c) the separation of a procuring entity listed in Part 2 of Annex 10 into two or more procuring entities that are added to the procuring entities listed in the same paragraph of that Part; and

(d) updates of indicative lists such as those set out in paragraph 3 of Section A of Part 2 of Annex 10, subparagraph 1(b) of Section B of Part 2 of Annex 10, or in Annexes 2 and 3 of the European Union to Appendix I to the GPA.

8. In the case of intended rectifications, the Party shall notify the other Party in writing every two years, in line with the cycle of notifications provided for in the Decision of the Committee on Government Procurement on Notification Requirements under Articles XIX and XXII of the Agreement adopted on 30 March 2012 (GPA/113), following the entry into force of this Agreement.

9. The other Party may, within 45 days from the date of receipt of the notification pursuant to paragraph 8, submit an objection in writing to the Party intending to rectify its commitments. The Party submitting an objection shall set out the reasons why it believes the intended rectification is not a change provided for in paragraph 7, and describe the effect of the intended rectification on the mutually agreed coverage provided for in this Agreement. If no such objection is submitted in writing within 45 days from the date of receipt of the notification, the intended rectification shall be deemed to have been accepted.

10. If the Party objects to the intended modification or rectification, or to the proposed compensatory adjustment, the Parties shall seek to resolve the issue through consultations. If no agreement between the Parties is reached within 150 days

from the date of receipt of the notification of the objection, the Party intending to modify or rectify its commitments may have recourse to dispute settlement under Chapter 21 to determine whether the objection is justified. An intended modification or rectification in respect of which an objection has been submitted, shall be deemed to have been accepted only when so agreed through the consultations or so decided by the panel established pursuant to Article 21.7.

Article 10.15. Cooperation

The Parties shall endeavour to cooperate with a view to achieving enhanced understanding of their respective government procurement markets. The Parties also recognise that the involvement of related industries of the Parties, through means such as dialogues, is important for that purpose.

Article 10.16. Committee on Government Procurement

1. The Committee on Government Procurement established pursuant to Article 22.3 (hereinafter referred to in this Article as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) making recommendations to the Joint Committee to adopt decisions amending Part 2 of Annex 10 to reflect modifications or rectifications accepted pursuant to Article 10.14 or agreed compensatory adjustments;

(b) adopting modalities for the communication of statistical data pursuant to Article 10.13, if deemed necessary;

(c) considering matters regarding government procurement that are referred to it by a Party; and

(d) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party.

Article 10.17. Contact Points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Chapter 11. COMPETITION POLICY

Article 11.1. Principles

The Parties recognise the importance of fair and free competition in their trade and investment relations. The Parties acknowledge that anticompetitive practices have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment.

Article 11.2. Anticompetitive Practices

Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against anticompetitive practices, in order to achieve the objectives of this Agreement.

Article 11.3. Legislative and Regulatory Framework

1. Each Party shall maintain its competition law that applies to all enterprises in all sectors of the economy and which addresses, in an effective manner, the following anticompetitive practices:

(a) for the European Union:

(i) agreements between enterprises, decisions by associations of enterprises and concerted practices which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more enterprises of a dominant position; and

(iii) mergers or concentrations between enterprises which would significantly impede effective competition; and

(b) for Japan:

(i) private monopolisation;

(ii) unreasonable restraint of trade;

(iii) unfair trade practices; and

(iv) mergers or acquisitions which would substantially restrain competition in a particular field of trade.

2. Each Party shall apply its competition law to all enterprises, private or public, engaged in economic activities. This shall not prevent a Party from providing for exemptions from its competition law, provided that such exemptions are transparent and are limited to those necessary for securing public interest. Such exemptions shall not go beyond what is strictly necessary to achieve the public interest objectives that have been defined by that Party.

3. For the purposes of this Chapter, "economic activities" means those activities pertaining to the offering of goods and services in a market.

Article 11.4. Operational Independence

Each Party shall maintain an operationally independent authority which is responsible and competent for the effective enforcement of its competition law.

Article 11.5. Non-discrimination

When applying its competition law, each Party shall respect the principle of non-discrimination for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

Article 11.6. Procedural Fairness

When applying its competition law, each Party shall respect the principle of procedural fairness for all enterprises, irrespective of the nationality and type of ownership of the enterprises.

Article 11.7. Transparency

Each Party shall apply its competition law in a transparent manner. Each Party shall promote transparency in its competition policy.

Article 11.8. Enforcement Cooperation

1. To achieve the objectives of this Agreement and to contribute to the effective enforcement of the competition law of each Party, the Parties acknowledge that it is in their common interest to promote cooperation and coordination between the competition authorities with regard to developments in competition policy and enforcement activities, within the framework of the Agreement between the European Community and the Government of Japan concerning cooperation on anticompetitive activities, done at Brussels on 10 July 2003 (hereinafter referred to in this Chapter as "Agreement concerning cooperation on anticompetitive activities").

2. To facilitate the cooperation and coordination referred to in paragraph 1, the competition authorities of the Parties may exchange or otherwise communicate information, within the framework of the Agreement concerning cooperation on anticompetitive activities.

Article 11.9. Dispute Settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

Chapter 12. SUBSIDIES

Article 12.1. Principles

The Parties recognise that subsidies may be granted by a Party when they are necessary to achieve public policy objectives.

However, certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment. In principle, subsidies should not be granted by a Party when it finds that they have or could have a significant negative effect on trade or investment between the Parties.

Article 12.2. Definitions

For the purposes of this Chapter:

(a) "economic activities" means those activities pertaining to the offering of goods and services in a market;

(b) "subsidy" means a measure which fulfils mutatis mutandis the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the recipients of the subsidy deal in goods or services; and

(c) "specific subsidy" means a subsidy which is determined mutatis mutandis to be specific in accordance with Article 2 of the SCM Agreement.

Article 12.3. Scope

1. This Chapter applies to specific subsidies to the extent they are related to economic activities. (63)

2. This Chapter does not apply to subsidies granted to enterprises entrusted by the government with the provision of services to the general public for public policy objectives. Such exceptions from the rules on subsidies shall be transparent and shall not go beyond their targeted public policy objectives.

3. This Chapter does not apply to subsidies granted to compensate the damage caused by natural disasters or other exceptional occurrences.

4. Articles 12.5 and 12.6 do not apply to subsidies, the cumulative amounts or budgets of which are less than 450,000 special drawing rights (hereinafter referred to as "SDR") per beneficiary for a period of three consecutive years.

5. Articles 12.6 and 12.7 do not apply to subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture and subsidies related to trade in fish and fish products.

6. Article 12.7 does not apply to subsidies granted temporarily to respond to a national or global economic emergency. (64) Such subsidies shall be targeted, economical, effective and efficient in order to remedy the identified temporary national or global economic emergency.

7. This Chapter does not apply to audio-visual services.

8. Article 12.7 does not apply to subsidies granted by sub-central levels of government of each Party. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of the provisions of this Chapter by sub-central levels of government of that Party.

(63) For greater certainty, education provided under the domestic educational system of each Party shall be considered as a non-economic activity.

(64) For greater certainty, an emergency shall be understood as one that affects the whole economy of a Party. For the European Union, the whole economy of a Party means the whole economy of the European Union or at least of one of the Member States of the European Union

Article 12.4. Relation to the WTO Agreement

Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, Article XVI of GATT 1994 and Article XV of GATS.

Article 12.5. Notification

1. Each Party shall notify in English the other Party of the legal basis, form, amount or budget and, where possible, the name of the recipient of any specific subsidy granted or maintained (65) by the notifying Party, every two years from the date of entry into force of this Agreement. However, the first notification shall be made no later than three years after the date of entry into force of this Agreement.

2. If a Party makes publicly available on an official website the information specified in paragraph 1, the notification pursuant to paragraph 1 shall be deemed to have been made. If a Party notifies subsidies pursuant to Article 25.2 of the SCM Agreement, the Party shall be considered to have met the requirement of paragraph 1 with respect to such subsidies.

3. With regard to subsidies related to services, this Article only applies to the following sectors: architectural and engineering services, banking services, computer services, construction services, energy services, environment services, express delivery services, insurance services, telecommunication services and transport services.

(65) For the purposes of this paragraph, in the case of subsidies which have previously been notified, the information provided in updated notifications may be limited to indicating any modifications, or the absence thereof, from the previous notification.

Article 12.6. Consultations

1. In the event a Party considers that a subsidy of the other Party has or could have a significant negative effect on its trade or investment interests under this Chapter, the former Party may submit a request for consultation in writing. The Parties shall enter into consultations with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has or could have a significant negative effect on trade or investment between the Parties.

2. During the consultations, the Party receiving the request for consultation shall consider to provide information about the subsidy, if requested by the other Party, such as:

(a) the legal basis and policy objective or purpose of the subsidy;

(b) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;

(c) dates and duration of the subsidy and any other time limits attached to it;

(d) eligibility requirements of the subsidy;

(e) the total amount or the annual amount budgeted for the subsidy and the possibility of limiting the subsidy;

(f) where possible, the recipient of the subsidy; and

(g) any other information, including statistical data, permitting an assessment of the effects of the subsidy on trade or investment.

3. To facilitate the consultations, the requested Party shall provide relevant information on the subsidy in question in writing no later than 90 days after the date of receipt of the request referred to in paragraph 1.

4. In the event that any information referred to in paragraph 2 is not provided by the requested Party, that Party shall explain the absence of such information in its written response.

5. If the requesting Party, after the consultations, still considers that the subsidy has or could have a significant negative effect on its trade or investment interests under this Chapter, the requested Party shall accord sympathetic consideration to the concerns of the requesting Party. Any solution shall be considered feasible and acceptable by the requested Party.

Article 12.7. Prohibited Subsidies

The following subsidies of a Party that have or could have a significant negative effect on trade or investment between the Parties shall be prohibited:

(a) legal or other arrangements whereby a government or a public body is responsible for guaranteeing debts or liabilities of an enterprise, without any limitation as to the amount and duration of such guarantee; and

(b) subsidies for restructuring an ailing or insolvent enterprise without the enterprise having prepared a credible restructuring plan. Such a restructuring plan shall be prepared within a reasonable time period after such enterprise having received temporary liquidity support. (66) The restructuring plan shall be based on realistic assumptions with a view to ensuring the return to long-term viability of the ailing or insolvent enterprise within a reasonable time period. The enterprise itself or its owners shall contribute significant funds or assets to the costs of restructuring.

(66) For greater certainty, nothing in this Article prevents a Party from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to keep the enterprise in business for the time necessary to prepare a restructuring or

Article 12.8. Use of Subsidies

Each Party shall ensure that enterprises use subsidies only for the specific purpose for which the subsidies were granted.

Article 12.9. General Exceptions

For the purposes of this Chapter, Article XX of GATT 1994 and Article XIV of GATS are hereby incorporated into and made part of this Agreement, mutatis mutandis.

Article 12.10. Dispute Settlement

Paragraph 5 of Article 12.6 shall not be subject to dispute settlement under Chapter 21.

Chapter 13. STATE-OWNED ENTERPRISES, ENTERPRISES GRANTED SPECIAL RIGHTSOR PRIVILEGES AND DESIGNATED MONOPOLIES

Article 13.1. Definitions

For the purposes of this Chapter:

(a) "Arrangement" means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organisation for Economic Co-operation and Development (hereinafter referred to as "OECD") or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;

(b) "commercial activities" means activities which an enterprise undertakes with an orientation towards profit-making (67) and which results in the production of a good or the supply of a service, which will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;

(c) "commercial considerations" means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;

(d) "designate a monopoly" means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

(e) "designated monopoly" means an entity, including a consortium or a government agency, that in a relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

(f) "enterprise granted special rights or privileges" means an enterprise, public or private, including its subsidiaries, to which a Party has granted special rights or privileges; special rights or privileges are granted by a Party where it designates a limited number of enterprises authorised to supply a good or service, other than according to objective, proportional and non-discriminatory criteria, substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area under substantially equivalent conditions;

(g) "service supplied in the exercise of governmental authority" means a service supplied in the exercise of governmental authority as defined in GATS and, if applicable, in the Annex on Financial Services to GATS; and

(h) "state-owned enterprise" means an enterprise that is engaged in commercial activities in which a Party:

(i) directly owns more than 50 per cent of the share capital;

(ii) controls, directly or indirectly through ownership interests, the exercise of more than 50 per cent of the voting rights;

(iii) holds the power to appoint a majority of members of the board of directors or any other equivalent management body; or

(iv) has the power to legally direct the actions of the enterprise or otherwise exercises an equivalent degree of control in accordance with its laws and regulations.

(67) For greater certainty, activities undertaken by an enterprise which operates on a non-profit basis or a cost-recovery basis are not activities undertaken with an orientation towards profit-making.

Article 13.2. Scope

1. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, engaged in commercial activities. Where they engage both in commercial and non-commercial activities, only the commercial activities are covered by this Chapter.

2. This Chapter applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies at all levels of government.

3. This Chapter does not apply to situations where state-owned enterprises, enterprises granted special rights or privileges or designated monopolies act as procuring entities covered either under each Party's annexes to Appendix I to the GPA or under Part 2 of Annex 10 conducting procurement for governmental purposes and not with a view to commercial resale or with a view to use in the production of a good or in the supply of a service for commercial sale.

4. This Chapter does not apply to any service supplied in the exercise of governmental authority.

5. This Chapter does not apply to a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, if in any one of the three previous consecutive fiscal years the annual revenue derived from the commercial activities of the enterprise or monopoly concerned was less than 200 million SDR.

6. Article 13.5 does not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate, if that supply of financial services:

(a) supports exports or imports, provided that those services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

7. Article 13.5 does not apply to the sectors set out in paragraph 2 of Article 8.6.

8. Article 13.5 does not apply to the extent that a state-owned enterprise, an enterprise granted special rights or privileges or a designate monopoly of a Party makes purchases and sales of a good or a service pursuant to:

(a) any existing non-conforming measure in accordance with paragraph 1 of Article 8.12 and paragraph 1 of Article 8.18 that the Party maintains, continues, renews, amends or modifies as set out in its Schedule in Annex I to Annex 8-B; or

(b) any non-conforming measure by a Party in accordance with paragraph 2 of Article 8.12 and paragraph 2 of Article 8.18 with respect to sectors, subsectors, or activities as set out in its Schedule in Annex II to Annex 8-B.

Article 13.3. Relation to the WTO Agreement

The Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

Article 13.4. General Provisions

1. Without prejudice to the rights and obligations of each Party under this Chapter, nothing in this Chapter prevents a Party from establishing or maintaining a state-owned enterprise, granting an enterprise special rights or privileges or designating a monopoly.

2. Neither Party shall require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Chapter.

Article 13.5. Non-discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (b) or (c);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and

(ii) accords to a good or service supplied by a covered enterprise as defined in subparagraph (c) of Article 8.2 treatment no less favourable than it accords to a like good or a like service supplied by enterprises of entrepreneurs of the Party in the relevant market in the Party; and

(c) in its sale of a good or service:

(i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and

(ii) accords to a covered enterprise as defined in subparagraph (c) of Article 8.2 treatment no less favourable than it accords to enterprises of entrepreneurs of the Party in the relevant market in the Party. (68)

2. Subparagraphs 1(b) and (c) do not preclude a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions, including those relating to price, provided that such different terms or conditions are made in accordance with commercial considerations; or

(b) refusing to purchase or sell goods or services, provided that such refusal is made in accordance with commercial considerations.

(68) For greater certainty, this paragraph shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly as a means of its equity participation in another enterprise.

Article 13.6. Regulatory Framework

1. The Parties respect and make best use of relevant international standards including, inter alia, the OECD Guidelines on Corporate Governance of StateOwned Enterprises.

2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains is independent from, and not accountable to, any of the enterprises regulated by that body, and acts impartially (69) in like circumstances with respect to all enterprises regulated by that body, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies. (70)

3. Each Party shall apply its laws and regulations to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

(69) For greater certainty, the impartiality with which the body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that body

(70) For greater certainty, for those sectors in which the Parties have agreed to specific obligations relating to such a body in Chapter 8, the relevant provisions of Chapter 8 shall prevail.

Article 13.7. Information Exchange

1. A Party which has reason to believe that its interests under this Chapter are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly (hereinafter referred to in this Article as "the entity") of the other Party may request the other Party in writing to provide information on the commercial activities of the entity related to the carrying out of the provisions of this Chapter in accordance with paragraph 2.

2. The requested Party shall provide the following information, provided that the request includes an explanation of how the activities of the entity may be affecting the interests of the requesting Party under this Chapter and indicates which of the following information shall be provided:

(a) the organisational structure of the entity and its composition of the board of directors or of any other equivalent management body;

(b) the percentage of shares that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively own, and the percentage of voting rights that they cumulatively hold, in the entity;

(c) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, where such rights are different from those attached to the general common shares of the entity;

(d) a description of the government departments or public bodies which regulate the entity, a description of the reporting requirements imposed on it by those departments or public bodies, and the rights and practices, where possible, of those departments or public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of its board of directors or any other equivalent management body;

(e) annual revenue and total assets of the entity over the most recent three year period for which information is available;

(f) any exemptions, immunities and related measures from which the entity benefits under the laws and regulations of the requested Party; and

(g) any additional information regarding the entity that is publicly available, including annual financial reports and third party audits.

Article 13.8. General Exceptions

For the purposes of this Chapter, Article XX of GATT 1994 and Article XIV of GATS are hereby incorporated into and made part of this Agreement, mutatis mutandis.

Chapter 14. INTELLECTUAL PROPERTY

Section A. General Provisions

Article 14.1. Initial Provisions

1. In order to facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties and to increase the benefits from trade and investment, the Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and of the international agreements to which both Parties are party.

2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter.

3. For the purposes of this Chapter, "intellectual property" means all categories of intellectual property that are covered by Articles 14.8 to 14.39 of this Chapter or Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883 (hereinafter referred to as "the Paris Convention"). (71)

4. The objectives and principles set out in Part I of the TRIPS Agreement, in particular in Articles 7 and 8, shall apply to this Chapter, *mutatis mutandis*.

(71) For greater certainty, the Paris Convention shall be understood to be the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958, and at Stockholm on 14 July 1967 and as amended on 28 September 1979.

Article 14.2. Agreed Principles

Having regard to the underlying public policy objectives of domestic systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of, inter alia, transparency and non-discrimination, and taking into account the interests of relevant stakeholders including right holders and users.

Article 14.3. International Agreements

1. The provisions of this Chapter shall complement the rights and obligations of the Parties under other international agreements in the field of intellectual property to which both Parties are party.

2. The Parties affirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are party (72) at the date of entry into force of this Agreement, including the following:

(a) the TRIPS Agreement;

(b) the Paris Convention;

(c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "the Rome Convention");

(d) the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886 (hereinafter referred to as "the Berne Convention"); (73)

(e) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;

(f) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;

(g) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977;

(h) the International Convention for the Protection of New Varieties of Plants, done at Paris on 2 December 1961 (hereinafter referred to as "the 1991 UPOV Convention"); (74)

(i) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989; and

(j) the Patent Cooperation Treaty, done at Washington on 19 June 1970.

3. Each Party shall make all reasonable efforts to ratify or accede to the following multilateral agreements, if, by the date of entry into force of this Agreement, it is not already party to that agreement: (75)

(a) the Patent Law Treaty, adopted at Geneva on 1 June 2000;

(b) the Trademark Law Treaty, adopted at Geneva on 27 October 1994;

(c) the Singapore Treaty on the Law of Trademarks, adopted at Singapore on 27 March 2006;

(d) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;

(e) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012; and

(f) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013.

(72) The international agreements relating to intellectual property referred to in this paragraph include those to which the Member States of the European Union are party.

(73) For greater certainty, the Berne Convention shall be understood to be the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, completed at Paris on 4 May 1896, revised at Berlin on 13 November 1908, completed at Berne on 20 March 1914, revised at Rome on 2 June 1928, at Brussels on 26 June 1948, at Stockholm on 14 July 1967 and at Paris on 24 July 1971 and amended on 28 September 1979.

(74) For greater certainty, the 1991 UPOV Convention shall be understood to be the International Convention for the Protection of New Varieties of Plants of 2 December 1961 as revised at Geneva on 19 March 1991.

(75) For the European Union, this includes the ratification of or accession by the Member States to the multilateral agreements referred to in this paragraph.

Article 14.4. National Treatment

1. In respect of all categories of intellectual property covered by this Chapter, each Party shall accord to nationals (76) of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection (77) of intellectual property subject to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.

2. The obligations pursuant to paragraph 1 shall also be subject to the exceptions provided for in Article 5 of the TRIPS Agreement.

(76) For the purposes of this Article and Article 14.5, "nationals" has the same meaning as in the TRIPS Agreement.

(77) For the purposes of this Article and Article 14.5, "protection" includes matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article 14.5. Most-favoured-nation Treatment

Each Party shall immediately and unconditionally accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a third country with regard to the protection of intellectual property, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

Article 14.6. Procedural Matters and Transparency

1. Each Party shall make all reasonable efforts to promote efficiency and transparency in the administration of its intellectual property system.

2. For the purpose of providing an efficient administration of its intellectual property system, each Party shall take appropriate measures to enhance the efficiency of its administrative procedures concerning intellectual property rights in line with international standards.

3. For the purpose of further promoting transparency in the administration of its intellectual property system, each Party shall make all reasonable efforts to take appropriate available measures to:

(a) publish information on, and make available to the public information contained in the files on:

(i) applications for and grant of patents;

(ii) registrations of industrial designs;

(iii) registrations of trademarks and applications therefor;

(iv) registrations of new varieties of plants; and

(v) registrations of geographical indications;

(b) make available to the public information on measures taken by the competent authorities for the suspension of the release of goods infringing intellectual property rights as a border measure set out in Article 14.51;

(c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with regard to its intellectual property system; and

(d) make available to the public information on relevant laws and regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights.

Article 14.7. Promotion of Public Awareness Concerning Protection of Intellectual Property

Each Party shall take necessary measures to continue promoting public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Section B. Standards Concerning Intellectual Property

Subsection 1. Copyright and Related Rights

Article 14.8. Authors

Each Party shall provide for authors the exclusive right to authorise or prohibit:

(a) direct or indirect reproduction by any means and in any form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorisation of the author; and

(c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 14.9. Performers

Each Party shall provide for performers the exclusive right to authorise or prohibit:

(a) the fixation of their performances;

(b) direct or indirect reproduction by any means and in any form, in whole or in part, of fixations of their performances;

(c) the distribution to the public, by sale or otherwise, of fixations of their performances in phonograms; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorisation of the performer;

(d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

Article 14.10. Producers of Phonograms

Each Party shall provide for phonogram producers the exclusive right to authorise or prohibit:

(a) direct or indirect reproduction by any means and in any form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of their phonograms, including copies; each Party may determine the conditions under which the exhaustion of the right set out in this provision applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorisation of the producer of the phonogram; and

(c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Article 14.11. Broadcasting Organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

(a) the fixation of their broadcasts;

(b) the reproduction of fixations of their broadcasts;

(c) the making available to the public (78) of their broadcasts, by wire or wireless means, which is made in response to a request from a member of the public; (79)

(d) the rebroadcasting of their broadcasts by wireless means; and

(e) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; each Party may determine the conditions under which that exclusive right may be exercised.

(78) For greater certainty, for the European Union, this right is limited to situations where the request is made from a place and at a time individually chosen by a member of the public.

(79) For greater certainty, for Japan, this subparagraph shall be applied to the form of public transmission which occurs automatically in response to a request from the public, except for those which occur manually.

Article 14.12. Use of Phonograms

The Parties agree to continue discussion on adequate protection for the use of phonograms for all communication to the public, giving due consideration to the importance of international standards regarding protection for the use of phonograms.

Article 14.13. Term of Protection

1. The term of protection for rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after the author's death, irrespective of the date when the work is lawfully made available to the public. If the term of protection for those rights is counted on a basis other than the life of a natural person, such term shall be no less than 70 years after the work is lawfully made available to the public. Failing such making available within 70 years after the creation of the work, the term of protection shall be no less than 70 years from the work's creation.

2. The term of protection for rights of performers shall be no less than 50 years after the performance.

3. The term of protection for rights of producers of phonograms shall be no less than 70 years after the phonogram was

published. Failing such publication within at least 50 years from the fixation of the phonogram, the term of protection shall be no less than 50 years after the fixation was made. (80)

4. The term of protection for rights in broadcasts shall be no less than 50 years after the first transmission of the broadcast.

5. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.

(80) Each Party may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and producers of phonograms.

Article 14.14. Limitations and Exceptions

Each Party may provide for limitations or exceptions to the rights set out in Articles 14.8 to 14.12 only in certain special cases which neither conflict with a normal exploitation of the subject matter nor unreasonably prejudice the legitimate interests of the right holders, in accordance with the conventions and international agreements to which it is party.

Article 14.15. Artist's Resale Right In Works of Art

The Parties agree to exchange views and information on issues related to right to an interest in resale of an original work of art and the situation in this regard in the European Union and in Japan.

Article 14.16. Collective Management

The Parties:

(a) recognise the importance of promoting cooperation between their respective collective management organisations;

(b) agree to promote the transparency of collective management organisations; and

(c) endeavour to facilitate non-discriminating treatment by collective management organisations of right holders they represent either directly or via another collective management organisation.

Article 14.17. Protection of Existing Subject Matter

1. Each Party shall apply Article 18 of the Berne Convention and paragraph 6 of Article 14 of the TRIPS Agreement, mutatis mutandis, to works, performances and phonograms, and the rights in and protections afforded to those subject matters as required by this Sub-Section.

2. A Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

Subsection 2. Trademarks

Article 14.18. Rights Conferred by a Trademark

Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using (81) in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights nor shall they affect the possibility of a Party to make rights available on the basis of use.

(81) For the purpose of this Article, "using" such sign includes, at least, importing and exporting goods or packages of goods to which the sign is affixed.

Article 14.19. Exceptions

Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms (82) and may provide for other limited exceptions, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

(82) The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services in accordance with honest practices in industrial or commercial matters.

Article 14.20. Preparatory Acts Deemed as Infringement

With regard to labels and packaging, each Party shall provide that at least each of the following preparatory acts are deemed as an infringement of a registered trademark if the act has been performed without the consent of the registered trademark owner:

(a) the manufacture;

(b) the importation; and

(c) the presentation (83)

of labels or packaging bearing (84) a sign which is identical or similar to the registered trademark, for the purpose of using such sign or causing it to be used in the course of trade for goods or services which are identical or similar to those in respect of which the trademark is registered.

(83) For the purpose of this Article, the European Union considers "presentation" as offering or putting on the market and Japan considers "presentation" as assignment.

(84) For the purpose of this Article, for Japan, "bearing" means indicating.

Article 14.21. Well-known Trademarks

For the purpose of giving effect to the protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, the Parties affirm the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of the WIPO in 1999.

Subsection 3. Geographical Indications

Article 14.22. Scope

1. This Sub-Section applies to the recognition and protection of geographical indications for wines, spirits and other alcoholic beverages (85) as well as agricultural products (86) which originate in the Parties.

2. For the purposes of this Chapter, "geographical indications" means indications which identify a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

3. Geographical indications of a Party listed in Annex 14-B shall be protected by the other Party under this Agreement if they fall within the types of goods that the other Party protects in accordance with its laws and regulations as listed in Annex 14-A.

(85) For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "alcoholic beverages" means beverages containing one per cent of alcohol or more.

(86) For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "agricultural products" means agricultural, forestry and fishery products as well as foodstuffs excluding alcoholic beverages.

Article 14.23. System of Protection of Geographical Indications

1. Each Party shall establish or maintain a system for the registration (87) and protection of geographical indications in its territory.

2. The system referred to in paragraph 1 shall contain at least the following elements:

(a) an official means to make available to the public the list of registered geographical indications;

(b) an administrative process to verify that a geographical indication to be registered as referred to in subparagraph (a) identifies a good as originating in the territory of a Party, or a region or locality in that Party's territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(c) an opposition procedure that allows the legitimate interests of third parties to be taken into account; and

(d) a procedure for the cancellation (88) of the protection of a geographical indication, taking into account the legitimate interests of third parties and the users of the registered geographical indications in question. (89)

(87) For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "registration" and "register" respectively may be deemed to be synonymous with "designation" or "confirmation of protection" and "designate" or "confirm protection" under its relevant laws and regulations.

(88) For the purposes of this Sub-Section, with respect to the protection of geographical indications in Japan, "cancellation" may be deemed to be synonymous with "exemption from protection" under its relevant laws and regulations.

(89) Without prejudice to its laws and regulations on the system referred to in paragraph 1, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

Article 14.24. Lists of Geographical Indications

1. Following the completion of an opposition procedure and an examination of the geographical indications of the European Union listed in Section A of Part 1 and Section A of Part 2 of Annex 14B, Japan shall recognise that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by the European Union under the system referred to in Article 14.23. Japan shall protect those geographical indications in accordance with this Sub-Section.

2. Following the completion of an opposition procedure and an examination of the geographical indications of Japan listed in Section B of Part 1 and Section B of Part 2 of Annex 14-B, the European Union shall recognise that those indications are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and that they have been registered by Japan under the system referred to in Article 14.23. The European Union shall protect those geographical indications in accordance with this Sub-Section.

Article 14.25. Scope of Protection of Geographical Indications

1. Subject to Article 14.29 each Party shall, in respect of geographical indications of the other Party listed in Annex 14-B, provide the legal means for interested parties to prevent in its territory: (90)

(a) the use of a geographical indication identifying a good for a like good (91) not meeting the applicable requirement of specifications of geographical indication even if:

(i) the true origin of the good is indicated;

(ii) the geographical indication is used (92) in translation or transliteration; (93) or

(iii) the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation", or the like;

(b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and

(c) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Each Party may determine the practical conditions under which the homonymous geographical indications will be differentiated from each other in its territory, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

3. If a Party intends to protect, pursuant to an international agreement, a geographical indication of a third country which is homonymous with a geographical indication of the other Party which is protected under this Agreement, the former Party shall inform no later than on the date of the publication for opposition, the other Party of the opportunity to comment, provided that such opposition procedure for the relevant geographical indication of the third country to be protected commences after the date of entry into force of this Agreement.

4. In the opposition procedure and examination referred to in Article 14.24, each Party may consider the following grounds on which that Party shall not be required to protect a name as a geographical indication in Annex 14-B:

(a) that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the good; and

(b) that name is the term customary in common language as the common name for the good concerned.

5. Notwithstanding the specifications of geographical indication referred to in subparagraph 1(a), for a period of seven years from the date of entry into force of this Agreement, the protection provided for under this Sub-Section for a particular geographical indication of the European Union as listed in Annex 14-B shall not preclude, with regard to the good identified with such geographical indication, the possibility that operations comprised of grating, slicing and packaging, including cutting into portions and inner packaging, could be carried out within the territory of Japan, provided that such good is destined for the Japanese market and not for the purpose of re-exportation.

6. The Parties shall review the implementation of the provisions of paragraph 5 no later than three years after the date of entry into force of this Agreement with a view to reaching a mutually acceptable solution before the end of the seven-year period referred to in that paragraph.

(90) For the purpose of paragraph 1, and notwithstanding Sub-Section 2 of Section C, each Party may provide for enforcement by administrative action.

(91) For the purposes of this paragraph, paragraph 4 of Article 14.27 and paragraphs 1 and 2 of Article 14.29, "like good", in relation to a good for which a geographical indication has been protected in a Party's system as referred to in paragraph 2 of Article 14.23, means a good that would fall within the same category of good as the good for which a geographical indication has been registered in that Party.

(92) For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the protected name and the translated or transliterated term

(93) For the purposes of this Sub-Section, transliteration covers the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

Article 14.26. Scope of the Use of Geographical Indications

1. Any person may use any geographical indication protected under this Sub-Section provided that such use is related to the goods as identified by that geographical indication and in compliance with the scope of protection under this Agreement.

2. Once a geographical indication of a Party is protected under this Agreement in the other Party, the legitimate use of such protected name shall not be subject to any user registration or further charges in the other Party.

Article 14.27. Relationship with Trademarks

1. If a geographical indication is protected under this Sub-Section, each Party shall refuse to register a trademark the use

of which would be likely to mislead as to the quality of the good, provided that an application to register the trademark is submitted after the applicable date for protection of the geographical indication in the territory concerned (94) as referred to in paragraphs 2 and 3. Trademarks registered in breach of this paragraph shall be invalidated.

2. For geographical indications referred to in Article 14.24 and listed in Annex 14-B on the date of entry into force of this Agreement, the applicable date for protection shall be the date of entry into force of this Agreement.

3. For geographical indications referred to in Article 14.30 and not listed in Annex 14-B on the date of entry into force of this Agreement, the applicable date for protection shall be the date on which the amendment to Annex 14-B enters into force.

4. The Parties acknowledge that the existence of a prior conflicting trademark in a Party would not completely preclude the protection under this Agreement of a subsequent geographical indication for like goods in that Party. (95)

5. If a trademark has been applied for or registered in good faith, or if rights to a trademark have been acquired through use in good faith, in a Party, before a geographical indication is protected under this Agreement in that Party, measures adopted to implement this Sub-Section shall not prejudice the eligibility for or the validity of the registration of the trademark, or the right to use the trademark, on the basis that such a trademark is identical with, or similar to, the geographical indication.

(94) For the purpose of paragraph 1, the examination of the trademark application which is filed in a Party after the date of entry into force of this Agreement or the date of publication for opposition of a geographical indication referred to in Article 14.24, whichever is later, shall take into account the publication for opposition of the geographical indication.

(95) The competent authorities may require certain conditions for the protection of a geographical indication which conflicts with a prior existing trademark.

Article 14.28. Enforcement of Protection

Each Party shall authorise its competent authorities to take appropriate measures ex officio or on request of an interested party in accordance with its laws and regulations to protect geographical indications listed in Annex 14-B.

Article 14.29. Exceptions

1. Notwithstanding paragraph 1 of Article 14.25, a Party shall prevent maintaining the prior use in its territory of a particular geographical indication of the other Party listed in Annex 14-B identifying an agricultural product for a like good in connection with goods or services after a transitional period of a maximum of seven years from the date of the protection by the former Party of the said geographical indication. Goods produced in the former Party and concerned by such uses shall bear clear and visible indication of the true geographical origin.

2. Notwithstanding paragraph 1 of Article 14.25, except when paragraph 4 of Article 24 of the TRIPS Agreement is applicable, a Party shall prevent maintaining the prior use in its territory of a particular geographical indication of the other Party listed in Annex 14-B identifying wine, spirit or other alcoholic beverage for a like good in connection with goods or services after a transitional period of a maximum of five years from the date of the protection by the former Party of the said geographical indication. Goods produced in the former Party and concerned by such uses shall bear clear and visible indication of the true geographical origin.

3. Each Party may determine the practical conditions under which such use referred to in paragraphs 1 and 2 will be differentiated from the geographical indication in its territory, taking into account the need to ensure that consumers are not misled.

4. The transitional period referred to in paragraph 1 shall not apply if the use of the geographical indication for the good concerned which is produced in the territory of the other Party as referred to in paragraph 1 does not comply with the relevant laws and regulations as listed in Annex 14-A applicable in the territory of that Party.

5. Nothing in this Sub-Section shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

Article 14.30. Amendment of the Lists of Geographical Indications

1. The Parties agree on the possibility to amend the lists of geographical indications in Annex 14-B in accordance with paragraphs 3 and 4 of Article 14.53 after having completed the opposition procedure and after having examined the geographical indications as referred to in Article 14.24 to the satisfaction of both Parties.

2. Paragraph 4 of Article 14.25 applies as regards the addition of a name to be protected as a geographical indication in Annex 14-B.

3. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in accordance with the laws and regulations of the other Party. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of the Party of origin.

4. On request of a Party, the Parties shall hold consultations for the amendment of Annex 14-B as regards any matter affecting the continuation of the protection of the geographical indications listed in that Annex with a view to reaching a mutually acceptable solution.

Subsection 4. Industrial Designs

Article 14.31. Industrial Designs (96)

1. Each Party shall provide for the protection of independently created industrial designs that are new and original, including designs of a part of a product, (97) regardless of whether or not the part can be separated from the product. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Article.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and original in the following circumstances: (98)

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use (99)of the latter, and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

3. Each Party may provide limited exceptions to the protection of industrial designs in a manner consistent with paragraph 2 of Article 26 of the TRIPS Agreement.

4. The provisions of this Article shall be without prejudice to any provisions of this Chapter or of the laws and regulations of each Party relating to other intellectual property including unregistered appearances of products, trademarks or other distinctive signs and patents.

5. Each Party shall ensure that an owner of a protected industrial design has at least the right to prevent third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.

6. Each Party shall provide that an applicant for an industrial design registration may request the competent authority to maintain the design unpublished for a period designated by the applicant not exceeding the period provided for in its laws and regulations.

7. Each Party shall ensure that the total term of protection available for industrial designs is no less than 20 years.

(96) For the purpose of this Sub-Section, for the European Union, "industrial designs" refers to registered designs.

(97) For the purposes of this paragraph and paragraph 2, for Japan, "product" shall be interpreted as "article".

(98) As an alternative to the circumstances provided for in subparagraphs (a) and (b), a Party may consider a design applied to or incorporated in a product which constitutes a component part of a complex product to be new and original in circumstances in accordance with its laws and regulations.

(99) For the purpose of this paragraph, "normal use" shall mean use by the end user, excluding maintenance, servicing or repair work

Subsection 5. Unregistered Appearance of Products

Article 14.32. Unregistered Appearance of Products

1. The Parties recognise that the appearance of products may be protected through industrial designs, copyright or unfair competition prevention legislation.

2. Each Party shall provide legal means to prevent the use of the unregistered appearance of a product, if such use results from copying the unregistered appearance of the product to the extent provided by its laws and regulations. Such use shall at least cover offering for sale, putting on the market, importing or exporting the product. (100)

3. The duration of protection available for the unregistered appearance of a product shall amount to at least three years according to the respective laws and regulations of the Parties.

(100) For the purpose of this Article, "copying", "appearances", "offering", and "putting on the market" may be deemed by a Party to be synonymous with "imitating", "configuration", "displaying" and "selling", respectively.

Subsection 6. Patents

Article 14.33. Patents

1. Each Party shall ensure that a patent confers on its owner exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, using, offering for sale, (101) selling or importing for these purposes that product; and

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from using the process, and from using, offering for sale, selling or importing for these purposes at least the product obtained directly by that process.

2. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

3. The Parties recognise the importance of providing a unitary patent protection system including a unitary judicial system in their respective territory.

4. The Parties shall continue to cooperate to enhance international substantive patent law harmonisation, inter alia on grace period, prior user rights and publication of pending patent applications.

5. The Parties shall give due consideration to the cooperation for enhancing mutual utilisation of search and examination results, such as that based upon the Patent Cooperation Treaty and any other utilisation (102), so as to allow applicants to obtain patents in an efficient and expeditious manner, without prejudice to their respective substantive patent examination.

(101) For the purpose of this paragraph, "offering for sale" may include exporting

(102) Such utilisation may include that based upon the Patent Prosecution Highway

Article 14.34. Patents and Public Health

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the WTO Ministerial Conference. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with that Declaration.

2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and contribute to its implementation.

Article 14.35. Extension of the Period of Protection Conferred by a Patent on Pharmaceutical Products and Agricultural Chemical Products (103) (104)

With respect to the patents which are granted for inventions related to pharmaceutical products or agricultural chemical products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for a period during which a patented invention cannot be worked due to marketing approval process. As of the date of signing of this Agreement, the maximum compensatory term is stipulated as being five years (105) by the relevant laws and regulations of each Party.

(103) For the European Union, "pharmaceutical products" refers in this Article to medicinal products as defined in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

(104) For the European Union, "agricultural chemical products" refers in this Article to plant protection products as defined in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

(105) For the European Union, a further six months extension is possible in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

Subsection 7. Trade Secrets and Undisclosed Tests or other Data

Article 14.36. Scope of Protection of Trade Secrets

1. Each Party shall ensure in its laws and regulations adequate and effective protection of trade secrets in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.

2. For the purposes of this Article and Sub-Section 3 of Section C:

(a) "trade secret" means information that:

(i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) has commercial value because it is secret; and

(iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret; and

(b) "trade secret holder" means any person lawfully in control of a trade secret.

3. For the purposes of this Article and Sub-Section 3 of Section C, each Party shall provide, in accordance with its laws and regulations, that at least the following conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by wrongful means, or, alternatively, unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in subparagraph (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder; and

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition,

use or disclosure, knew or ought, under the circumstances, to have known (106) that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b), including when a person induced another person to carry out the actions referred to in subparagraph (b).

4. Nothing in this Sub-Section shall require a Party to consider any of the following conduct as contrary to honest commercial practices or subject those conducts to the measures, procedures, and remedies referred to in Sub-Section 3 of Section C:

(a) independent discovery or creation by a person of the relevant information;

(b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(c) acquisition, use or disclosure of information required or allowed by its relevant laws and regulations;

(d) use by employees of their experience and skills honestly acquired in the normal course of their employment; or

(e) disclosure of information in the exercise of the right to freedom of expression and information.

(106) For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

Article 14.37. Treatment of Test Data In Marketing Approval Procedure

1. Each Party shall prevent applicants for marketing approval for pharmaceutical products (107) which utilise new active pharmaceutical ingredients from relying on or referring to undisclosed test or other data submitted to its competent authority by the first applicant for a certain period of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws and regulations of each Party.

2. If a Party requires as a condition for approving the marketing of agricultural chemical products (108) which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either:

(a) prevented from relying on or referring to such data submitted to its competent authority by the first applicant for a period of at least 10 years counted from the date of approval of that application; or

(b) generally required to submit a full set of test data, even in cases where there was a prior application for the same product, for a period of at least 10 years, counted from the date of approval of a prior application.

(107) For the European Union, "pharmaceutical products" refers in this Article to medicinal products as defined in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

(108) For the European Union, "agricultural chemical products" refers in this Article to plant protection products as defined in Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

Subsection 8. New Varieties of Plants

Article 14.38. New Varieties of Plants

Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention.

Subsection 9. Unfair Competition

Article 14.39. Unfair Competition

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris

Convention (109).

2. In connection with the respective systems of the European Union and Japan for the management of their country-code top-level domain (ccTLD) domain names (110) appropriate remedies (111) shall be available, in accordance with their respective laws and regulations, at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

3. Each Party shall provide for effective protection against unauthorised use of trademarks through the implementation of paragraph 2 of Article 6septies of the Paris Convention.

(109) For greater certainty, it is understood by the Parties that Article 10bis of the Paris Convention covers acts of unfair competition in relation to the supply of services in accordance with their respective laws and regulations

(110) For greater certainty, for the European Union, this paragraph applies only to ".eu" domain names.

(111) The Parties understand that such remedies may include, among other things, revocation, cancellation and transfer of the registered domain name, injunctive relief against the person that registered or holds the registered domain name and against the domain name registry, or damages against the person that registered or holds the domain name.

Section C. Enforcement

Subsection 1. General Provisions

Article 14.40. Enforcement – General

1. The Parties affirm their commitments under the TRIPS Agreement and in particular Part III thereof. Each Party shall provide for the following complementary measures, procedures and remedies (112) necessary to ensure the enforcement of intellectual property rights. The measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. The measures, procedures and remedies referred to in paragraph 1 shall be effective, proportionate and dissuasive (113) and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. Each Party shall make all reasonable efforts to:

(a) encourage the establishment of public or private advisory groups to address issues of at least counterfeiting and piracy; and

(b) ensure internal coordination among, and facilitate joint actions by, its competent authorities concerned with enforcement of intellectual property rights, subject to their available resources.

(112) Without prejudice to the civil and administrative measures, procedures and remedies laid down in this Chapter, a Party may provide for other appropriate sanctions in cases where intellectual property rights have been infringed.

(113) For the purpose of this Article, "dissuasive" may be deemed by a Party to be synonymous with "deterrent" under Article 41 of the TRIPS Agreement.

Article 14.41. Entitled Applicants

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section:

(a) the holders of intellectual property rights in accordance with its laws and regulations;

(b) the trade secret holders referred to in Article 14.36; and

(c) all other persons and entities, as far as permitted by and in accordance with its laws and regulations.

Subsection 2. Enforcement – Civil Remedies (114) (115)

Article 14.42. Measures for Preserving Evidence

1. The judicial authorities of each Party shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, in accordance with procedures which ensure the protection of confidential information as appropriate.

2. The judicial authorities of each Party shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

3. In cases of intellectual property rights infringements, each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, materials and implements relevant to the act of infringement and of documentary evidence, either originals or copies thereof, relevant to the act of infringement.

(114) This Sub-Section applies for intellectual property rights described in Sub-Sections 1 to 9 of Section B, excluding Sub-Section 7

(115) For Japan, civil enforcement for geographical indications will be provided within the scope of Article 10bis of the Paris Convention and Article 22 of the TRIPS Agreement.

Article 14.43. Right of Information

Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer to provide the right holder or the judicial authorities, at least for the purpose of collecting evidence with relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons allegedly involved in the production and distribution of such goods or services and of their channels of distribution.

Article 14.44. Provisional and Precautionary Measures

1. Each Party shall ensure that its judicial authorities may, on request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by its laws and regulations, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions where appropriate, against a third party (116) over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

(116) For the purpose of this Article, a Party may provide that a "third party" includes an intermediary.

Article 14.45. Corrective Measures

1. Each Party shall ensure that its judicial authorities may order, on request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, at least the definitive removal from the channels of commerce, or the destruction, except in exceptional circumstances, of goods that they have found to be infringing an intellectual property right, without compensation of any sort. If appropriate, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article 14.46. Injunctions

Each Party shall ensure that, if a judicial decision finds an infringement of an intellectual property right, its judicial authorities may issue an injunction aimed at prohibiting the continuation of the infringement against the infringer as well as, where appropriate, against a third party (117) over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

(117) For the purpose of this Article, a Party may provide that a "third party" includes an intermediary.

Article 14.47. Damages

1. Each Party shall provide that in civil judicial proceedings its judicial authorities have the authority to order an infringer who, knowingly or with reasonable grounds to know, engaged in activities infringing intellectual property rights to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.

2. In determining the amount of damages for infringements of intellectual property rights, judicial authorities of each Party may consider, inter alia, any legitimate measure of value that may be submitted by the right holder, which may include lost profits.

3. A Party may provide in its laws and regulations presumptions (118) for determining the amount of damages referred to in paragraph 1.

(118) This may include a presumption that the amount of damage is: (a) at least the amount that the right holder would have been entitled to receive for the exercise of his or her intellectual property rights, which may include reasonable royalty, to compensate a right holder for the unauthorised use of his or her intellectual property; (b) the profits earned by the infringer from the act of infringement; or (c) the quantity of the goods infringing the right holder's intellectual property rights and actually transferred to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act ofinfringement.

Article 14.48. Costs

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringements of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under its laws and regulations.

Article 14.49. Presumption of Authorship or Ownership

1. Each Party shall ensure that it is sufficient for the name of an author of a literary or artistic work to appear on the work in the usual manner in order for that author to be regarded as such, unless there is a proof to the contrary, and consequently to be entitled to institute infringement proceedings.

2. A Party may apply paragraph 1 mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Subsection 3. Enforcement of Protection Against Misappropriation of Trade Secrets

Article 14.50. Civil Procedures and Remedies

1. Each Party shall provide for appropriate civil judicial procedures and remedies for a trade secret holder to prevent, and

obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. Each Party shall provide, in accordance with its laws and regulations, that its judicial authorities have the authority to order that the parties, their lawyers and other persons concerned in the relevant civil judicial proceedings, are not permitted to use or disclose any trade secret or alleged trade secret which the judicial authorities have identified as confidential (119), in response to a duly reasoned application by an interested party and of which these parties, lawyers and other persons have become aware as a result of their participation in such civil judicial proceedings.

3. In the relevant civil judicial proceedings each Party shall provide that its judicial authorities have at least the authority to:

(a) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order the person that knew or ought to have known (120) that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

(c) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil judicial proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with its laws and regulations, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of a judicial decision in which the passages containing trade secrets have been removed or redacted; and

(d) impose sanctions on the parties, their lawyers and other persons concerned in the civil judicial proceedings for violation of judicial orders referred to in paragraph 2 concerning the protection of a trade secret or alleged trade secret produced in those proceedings.

4. A Party shall not be required to provide for the civil judicial procedures and remedies referred to in paragraph 1 when conduct contrary to honest commercial practices is carried out, in accordance with its relevant laws and regulations, to reveal misconduct, wrongdoing or illegal activity or to protect a legitimate interest recognised by law.

(119) For greater certainty, a Party may provide that its judicial authorities may identify a trade secret as confidential through a protective order.

(120) For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

Subsection 4. Enforcement – Border Measures

Article 14.51. Enforcement – Border Measures

1. With respect to goods imported or exported (121), each Party shall adopt or maintain procedures under which a right holder may submit applications requesting its customs authority to suspend the release of or detain goods suspected of infringing trademarks, copyrights and related rights, geographical indications (122), patents, utility models, industrial designs, and plant variety rights (hereinafter referred to in this Article as "suspect goods") in its customs territory.

2. Each Party shall have in place electronic systems for the management by its customs authority of the applications referred to in paragraph 1 once they have been granted or recorded.

3. The customs authority of each Party shall decide on granting or recording the applications referred to in paragraph 1 within a reasonable period of time from the submission of the applications.

4. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

5. With respect to goods imported or exported, customs authority of each Party shall have the authority to act upon its own initiative to suspend the release of or detain suspect goods in the customs territory of that Party. (123)

6. Article 4.9 covers detection of suspect goods referred to in this Article.

7. Without prejudice to its laws and regulations relating to the privacy or confidentiality of information, a Party may

authorise its customs authority to provide a right holder with information about goods, including a description and the quantities thereof, and if known, the name and address of the consignor, importer, exporteror consignee, and the country of origin of the goods, whose release has been suspended, or which have been detained.

8. A Party may adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraphs 1 and 5, whether the suspect goods are infringing. In such case, the competent authorities shall have the authority to order the destruction of goods following a determination that the goods are infringing. A Party may have in place procedures allowing for the destruction of suspect goods without there being any need for the formal determination on the infringement, where the persons concerned agree or do not oppose to destruction.

9. If a Party requests right holders to bear the costs actually incurred for the storage or destruction of the goods whose release has been suspended, or which have been detained in accordance with paragraphs 1 and 5, those costs shall correspond to the services rendered for the storage or destruction of the goods.

10. There shall be no obligations to apply this Article to the import of goods put on the market in another country by or with the consent of the right holder. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

11. Consultations referred to in paragraph 4 of Article 4.3 shall also deal with the border measures by the customs authority of each Party under this Article.

12. The customs authorities of the Parties may cooperate on border measures against infringements of intellectual property covered by this Sub-Section.

13. Without prejudice to the responsibilities of the Committee on Intellectual Property referred to in Article 14.53, the Committee on Rules of Origin and Customs-Related Matters referred to in Article 4.14 may consider the possibility of cooperation on the following:

(a) exchanging general information regarding seizures of infringing goods or suspect goods; and

(b) holding a dialogue on specific topics of common interest concerning:

(i) general information regarding the use of risk management systems in the detection of suspect goods; and

(ii) general information regarding risk analysis in the fight against infringing goods.

(121) For the purpose of this Article, "goods imported or exported" means, for the European Union, goods under customs control, being brought into or taken out from its customs territory or being there in temporary storage, placed under a customs procedure or re-exported.

(122) With respect to geographical indications, Japan may comply with the obligations set out in this Article by providing for administrative measures to prevent the release into its domestic market of suspect goods by its appropriate competent authorities, in accordance with its laws and regulations

(123) For the purpose of this paragraph, Japan may provide for penalties to be applied in cases of customs transit or transhipment of infringing goods. For that purpose, (a) "customs transit" means the customs procedure under which goods are transported under customs control from one customs office to another; and (b) "transhipment" means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

Section D. Cooperation and Institutional Arrangements

Article 14.52. Cooperation

1. The Parties, recognising the growing importance of the protection of intellectual property in further promoting trade and investment between them, shall cooperate on intellectual property, including by exchange information on relations of a Party with third countries on matters concerning intellectual property, in accordance with their respective laws and regulations and subject to their available resources.

2. For the purpose of paragraph 1, cooperation may include exchange of information, sharing of experiences and skills and any other form of cooperation or activities as may be agreed between the Parties. Such cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) intellectual property issues relevant to:

(i) small and medium-sized enterprises;

(ii) science, technology and innovation activities; and

(iii) the generation, transfer and dissemination of technology;

(e) policies involving the use of intellectual property for research, innovation and economic growth;

(f) the implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of the WIPO;

(g) technical assistance for developing countries;

(h) best practices, projects and programmes related to the fight against infringements of intellectual property rights; and

(i) exploration of the possibility for further work on common efforts against infringements of intellectual property rights worldwide.

3. The Parties shall seek to cooperate with regard to activities for improving the international intellectual property regulatory framework, including by encouraging further ratification of existing international agreements and by fostering international harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the WTO and the WIPO.

Article 14.53. Committee on Intellectual Property

1. The Committee on Intellectual Property established pursuant to Article 22.3 (hereinafter referred to in this Article as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) exchanging information on legislative and policy developments on geographical indications and on any other matter of mutual interest in the area of geographical indications, including any matter arising from applicable requirements of specifications of geographical indications listed in Annex 14-B with respect to their protection under this Agreement;

(c) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property systems;

(d) reporting its findings and the outcomes of its discussions to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.

3. The Committee shall make recommendations to the Joint Committee on amendments to Annex 14-A and Annex 14-B on request of a Party.

4. Each Party shall examine any request of the other Party concerning the amendment of Annex 14-B, in accordance with Article 14.30.

5. The Committee may invite representatives of relevant entities other than the Parties, including from the private sector, with the necessary expertise relevant to the issues to be discussed.

Article 14.54. Security Exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is hereby incorporated into and made part of this Agreement, mutatis mutandis.

Article 14.55. Dispute Settlement

Article 14.52 shall not be subject to dispute settlement under Chapter 21.

Chapter 15. CORPORATE GOVERNANCE

Article 15.1. Objectives

1. The Parties acknowledge the importance of an effective corporate governance framework to achieve economic growth through well-functioning markets and sound financial systems based on transparency, efficiency, trust and integrity.

2. Each Party shall take appropriate measures to develop an effective corporate governance framework within its territory, recognising that those measures will attract and encourage investment by enhancing investor confidence and improving competitiveness, thus enabling best advantage to be taken of the opportunities granted by their respective market access commitments.

3. Without limiting the ability of each Party to develop its own legal, institutional and regulatory framework in relation to the corporate governance of publicly listed companies, the Parties commit to respect the principles and adhere to the provisions of this Chapter to the extent that they facilitate access to each other's markets as provided for in this Agreement.

4. The Parties shall cooperate on matters relating to the development of an effective corporate governance framework which fall within the scope of this Chapter.

Article 15.2. Definitions

For the purposes of this Chapter:

(a) "board" means the governing body of a publicly listed company with a decision-making authority on the oversight of the operations of the company, whose members (directors) are elected, normally by the shareholders of the company, to govern the company;

(b) "corporate governance" means the set of relationships between a company's management, its board, its shareholders and other stakeholders; it also provides the structure through which a company is managed and controlled, notably by determining how the objectives of the company are set and the means of attaining those objectives, as well as by monitoring performance;

(c) "corporate governance framework" of a Party means the principles and rules of a binding or non-binding nature regarding the corporate governance of publicly listed companies, as applicable according to the competences and legislation of that Party; and

(d) "publicly listed company" means a legal person whose shares are listed or quoted for public trading on a stock market or regulated market of a Party as defined in the legislation of that Party.

Article 15.3. General Principles

1. The Parties recognise the importance of the role of the corporate governance framework in providing timely and accurate disclosure on all material matters regarding publicly listed companies within their respective jurisdictions, including the financial situation, performance, ownership and governance of those companies.

2. The Parties also recognise the importance of the role of the corporate governance framework in providing appropriate accountability of the management and the board towards the shareholders, responsible board decision making based on an independent and objective standpoint, and equal treatment of shareholders of the same class.

3. For greater certainty, the provisions of the corporate governance framework of a Party referred to in Articles 15.4 and 15.5 may be implemented either through legally binding mechanisms or through non-binding means such as on a comply or explain basis.

4. A Party may provide that some corporate governance principles or rules do not apply to certain companies (124) in cases justified by objective and non-discriminatory criteria such as early phase of development or size of the company.

(124) Companies listed outside regulated market are examples of companies that the European Union may exclude from the application of some corporate governance principles and rules.

Article 15.4. Rights of Shareholders and Ownership Functions

1. The corporate governance framework of each Party shall include provisions aiming at protecting and facilitating the effective exercise of shareholders' rights in publicly listed companies. Those rights include, where applicable, participation and voting in the general meeting as well as election and removal of members of the board in accordance with the corporate governance structure of the company with a view to allowing shareholders to oversee board behaviour (125) and participate in important decision making of the company.

2. The corporate governance framework of each Party shall include provisions aiming at encouraging disclosure of information regarding the control of a company which can be valuable and useful to investors. That information includes, for instance, the capital structure, with an indication of the different classes of shares where appropriate, direct and indirect shareholdings which are considered to be significant, and special control rights.

(125) For greater certainty, "to oversee board behaviour" does not require the daily oversight of the board's operation by the shareholders.

Article 15.5. Roles of the Board

The corporate governance framework of each Party shall include provisions aiming at the following, so that such framework will promote responsible board decision-making:

(a) the effective monitoring of management by the board from an independent and objective standpoint, which can be achieved, for instance, through the effective use of a sufficient number of independent directors; (126)

(b) ensuring board accountability to the shareholders; and

(c) ensuring sufficient disclosure of information relevant to investors, for instance with respect to board composition, board committees and independence of directors.

(126) Each Party may determine in its jurisdiction what constitutes a "sufficient number of independent directors" in either qualitative or quantitative terms.

Article 15.6. Takeovers

Each Party shall provide rules and procedures governing takeovers in publicly listed companies. Such rules and procedures shall aim at enabling those transactions to occur at transparent prices and under fair conditions.

Article 15.7. Dispute Settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

Chapter 16. TRADE AND SUSTAINABLE DEVELOPMENT

Article 16.1. Context and Objectives

1. The Parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development, for the welfare of present and future generations, taking into consideration the Agenda 21 adopted by the United Nations Conference on Environment and Development on 14 June 1992, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted by the International Labour Conference on 18 June 1998, the Plan of Implementation adopted by the World Summit on Sustainable Development on 4 September 2002, the Ministerial Declaration entitled "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" adopted by the Economic and Social Council of the United Nations on 5 July 2006, the ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference on 10 June 2008, the outcome document of the United

Nations Conference on Sustainable Development, entitled "The future we want" adopted by the General Assembly of the United Nations on 27 July 2012, and the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled "Transforming our world: the 2030 Agenda for Sustainable Development" adopted by the General Assembly of the United Nations on 25 September 2015.

2. The Parties recognise the contribution of this Agreement to the promotion of sustainable development, of which economic development, social development and environmental protection are mutually reinforcing components. The Parties further recognise that the purpose of this Chapter is to strengthen the trade relations and cooperation between the Parties in ways that promote sustainable development, and is not to harmonise the environment or labour standards of the Parties.

Article 16.2. Right to Regulate and Levels of Protection

1. Recognising the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic environmental and labour protection, and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitments to the internationally recognised standards and international agreements to which the Party is party, each Party shall strive to ensure that its laws, regulations and related policies provide high levels of environmental and labour protection and shall strive to continue to improve those laws and regulations and their underlying levels of protection.

2. The Parties shall not encourage trade or investment by relaxing or lowering the level of protection provided by their respective environmental or labour laws and regulations. To that effect, the Parties shall not waive or otherwise derogate from those laws and regulations or fail to effectively enforce them through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.

3. The Parties shall not use their respective environmental or labour laws and regulations in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on international trade.

Article 16.3. International Labour Standards and Conventions

1. The Parties recognise full and productive employment and decent work for all as key elements to respond to economic, labour and social challenges. The Parties further recognise the importance of promoting the development of international trade in a way that is conducive to full and productive employment and decent work for all. In that context, the Parties shall exchange views and information on trade-related labour issues of mutual interest in the meetings of the Committee on Trade and Sustainable Development established pursuant to Article 22.3, and as appropriate in other fora.

2. The Parties reaffirm their obligations deriving from the International Labour Organisation (hereinafter referred to as "ILO") membership. (127) The Parties further reaffirm their respective commitments with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. Accordingly, the Parties shall respect, promote and realise in their laws, regulations and practices the internationally recognised principles concerning the fundamental rights at work, which are:

(a) the freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

3. Each Party shall make continued and sustained efforts on its own initiative to pursue ratification of the fundamental ILO Conventions and other ILO Conventions which each Party considers appropriate to ratify.

4. The Parties shall exchange information on their respective situations as regards the ratification of ILO Conventions and Protocols, including the fundamental ILO Conventions.

5. Each Party reaffirms its commitments to effectively implement in its laws, regulations and practices ILO Conventions ratified by Japan and the Member States of the European Union respectively.

6. The Parties recognise that the violation of the internationally recognised principles concerning the fundamental rights at work referred to in paragraph 2 cannot be invoked or otherwise used as a legitimate comparative advantage, and that labour standards should not be used for protectionist trade purposes.

(127) For the European Union, "ILO membership" means the ILO membership of the Member States of the European Union.

Article 16.4. Multilateral Environmental Agreements

1. The Parties stress the importance of multilateral environmental agreements, in particular those to which both Parties are party, as a means of multilateral environmental governance for the

international community to address global or regional environmental challenges. The Parties further stress the importance of achieving mutual supportiveness between trade and environment. In this context, the Parties shall exchange views and information on trade-related environmental matters of mutual interest in the meetings of the Committee on Trade and Sustainable Development, and as appropriate in other fora.

2. Each Party reaffirms its commitment to effectively implement in its laws, regulations and practices the multilateral environmental agreements to which it is party.

3. Each Party shall exchange information with the other Party on its respective situation and advancements regarding ratification, acceptance or approval of, or accession to, multilateral environmental agreements, including their amendments, which each Party considers appropriate to be bound by, as well as implementation of such agreements.

4. The Parties recognise the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992 (hereinafter referred to as "UNFCCC"), in order to address the urgent threat of climate change, and the role of trade to that end. The Parties reaffirm their commitments to effectively implement the UNFCCC and the Paris Agreement, done at Paris on 12 December 2015 by the Conference of the Parties to the UNFCCC at its 21st session. The Parties shall cooperate to promote the positive contribution of trade to the transition to low greenhouse gas emissions and climate-resilient development. The Parties commit to working together to take actions to address climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement.

5. Nothing in this Agreement prevents a Party from adopting or maintaining measures to implement the multilateral environmental agreements to which it is party, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination against the other Party or a disguised restriction on trade.

Article 16.5. Trade and Investment Favouring Sustainable Development

The Parties recognise the importance of enhancing the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions. Accordingly, the Parties:

(a) recognise the importance of the principles concerning fundamental rights at work, decent work for all, and fundamental values of freedom, human dignity, social justice, security and non-discrimination for sustainable economic and social development and efficiency, as well as the importance of seeking better integration of those principles into trade and investment policies;

(b) shall strive to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with this Agreement;

(c) shall strive to facilitate trade and investment in goods and services of particular relevance to climate change mitigation, such as those related to sustainable renewable energy and energy efficient goods and services, in a manner consistent with this Agreement;

(d) shall strive to promote trade and investment in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are the subject of labelling schemes, and recognise the contribution of other voluntary initiatives, including private ones, to sustainability; and

(e) shall encourage corporate social responsibility and exchange views and information on this matter through the Committee on Trade and Sustainable Development, and as appropriate through other fora. In this regard, the Parties recognise the importance of the relevant internationally recognised principles and guidelines, including the OECD Guidelines for Multinational Enterprises which are part of the OECD Declaration on International Investment and Multinational Enterprises adopted by the OECD on 21 June 1976 and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office in November 1977.

Article 16.6. Biological Diversity

1. Each Party recognises the importance and the role of trade and investment in ensuring the conservation and sustainable use of biological diversity in accordance with relevant international agreements to which it is party, notably the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992, and its protocols and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 (hereinafter referred to as "CITES").

2. In that context, each Party shall:

(a) encourage the use of products which were obtained through sustainable use of natural resources and which contribute to the conservation and sustainable use of biodiversity, including through labelling schemes, taking into account the importance of trade in such products;

(b) implement effective measures, such as monitoring and enforcement measures, and awareness-raising actions, to combat illegal trade in endangered species of wild fauna and flora as listed in CITES, and as appropriate in other endangered species;

(c) implement, as appropriate, the decisions which were adopted under the international agreements referred to in paragraph 1, including through laws, regulations, strategies, plans and programmes; and

(d) exchange information and consult with the other Party at bilateral and multilateral levels on matters of relevance to this Article, including trade in wildlife and natural resource-based products, the valuation, mapping and assessment of ecosystems and related services, and the access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation.

Article 16.7. Sustainable Management of Forests and Trade In Timber and Timber Products

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable management of forests.

2. In that context, the Parties shall:

(a) encourage conservation and sustainable management of forests, and trade in timber and timber products harvested in accordance with the laws and regulations of the country of harvest;

(b) contribute to combating illegal logging and related trade including, as appropriate, the trade with third countries; and

(c) exchange information and share experiences at bilateral and multilateral levels with a view to promoting the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combating illegal logging.

Article 16.8. Trade and Sustainable Use of Fisheries Resources and Sustainable Aquaculture

1. The Parties recognise the importance and the role of trade and investment in ensuring the conservation and sustainable use and management of fisheries resources, safeguarding marine ecosystems, and promoting responsible and sustainable aquaculture.

2. In that context, the Parties shall:

(a) comply with the United Nations Convention on the Law of the Sea, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, done at Rome on 24 November 1993, and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 August 1995, take measures to achieve the objectives and principles of the Code of Conduct for Responsible Fisheries adopted by the Conference of the Food and Agriculture Organisation on 31 October 1995, encourage the implementation of port state measures both at global and regional levels, and, as appropriate, encourage third countries to ratify, accept, approve, or accede to, relevant international agreements to which both Parties are party;

(b) promote conservation and sustainable use of fisheries resources through appropriate international organisations or bodies in which both Parties participate, including regional fisheries management organisations (hereinafter referred to as "RFMOs"), by means of, where applicable, effective monitoring, control or enforcement of the RFMOs' resolutions,

recommendations or measures, and implementation of their catch documentation or certification schemes;

(c) adopt and implement their respective effective tools for combating illegal, unreported and unregulated (hereinafter referred to as "IUU") fishing, including through legal instruments, and, where appropriate, control, monitoring and enforcement, and capacity management measures, recognising that voluntary sharing of information on IUU fishing will enhance the effectiveness of these tools in the fight against IUU fishing, and underlining the crucial role of the members of RFMOs with major fisheries markets to leverage a sustainable use of fisheries resources; and

(d) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects.

Article 16.9. Scientific Information

When preparing and implementing measures with the aim of protecting the environment or labour conditions that may affect trade or investment, the Parties shall take account of available scientific and technical information, and where appropriate, relevant international standards, guidelines or recommendations, and the precautionary approach.

Article 16.10. Transparency

Each Party shall ensure that any measure of general application pursuing the objectives of this Chapter is administered in a transparent manner, in accordance with its laws and regulations and Chapter 17, including by providing the public with reasonable opportunities and sufficient time to comment, and by publishing such measures.

Article 16.11. Review of Sustainability Impacts

The Parties recognise the importance of reviewing, monitoring and assessing, jointly or individually, the impact of the implementation of this Agreement on sustainable development through their respective processes and institutions, as well as those set up under this Agreement.

Article 16.12. Cooperation

Recognising the importance of cooperation on trade-related and investment-related aspects of environmental and labour policies in order to achieve the objectives of this Agreement, the Parties may, inter alia:

(a) cooperate at bilateral or multilateral level in the fields of environmental protection and labour, including through appropriate international organisations or bodies in which both Parties participate;

(b) cooperate on evaluating the mutual impact between trade and environment, and trade and labour, as well as on identifying ways to enhance, prevent or mitigate such impact, taking into account the results of the monitoring and assessment carried out by the Parties, for instance, sustainability impact assessments as far as the European Union is concerned;

(c) cooperate to facilitate and promote trade and investment in environmental goods and services, in a manner consistent with this Agreement, including through the exchange of information;

(d) cooperate on labelling schemes, including through the exchange of information on eco-labels, as well as other measures and initiatives that contribute to sustainability, including as appropriate fair and ethical trade schemes;

(e) cooperate to promote corporate social responsibility, notably through the exchange of information and best practices, including on adherence, implementation, follow-up, and dissemination of internationally agreed guidelines and principles;

(f) cooperate on trade-related aspects of ILO's Decent Work Agenda;

(g) cooperate on trade-related aspects of multilateral environmental agreements, including through the exchange of views and information on the implementation of CITES and through technical and customs cooperation;

(h) cooperate on trade-related aspects of the international climate change regime, including on means to promote low-carbon technologies, other climate-friendly technologies and energy efficiency;

(i) cooperate to promote the conservation and sustainable use of biological diversity, including combatting illegal trade in endangered species of wild fauna and flora;

(j) cooperate to promote the conservation and sustainable management of forests and trade in legally harvested timber and timber products, as well as to combat illegal logging; and

(k) cooperate, bilaterally or through appropriate international organisations or bodies in which both Parties participate, to promote sustainable fishing and aquaculture practices and trade in legally obtained fisheries resources, as well as to combat IUU fishing.

Article 16.13. Committee on Trade and Sustainable Development

1. The Committee on Trade and Sustainable Development established pursuant to Article 22.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) reviewing and monitoring the implementation and operation of this Chapter and, when necessary, making appropriate recommendations to the Joint Committee for its consideration related to subparagraph 5(d) of Article 22.1;

(b) considering any other matter related to this Chapter as the Parties may agree;

(c) interacting with civil society (128) on the implementation of this Chapter;

(d) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1; and

(e) seeking solutions to resolve differences between the Parties as to the interpretation or application of this Chapter, including through the procedures pursuant to paragraph 5 of Article 16.17. (129)

3. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet in accordance with subparagraph 3(a) of Article 22.3 without prejudice to procedures pursuant to paragraph 5 of Article 16.17.

4. The Committee will pursue coherence and cooperation between its work and the activities of the ILO and of relevant multilateral environmental organisations or bodies.

(128) For the purposes of this Chapter, "civil society" means independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups.

(129) For greater certainty, the advice provided under paragraph 4 of Article 16.17 is taken into account in the work carried out by the Committee pursuant to this subparagraph.

Article 16.14. Contact Points

Each Party shall, upon the entry into force of this Agreement, designate a contact point to facilitate communications between the Parties on any matter relating to this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Article 16.15. Domestic Advisory Group

1. Each Party shall convene meetings of its own new or existing domestic advisory group or groups on economic, social and environmental issues related to this Chapter and consult with the group or groups in accordance with its laws, regulations and practices.

2. Each Party is responsible for ensuring a balanced representation of independent economic, social and environmental stakeholders, including employers' and workers' organisations and environmental groups, in the advisory group or groups.

3. The advisory group or groups of each Party may meet on its or their own initiative and express its or their opinions on the implementation of this Chapter independently of the Party and submit those opinions to that Party.

Article 16.16. Joint Dialogue with Civil Society

1. The Parties shall convene the Joint Dialogue with civil society organisations situated in their territories (hereinafter referred to in this Chapter as "Joint Dialogue"), including members of their domestic advisory groups referred to in Article 16.15, to conduct a dialogue on this Chapter.

2. The Parties shall promote in the Joint Dialogue a balanced representation of relevant stakeholders, including independent organisations which are representative of economic, environmental and social interests as well as other relevant organisations as appropriate.

3. The Joint Dialogue shall be convened no later than one year after the date of entry into force of this Agreement. Thereafter, the Joint Dialogue shall be convened regularly, unless the Parties agree otherwise. The Parties shall agree on the operation of the Joint Dialogue before the first meeting of the Joint Dialogue. Participation in the Joint Dialogue may take place by any appropriate means of communication as agreed by the Parties.

4. The Parties will provide the Joint Dialogue with information on the implementation of this Chapter. The views and opinions of the Joint Dialogue may be submitted to the Committee and may be made publicly available.

Article 16.17. Government Consultations

1. In the event of disagreement between the Parties on any matter regarding the interpretation or application of this Chapter, the Parties shall only have recourse to the procedures set out in this Article and Article 16.18. The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

2. A Party may request in writing consultations with the other Party on any matter concerning the interpretation and application of this Chapter. The Party requesting consultations shall set out the reasons for the request, including identification of the matter and an indication of its factual and legal basis, specifying the relevant provisions of this Chapter.

3. When a Party requests consultation pursuant to paragraph 2, the other Party shall reply promptly and enter into consultations with a view to reaching a mutually satisfactory resolution of the matter.

4. During consultations, each Party shall provide sufficient information to enable a full examination of the matter in question. The Parties shall take into account the activities of the ILO and other relevant international organisations or bodies in which both Parties participate and, as may be required by the Parties on an ad hoc basis, may seek advice from those international organisations or bodies, or other experts. The Parties shall discuss appropriate measures to be implemented, taking into account that advice.

5. If no solution is reached through the consultations held in accordance with paragraphs 2 to 4, the Committee shall be convened promptly on request of a Party to consider the matter in question.

6. The Parties shall ensure that the solutions reached through the consultations under this Article will be jointly made publicly available, unless the Parties agree otherwise.

Article 16.18. Panel of Experts

1. If, no later than 75 days of the date of the request by a Party to convene the Committee pursuant to paragraph 5 of Article 16.17, the Parties do not reach a mutually satisfactory resolution of the matter concerning the interpretation or application of the relevant Articles of this Chapter, a Party may request that a panel of experts be convened to examine the matter in accordance with the terms of reference referred to in paragraph 2. Such request shall be made in writing through the contact point of the other Party referred to in Article 16.14 and shall identify the reasons for the request, including the identification of the matter to be resolved and an indication of its factual and legal basis.

2. The Committee shall, within one year of the date of entry into force of this Agreement, adopt the rules of procedure and the terms of reference for the panel of experts. The rules of procedure shall identify the procedures for finding the relevant information. The panel shall interpret the relevant Articles of this Chapter in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Pending the establishment of those rules of procedure and terms of reference, the Rules of Procedure referred to in Article 21.30 shall apply mutatis mutandis, and the terms of reference shall be, unless the Parties agree otherwise no later than five days after the date of establishment of the panel, as follows:

"to examine, in the light of the relevant Articles of Chapter 16, the matter referred to in the request for the establishment of the panel of experts, and to issue a report in accordance with paragraph 5 of Article 16.18, making recommendations for the resolution of the matter".

3. The panel of experts may obtain information from any source it deems appropriate. For matters related to ILO instruments or multilateral environmental agreements, it should seek information and advice from the relevant international organisations or bodies. Any information obtained pursuant to this paragraph shall be submitted to the Parties for their comments.

4. The panel shall be composed of three experts. They shall be selected in accordance with subparagraphs (a) to (e).

(a) The experts shall have relevant technical or legal expertise in the issues addressed in this Chapter. They shall be independent of, and not be affiliated with or take instructions from, either Party. They shall serve in their individual capacities and not take instructions from any organisation or government, nor have been involved in the matter in question in any capacity.

(b) Each Party shall, no later than 45 days after the date of receipt of the request to convene the panel, appoint one expert who may be a national of that Party and propose up to three candidates to serve as the chairperson of the panel. The chairperson shall not be a national of either Party. The Parties shall agree on and appoint the chairperson from the proposed candidates no later than 15 days after the expiry of the 45 day period.

(c) If a Party has not appointed an expert or if the Parties have not agreed on nor appointed the chairperson pursuant to subparagraph (b), the experts or the chairperson not yet appointed shall be chosen no later than 15 days after the expiry of the 15 day period provided for in subparagraph (b) by lot from the candidates proposed pursuant to subparagraph (d).

(d) The Committee shall, within one year of the date of entry into force of this Agreement, establish a list of at least 10 individuals who are willing and able to serve as experts pursuant to this Article, and who meet the qualifications set out in subparagraph (a). The list shall be composed of three sub-lists: one for each Party and one for individuals who are not nationals of either Party and who shall act as the chairperson of the panel. Each Party shall select at least three individuals to serve as experts for its sub-list. Unless the Parties agree otherwise, they shall jointly select four individuals for the sub-list of chairpersons. The Committee will ensure that the number of individuals on the list is always maintained at the level required by this subparagraph.

(e) The date of establishment of a panel shall be the date on which the chairperson is appointed.

5. The panel of experts shall issue an interim and a final report to the Parties setting out the findings of facts, the interpretation or the applicability of the relevant Articles and the basic rationale behind any findings and suggestions. No later than 45 days after the date of receipt of the interim report, which shall be issued no later than 90 days after the date of establishment of the panel, the Parties may submit written comments on that report. After considering any such written comments, the panel of experts may modify the report and make any further examination it considers appropriate. The final report shall be issued no later than 180 days after the date of establishment of the panel, unless the chairperson of the panel notifies the Parties in writing that the deadline cannot be met. In that case, the final report shall be issued no later than 200 days after the date of establishment of the panel, unless the Parties agree otherwise. The final report shall be made publicly available. The Parties shall ensure the protection of confidential information.

6. The Parties shall discuss actions or measures to resolve the matter in question, taking into account the panel's final report and its suggestions. Each Party shall inform the other Party and its own domestic advisory group or groups of any follow-up actions or measures no later than three months after the date of issuance of the final report. The follow-up actions or measures shall be monitored by the Committee. The domestic advisory group or groups and the Joint Dialogue may submit their observations in this regard to the Committee.

Article 16.19. Review

1. The Committee shall discuss, as necessary, the implementation and operation of the institutional and consultation provisions contained in Articles 16.13, 16.17 and 16.18, taking into account, inter alia, the experience gained through the implementation and operation of this Chapter and the developments of the relevant policies of each Party. Such discussions may concern possible amendments to these Articles.

2. Taking into account the outcome of the discussions referred to in paragraph 1, the Committee may recommend to the Joint Committee in accordance with subparagraph 2(a) of Article 16.13 amendments to the Articles referred to in paragraph 1.

Chapter 17. TRANSPARENCY

Article 17.1. Definitions

For the purposes of this Chapter, "measure of general application" means any law, regulation, rule, administrative or judicial decision, or administrative or judicial procedure, of general application with respect to any matter covered by this Agreement.

Article 17.2. Transparent Regulatory Environment

Recognising the impact which its regulatory environment may have on trade and investment between the Parties, each Party shall provide for a transparent regulatory environment, which is effective and predictable for persons including economic operators, especially small and medium-sized enterprises.

Article 17.3. Publication

When introducing or changing measures of general application, each Party shall:

(a) promptly publish those measures of general application, or otherwise make them publicly available, together with an explanation of their objective and rationale, and where feasible, by electronic means such as a website in English; and

(b) endeavour to allow for a reasonable interval between the time when those measures of general application are published or made publicly available and the time when they enter into force, except in duly justified cases.

Article 17.4. Enquiries

1. Each Party shall, on request of the other Party, respond within a reasonable period of time to specific questions from, and provide information to, the other Party with respect to its measures of general application.

2. Each Party shall make easily available to the public the names and addresses of the competent authorities responsible for its measures of general application.

3. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from a person regarding its measures of general application.

4. The Parties recognise that the responses provided to the enquiries referred to in paragraph 3 may not be definitive or legally binding but for information purposes only, unless otherwise provided for in the laws and regulations of each Party.

Article 17.5. Administration of Measures of General Application

1. Each Party shall administer in a consistent, objective, impartial and reasonable manner all its measures of general application.

2. When applying measures of general application in administrative proceedings to particular persons, goods or services of the other Party in specific cases, each Party shall, in accordance with its laws and regulations, provide persons that are directly affected by those administrative proceedings with:

(a) a reasonable notice of when the proceedings are initiated, including the legal basis and a description of the nature of the proceedings, of the facts and of the issues in question; and

(b) a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision, except for reasons of urgency.

Article 17.6. Review and Appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review or appeal and, where warranted, correction of administrative actions or, as provided for in its laws and regulations, of failures to act with respect to any matter covered by this Agreement. Those tribunals or procedures shall be impartial and independent of the office or authority entrusted with administrative enforcement of such actions and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties before the tribunals or involved in the procedures referred to in paragraph 1 are provided with the right to:

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

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

3. Each Party shall ensure, subject to further review or appeal as provided for in its laws and regulations, that the decision referred to in subparagraph 2(b) is implemented by the relevant offices or authorities with respect to the administrative action concerned.

Article 17.7. Cooperation on the Promotion of Increased Transparency

The Parties shall cooperate, where appropriate, in bilateral, regional and multilateral fora on ways to promote transparency in respect of international trade and investment.

Article 17.8. Relation to other Chapters

This Chapter applies without prejudice to any specific provisions in other Chapters of this Agreement.

Chapter 18. GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

Section A. Good Regulatory Practices and Regulatory Cooperation

Subsection 1. General Provisions

Article 18.1. Objectives and General Principles

1. The objectives of this Section are to promote good regulatory practices and regulatory cooperation between the Parties with the aim of enhancing bilateral trade and investment by:

(a) promoting an effective, transparent and predictable regulatory environment;

(b) promoting compatible regulatory approaches and reducing unnecessarily burdensome, duplicative or divergent regulatory requirements;

(c) discussing regulatory measures, practices or approaches of a Party, including how to enhance their efficient application; and

(d) reinforcing bilateral cooperation between the Parties in international fora.

2. Nothing in this Section shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas such as:

(a) public health;

(b) human, animal and plant life and health;

(c) occupational health and safety;

(d) labour conditions;

(e) the environment including climate change;

(f) consumers;

(g) social protection and social security;

(h) personal data and cybersecurity;

(i) cultural diversity;

(j) financial stability; and

(k) energy security.

3. Nothing in this Section shall be construed to prevent a Party from:

(a) adopting, maintaining and applying regulatory measures in accordance with its legal framework, principles (130) and deadlines, in order to achieve its public policy objectives at the level of protection it deems appropriate; and

(b) providing and supporting services of general interest, including those related to water, health, education or social services.

4. Regulatory measures shall not constitute a disguised barrier to trade.

5. Nothing in this Section shall be construed as obliging the Parties to achieve any particular regulatory outcome.

(130) For the European Union, such principles include those established in the TFEU as well as in regulations and directives adopted pursuant to Article 289 of the TFEU.

Article 18.2. Definitions

For the purposes of this Section:

(a) "regulatory authority" means:

(i) the European Commission for the European Union; and

(ii) the Government of Japan for Japan; and

(b) "regulatory measures" means measures of general applicability, which are:

(i) for the European Union:

(A) regulations and directives, as provided for in Article 288 of the TFEU; and

(B) implementing and delegated acts, as provided for in Articles 290 and 291 of the TFEU, respectively; and

(ii) for Japan:

(A) laws;

(B) Cabinet Orders; and

(C) Ministerial Ordinances.

Article 18.3. Scope

1. This Section applies to regulatory measures issued by the regulatory authority of a Party in respect of any matter covered by this Agreement.

2. Sub-Sections 3 and 4 apply to other measures of general application issued by the regulatory authority of a Party which are relevant for regulatory cooperation activities, such as guidelines, policy documents or recommendations, in addition to the regulatory measures referred to in paragraph 1.

Subsection 2. Good Regulatory Practices

Article 18.4. Internal Coordination

Each Party shall maintain internal coordination processes or mechanisms to foster good regulatory practices, including those provided for in this Section.

Article 18.5. Regulatory Processes and Mechanisms

Each Party shall make publicly available descriptions of the processes and mechanisms under which its regulatory authority prepares, evaluates and reviews its regulatory measures. Those descriptions shall refer to relevant guidelines, rules or procedures, including those regarding opportunities for the public to provide comments.

Article 18.6. Early Information on Planned Regulatory Measures

The regulatory authority of each Party shall make publicly available at least once a year a list of its planned major (131) regulatory measures, together with a brief description of their scope and objectives, including, if available, the estimated timing for their adoption. Alternatively, if the regulatory authority of a Party does not make such a list publicly available, that Party shall provide annually, and as soon as possible, the Committee on Regulatory Cooperation established pursuant to Article 22.3 with the list together with the brief description. That list together with the brief description, with the exception of information designated as confidential, may be made publicly available by the regulatory authority of each Party.

(131) The regulatory authority of each Party may determine what constitutes "major" regulatory measures for the purposes of its obligations under this Section.

Article 18.7. Public Consultations

1. When preparing major regulatory measures, the regulatory authority of each Party shall, where applicable, and in accordance with the relevant rules and procedures:

(a) publish either the draft regulatory measures or consultation documents providing sufficient details about regulatory measures under preparation to allow any person to assess whether and how the person's interests might be significantly affected;

(b) offer, on a non-discriminatory basis, reasonable opportunities for any person to provide comments; and

(c) consider the comments received.

2. The regulatory authority of each Party should make use of electronic means of communication and seek to maintain a dedicated single access web portal for the purposes of providing information and receiving comments related to public consultations.

3. The regulatory authority of each Party shall make publicly available any comment received or a summary of the results of the consultations. This obligation does not apply to the extent necessary for the protection of confidential information, for withholding personal data or inappropriate content or for other justified grounds such as the risk of harm to the interests of a third party.

Article 18.8. Impact Assessment

1. The regulatory authority of each Party shall endeavour to systematically carry out, in accordance with the relevant rules and procedures, an impact assessment of major regulatory measures under preparation.

2. When carrying out an impact assessment, the regulatory authority of each Party shall establish and maintain processes and mechanisms under which the following factors will be taken into consideration:

(a) the need for the regulatory measure, including the nature and the significance of the issue that the regulatory measure intends to address;

(b) any feasible and appropriate regulatory or non-regulatory alternatives, including the option of not regulating, if available, that would achieve the Party's public policy objectives;

(c) to the extent possible and relevant, the potential social, economic and environmental impact of those alternatives, including on trade and on small and medium-sized enterprises; and

(d) where appropriate, how the options under consideration relate to relevant international standards, including the reason for any divergence.

3. The regulatory authority of each Party shall publish the findings of its impact assessments no later than the publication of the related proposed or final regulatory measure.

Article 18.9. Retrospective Evaluation

1. The regulatory authority of each Party shall maintain processes or mechanisms to promote periodic retrospective evaluation of regulatory measures in force.

2. The regulatory authority of each Party shall make publicly available its plans for and the results of such retrospective evaluations to the extent consistent with the relevant rules and procedures.

Article 18.10. Opportunity to Submit Comments

The regulatory authority of each Party shall, without prejudice to the pursuit of each Party's public policy objectives, provide an opportunity for any person to submit comments for improvements of regulatory measures in force, including suggestions for simplification or reduction of unnecessary burdens.

Article 18.11. Exchange of Information on Good Regulatory Practices

The regulatory authorities shall endeavour to exchange information, including in the Committee on Regulatory Cooperation, on their good regulatory practices as referred to in this Sub-Section, such as practices regarding impact assessments, including the assessment of the effects on trade and investment, or those regarding retrospective evaluations.

Subsection 3. Regulatory Cooperation

Article 18.12. Regulatory Cooperation Activities

1. Each Party may propose a regulatory cooperation activity to the other Party. It shall present that proposal via the contact point designated in accordance with Article 18.15.

2. The other Party shall review the proposal in due course and shall inform the proposing Party whether it considers the proposed activity suitable for regulatory cooperation.

3. On request of a Party, the Committee on Regulatory Cooperation shall discuss a proposal for regulatory cooperation activities referred to in paragraph 1.

4. In order to identify suitable activities for regulatory cooperation, each Party shall consider:

(a) the list provided for in Article 18.6; and

(b) proposals for regulatory cooperation activities submitted by persons of a Party that are substantiated and accompanied by relevant information.

5. If the Parties decide to engage in a regulatory cooperation activity, the regulatory authority of each Party shall:

(a) inform the regulatory authority of the other Party about the development of new or the revision of existing measures that are relevant for the regulatory cooperation activity;

(b) on request, provide information and discuss measures that are relevant for the regulatory cooperation activity; and

(c) when developing new or revising existing regulatory or other measures, consider, to the extent feasible, any regulatory approach by the other Party on the same or a related matter.

6. The Parties may engage in regulatory cooperation activities on a voluntary basis. A Party may refuse to engage in or withdraw from regulatory cooperation activities. A Party that refuses to engage in or withdraw from regulatory cooperation activities should explain the reasons for its decision to the other Party.

7. Where appropriate, the regulatory authorities may, by mutual consent, entrust the implementation of a regulatory cooperation activity to the relevant bodies in the Parties.

Article 18.13. Good Practices to Promote Regulatory Compatibility

The regulatory authority of each Party shall, in order to promote regulatory compatibility, consider, inter alia, the following:

(a) promotion of common principles, guidelines, codes of conduct, mutual recognition of equivalence and implementing tools, to avoid unnecessary duplication of regulatory requirements such as testing, qualifications, audits or inspections; and

(b) bilateral cooperation and cooperation with third countries in relevant international fora, where feasible, including through joint initiatives and proposals, with a view to developing and promoting the adoption and implementation of international regulatory standards, guidelines or other approaches.

Subsection 4. Institutional Provisions

Article 18.14. Committee on Regulatory Cooperation

1. The Committee on Regulatory Cooperation established pursuant to Article 22.3 shall enhance and promote good regulatory practices and regulatory cooperation between the Parties in accordance with the provisions of this Section.

2. The Committee on Regulatory Cooperation may invite interested persons to participate in its meetings.

3. The Committee on Regulatory Cooperation may, in particular:

(a) discuss proposals for regulatory cooperation activities;

(b) exchange information on, and promote, good regulatory practices;

(c) recommend regulatory cooperation activities on matters of common interest to the Parties, including those on pre-regulatory research;

(d) promote bilateral regulatory cooperation activities with the aim of facilitating compatible regulatory outcomes in each Party, in particular in areas where no regulatory measures exist or where their developments are at an initial stage;

(e) support the development of practical mechanisms, implementing tools and best practices to promote good regulatory practices and regulatory cooperation;

(f) encourage regulatory cooperation and coordination in international fora, including periodic bilateral exchanges of information on relevant ongoing or planned activities;

(g) periodically identify and endorse priority areas of regulatory cooperation;

(h) provide guidelines, if necessary, to help streamline the regulatory cooperation of other specialised committees referred to in Article 22.3 and of other bilateral regulatory cooperation fora;

(i) consider the report on the outcome of the consultations referred to in paragraph 8 of Article 18.16 and review the progress on the implementation of the satisfactory solution referred to in paragraph 6 of Article 18.16, if applicable; and

(j) establish, as necessary, ad hoc working groups to pursue specific regulatory cooperation activities, which shall report to the Committee on Regulatory Cooperation.

4. The Committee on Regulatory Cooperation shall:

(a) meet within one year of the date of entry into force of this Agreement and at least once a year thereafter, unless the representatives of the Parties decide otherwise; and

(b) adopt its rules of procedure at its first meeting after the entry into force of this Agreement.

Article 18.15. Contact Points

Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Section and for exchange of information in accordance with Article 18.16 and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

Article 18.16. Exchange of Information on Planned or Existing Regulatory Measures

1. A Party may submit to the other Party a request for information and clarifications regarding planned or existing regulatory measures of the other Party. The Party to whom the request is addressed shall endeavour to respond promptly.

2. A Party may submit to the other Party a request to consider its concerns about a planned or existing regulatory measure of the other Party. In its request, the requesting Party shall identify the regulatory measure at issue, provide a description of its concerns and, where relevant, submit questions.

3. The responding Party shall, as soon as possible but, unless justified, no later than 60 days after the receipt of the request, provide written comments as regards the concerns raised by the requesting Party pursuant to paragraph 2. Those comments shall, to the extent possible, include inter alia the policy objective and rationale of the regulatory measure and, where applicable, an explanation as to the absence of a less trade or investment restrictive measure which could achieve the same policy objective with the same efficiency. The responding Party shall reply to any questions for clarification

submitted by the requesting Party.

4. The requesting Party may request consultations with the responding Party:

(a) after the receipt of the written comments referred to in paragraph 3; or

(b) after the expiration of the time period referred to in paragraph 3, if the responding Party does not provide written comments within that period.

5. The consultations may be held through meetings in person or by electronic means. Each Party shall appoint an official responsible for conducting the meetings.

6. During the consultations the Parties shall explore in good faith a possible satisfactory solution to address the concerns of the requesting Party, including proposals for an adjustment of the

regulatory measure at issue or for the adoption of a less trade or investment restrictive regulatory measure, where relevant.

7. The Parties shall not be required to disclose confidential or sensitive information or data.

8. A report on the outcome of the consultations shall be prepared by the requesting Party in consultation with the responding Party. The contact point of the requesting Party shall send the report to the Committee on Regulatory Cooperation for its consideration.

9. The request referred to in paragraph 2 may also be submitted in cases where no satisfactory solution has been reached at the level of the relevant specialised committee and is without prejudice to the Parties' rights and obligations under Chapter 21 or under the dispute settlement procedure of any other applicable agreement.

10. The request referred to in paragraph 2 shall not require the responding Party to achieve a particular regulatory outcome and shall not delay the adoption of a regulatory measure.

Section B. Animal Welfare

Article 18.17. Animal Welfare

1. The Parties will cooperate for their mutual benefit on matters of animal welfare with a focus on farmed animals with a view to improving the mutual understanding of their respective laws and regulations.

2. For that purpose, the Parties may adopt by mutual consent a working plan defining the priorities and categories of animals to be dealt with under this Article, and establish an Animal Welfare Technical Working Group to exchange information, expertise and experiences in the field of animal welfare and to explore the possibility of promoting further cooperation.

Section C. Final Provisions

Article 18.18. Application of Section a

1. The provisions of Section A do not apply to Section B and to the regulatory cooperation on financial regulation provided for in Sub-Section 5 of Section E of Chapter 8.

2. Notwithstanding Article 18.3, any specific provisions in other Chapters of this Agreement shall prevail over the provisions of Section A to the extent necessary for the application of the specific provisions.

Article 18.19. Dispute Settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

Chapter 19. COOPERATION IN THE FIELD OF AGRICULTURE

Article 19.1. Objectives

The Parties recognise that promoting trade in agricultural products (132) and foods between them is in their mutual interest, and aim at promoting cooperation on sustainable agriculture, including rural development and the exchange of

technical information and best practices for providing safe and high quality foods for consumers in the European Union and Japan.

(132) For the purposes of this Chapter, "agricultural products" does not include forestry or fishery products.

Article 19.2. Scope

1. The Parties shall cooperate in the areas referred to in Article 19.1 in accordance with their respective laws and regulations. The Parties shall encourage and facilitate cooperation among relevant groups, entities, competent authorities and other organisations of the Parties.

2. The scope of cooperation referred to in paragraph 1 shall cover:

(a) the promotion of trade in agricultural products and foods, including a dialogue on the relevant regulation;

(b) cooperation with a view to improving farm management, productivity and competitiveness,

including the exchange of best practices regarding sustainable agriculture, as well as the use of technology and innovation;

(c) cooperation on production and technology in agriculture and foods;

(d) cooperation on agricultural product quality policy including on geographical indications (133), provided that such cooperation does not overlap with the tasks related to geographical indications of the Committee on Intellectual Property established pursuant to Article 22.3;

(e) cooperation and the exchange of best practices to promote rural development, such as policies aiming at keeping producers and young farmers in rural areas; and

(f) consultation on other matters covered by Article 19.1 as the Parties may agree.

(133) For the purposes of this Chapter, "agricultural product quality policy" on geographical indications refers to agricultural product quality policy on geographical indications for the products covered by Article 14.22.

Article 19.3. Cooperation for the Improvement of the Business Environment

1. Each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment in the area of agriculture and foods for persons of the other Party conducting their business activities in the former Party.

2. To further improve the business environment, the Parties shall, in accordance with their respective laws and regulations, promote cooperation between the public authorities and representatives of the respective agriculture and food sectors of the Parties.

Article 19.4. Request for Information

Each Party may submit to the other Party a request for information and clarifications regarding measures related to agriculture or foods. The requested Party shall, as soon as possible but no later than 60 days after the receipt of the request, unless otherwise agreed by the Parties, provide written information as regards the request made by the requesting Party.

Article 19.5. Committee on Cooperation In the Field of Agriculture

1. The Committee on Cooperation in the Field of Agriculture established pursuant to Article 22.3 (hereinafter referred to in this Chapter as "the Committee") shall be responsible for the effective implementation and operation of this Chapter.

2. The Committee shall have the following functions:

(a) ensuring and reviewing the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

(c) reporting the findings of the Committee to the Joint Committee;

(d) facilitating cooperation among private sectors of the Parties that contributes to the objectives of this Chapter; and

(e) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 22.1.

3. The Committee shall adopt its own rules of procedure and the details of the cooperation referred to in this Chapter.

4. The Committee may, by consensus, invite representatives of relevant entities other than the European Commission and the Government of Japan with the necessary expertise relevant to the issues to be discussed.

Article 19.6. Contact Points and Communications

1. Each Party shall, upon the entry into force of this Agreement, designate at least one contact point to facilitate communications between the Parties on any matter relating to this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

2. The requests relating to this Chapter raised by relevant entities in a Party other than the European Commission and the Government of Japan shall be notified by that Party's contact point to the other Party's contact point referred to in this Article within a reasonable period of time.

3. Communications referred to in this Chapter shall be made in English.

Article 19.7. Relation to other Chapters

1. Unless otherwise agreed by the Parties, this Chapter does not apply to matters covered by Chapter 2, 6, 7 or 14.

2. Nothing in this Chapter shall affect the rights and obligations of either Party under Chapters 2, 6, 7 and 14.

Article 19.8. Dispute Settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

Chapter 20. SMALL AND MEDIUM-SIZED ENTERPRISES

Article 20.1. Objective

The Parties recognise the importance of the provisions of this Chapter as well as other provisions in this Agreement that seek to enhance cooperation between the Parties on matters of relevance to small and medium-sized enterprises (hereinafter referred to in this Chapter as "SMEs") or that may otherwise be of particular benefit to SMEs.

Article 20.2. Information Sharing

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

(a) the text of this Agreement, including all Annexes, in particular the tariff schedules and product-specific rules of origin;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

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

(ii) any additional information that the Party considers to be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in the website referred to in paragraph 1 links to:

(a) the equivalent website of the other Party;

(b) the websites of its government authorities and other appropriate entities that provide information the Party considers useful to persons interested in trading, investing, or doing business in that Party; and

(c) the website of the EU-Japan Centre for Industrial Cooperation or of its successor organisation.

3. Each Party shall ensure that the linked websites referred to in subparagraph 2(b) provide information related to:

(a) customs legislation and procedures, as well as a description of the procedures, the practical steps, the forms, documents and other information required for importation into, exportation from, or transit through the customs territory of that Party;

(b) laws and regulations, including procedures, concerning intellectual property rights;

(c) technical regulations and conformity assessment procedures;

(d) sanitary and phytosanitary measures relevant for importation and exportation;

(e) publication of notices for government procurement in accordance with Article 10.4 as well as other relevant information;

(f) business registration procedures;

(g) taxes collected during the importation procedures, if applicable; and

(h) other information which the Party considers to be useful for SMEs.

4. Each Party shall include in the website referred to in paragraph 1 a link to a database that is electronically searchable by tariff nomenclature code and that includes, if the Party considers applicable, the following information with respect to access to its market:

(a) rates of customs duty to be applied by the Party to the originating goods of the other Party, the most-favoured-nation applied rates of customs duty and tariff rate quotas established by the Party;

(b) customs or other fees, including product-specific fees, imposed on or in connection with importation and exportation;

(c) other tariff measures;

(d) rules of origin;

(e) duty drawback, deferral or other types of relief that reduce, refund or exempt customs duties;

(f) criteria used to determine the customs value of goods;

(g) country of origin marking requirements, including placement and method of marking; and

(h) other relevant measures.

5. Each Party shall regularly, or when requested by the other Party, review the information and links referred to in paragraphs 1 to 4 to ensure that they are up-to-date and accurate.

6. Each Party shall work towards ensuring that information provided pursuant to this Article is presented in a manner that is easy to use for SMEs. Each Party shall endeavour to make the information available in English.

7. No fee shall be imposed on any person of either Party for access to the information provided pursuant to paragraphs 1 to 4.

Article 20.3. SME Contact Points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter (hereinafter referred to in this Chapter as "SME Contact Points") and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

2. The SME Contact Points shall, in accordance with each Party's rules and procedures, have the following functions:

(a) ensuring that the needs of SMEs are taken into account in the implementation of this Agreement;

(b) considering ways for strengthening the cooperation on matters of relevance to SMEs between the Parties in view of increasing trade and investment opportunities for SMEs;

(c) identifying ways and exchanging information for enabling SMEs of each Party to take advantage of new opportunities under this Agreement;

(d) monitoring the implementation of Article 20.2 and ensuring that the information provided by each Party is up-to-date and relevant for SMEs;

(e) regularly submitting a report on their activities and making appropriate recommendations to the Joint Committee; and

(f) considering any other matter of relevance to SMEs that is covered by this Agreement.

3. The SME Contact Points may, in accordance with each Party's rules and procedures, recommend to the Joint Committee the inclusion of additional information by the Parties in their respective websites referred to in Article 20.2.

4. The SME Contact Points shall endeavour to address any other matter of interest to SMEs in connection with the implementation of this Agreement, including by:

(a) exchanging information to assist the Parties in monitoring the implementation of this Agreement on matters of relevance to SMEs;

(b) participating in the work of specialised committees and working groups established under this Agreement, including matters of regulatory cooperation and non-tariff issues, and presenting to those specialised committees and working groups, in their respective areas of competence, specific matters of particular interest to SMEs, while avoiding duplication of work; and

(c) considering mutually acceptable solutions for improving the ability of SMEs to engage in trade and investment between the Parties.

5. The SME Contact Points shall meet when necessary and shall carry out their activities through the appropriate communication channels, which may include electronic mail, videoconference or other means.

6. The SME Contact Points may seek to cooperate with experts in the field of SMEs and external organisations, as appropriate, in carrying out their activities.

Article 20.4. Dispute Settlement

The provisions of this Chapter shall not be subject to dispute settlement under Chapter 21.

Chapter 21. DISPUTE SETTLEMENT

Section A. Objective, Scope and Definitions

Article 21.1. Objective

The objective of this Chapter is to establish an effective and efficient mechanism for settling disputes between the Parties concerning the interpretation and application of the provisions of this Agreement with a view to reaching a mutually agreed solution.

Article 21.2. Scope

Unless otherwise provided for in this Agreement, this Chapter applies with respect to the settlement of any dispute between the Parties concerning the interpretation and application of the provisions of this Agreement.

Article 21.3. Definitions

For the purposes of this Chapter:

(a) "arbitrator" means a member of a panel;

(b) "cases of urgency" and "matters of urgency" include those which concern goods or services that rapidly lose their quality, current condition or commercial value in a short period of time;

(c) "Code of Conduct" means the Code of Conduct for Arbitrators referred to in Article 21.30;

(d) "complaining Party" means the Party that requests the establishment of a panel pursuant to Article 21.7;

(e) "covered provisions" means the provisions of this Agreement covered by this Chapter in accordance with Article 21.2;

(f) "DSB" means the Dispute Settlement Body of the WTO;

(g) "panel" means a panel established pursuant to Article 21.7;

(h) "Party complained against" means the Party against which a dispute has been brought before a panel pursuant to Article 21.7; and

(i) "Rules of Procedure" means the Rules of Procedure of a Panel referred to in Article 21.30.

Section B. Consultations and Mediation

Article 21.4. Request for Information

Before a request for consultations or mediation is made pursuant to Article 21.5 or 21.6 respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

Article 21.5. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 21.2 through consultations in good faith with a view to reaching a mutually agreed solution.

2. A Party may seek consultations by means of a written request to the other Party. In the request for consultations, the Party which requested consultations shall give the reasons for the request, including identification of the measure at issue and an indication of its factual basis and its legal basis specifying the relevant covered provisions.

3. During consultations each Party shall provide sufficient information to enable a full examination of the measure at issue including how that measure could affect the operation and application of this Agreement.

4. The Party to which the request for consultations is made shall reply to the request no later than 10 days after the date of receipt of the request. The Parties shall enter into consultations no later than 30 days after the date of receipt of the request. Consultations shall be deemed to be concluded no later than 45 days after the date of receipt of the request unless the Parties agree otherwise. Where both Parties consider that the case concerns matters of urgency, consultations shall be deemed to be concluded no later than 25 days after the date of receipt of the request unless the Parties agree otherwise.

5. Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the Party to which the request is made.

6. Consultations, including all information disclosed and positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 21.6. Mediation

1. A Party may at any time request the other Party to enter into a mediation procedure with respect to any matter within the scope of this Chapter concerning a measure that adversely affects trade or investment between the Parties.

2. The Parties may at any time agree to enter into a mediation procedure which shall be initiated, conducted and terminated in accordance with the Mediation Procedure to be adopted by the Joint Committee at its first meeting pursuant to subparagraph 4(f) of Article 22.1.

3. If the Parties agree, the mediation procedure may continue while the panel procedures set out in Section C proceed.

Section C. Panel Procedure

Article 21.7. Establishment of a Panel

1. The Party that sought consultations pursuant to Article 21.5 may request the establishment of a panel if:

(a) the other Party does not respond to the request for consultations within 10 days after the date of its receipt, or does not enter into consultations within 30 days after the date of receipt of the request;

(b) the Parties agree not to enter into consultations; or

(c) the Parties fail to resolve the dispute through consultations within 45 days, or within 25 days in cases of urgency, after the date of receipt of the request for consultations, unless the Parties agree otherwise.

2. The request for the establishment of a panel pursuant to paragraph 1 shall be made in writing to the Party complained against. In its complaint, the complaining Party shall explicitly identify:

(a) the measure at issue;

(b) the legal basis specifying the relevant covered provisions in such a manner as to clearly present how such measure is inconsistent with those provisions; and

(c) the factual basis.

Article 21.8. Composition of a Panel

1. A panel shall be composed of three arbitrators.

2. No later than 10 days after the date of receipt of the request for the establishment of a panel by the Party complained against, the Parties shall consult with a view to reaching an agreement on the composition of the panel.

3. If the Parties do not reach an agreement on the composition of the panel within the time period provided for in paragraph 2, each Party shall appoint an arbitrator from the sub-list for that Party established pursuant to Article 21.9 no later than five days after the expiry of the time period provided for in paragraph 2. If a Party fails to appoint an arbitrator within that time period, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the expiry of the time period, an arbitrator from the sub-list for the Party that has failed to appoint an arbitrator established pursuant to Article 21.9. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the arbitrator to his or her representative.

4. If the Parties do not reach an agreement on the chairperson of the panel within the time period provided for in paragraph 2, on request of a Party, the Co-chair of the Joint Committee from the complaining Party shall select by lot, no later than five days after the date of delivery of the request, the chairperson of the panel from the sub-list of chairpersons established pursuant to Article 21.9. That request shall be notified simultaneously to the other Party. The Co-chair of the Joint Committee from the complaining Party may delegate the selection by lot of the chairperson of the panel to his or her representative.

5. Should the lists provided for in Article 21.9 not be established or not contain at least nine individuals as referred to in that Article, the following procedures apply:

(a) for the selection of the chairperson:

(i) if the sub-list of chairpersons contains at least two individuals agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select by lot the chairperson from those individuals no later than five days after the date of delivery of the request referred to in paragraph 4;

(ii) if the sub-list of chairpersons contains one individual agreed by the Parties, that individual shall act as chairperson; or

(iii) if the Parties fail to select a chairperson pursuant to subparagraph (i) or (ii) or if the sub-list of chairpersons contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall, no later than five days after the date of delivery of the request referred to in paragraph 4, select by lot the chairperson from the individuals who had been formally proposed by a Party as chairperson at the time of establishing or updating the list of arbitrators referred to in Article 21.9. A Party may propose a new individual, if an individual who had been formally proposed as chairperson by that Party is no longer available; and

(b) for the selection of an arbitrator other than the chairperson:

(i) if the sub-list of a Party contains at least two individuals agreed by the Parties, that Party shall select an arbitrator from those individuals no later than five days after the expiry of the time period provided in paragraph 2;

(ii) if the sub-list of a Party contains one individual agreed by the Parties, that individual shall act as an arbitrator; or

(iii) if an arbitrator cannot be selected pursuant to subparagraph (i) or (ii) or if the sub-list of arbitrators of a Party contains no individual agreed by the Parties, the Co-chair of the Joint Committee from the complaining Party shall select an arbitrator applying mutatis mutandis the procedure referred to in subparagraph (a).

6. The date of establishment of the panel shall be the date on which the last of the three arbitrators has notified to the Parties the acceptance of his or her appointment.

Article 21.9. List of Arbitrators

1. The Joint Committee shall, at its first meeting pursuant to paragraph 2 of Article 22.1, establish a list of at least nine individuals who are willing and able to serve as arbitrators. The list shall be composed of three sub-lists: a sub-list for each Party and a sub-list of individuals who are not nationals of either Party and who shall act as the chairperson of the panel. Each sub-list shall include at least three individuals. For the establishment or an update of the sub-list of chairpersons, each Party may propose up to three individuals. The Joint Committee will ensure that the number of individuals on the list of arbitrators is always maintained at the level required by this paragraph.

2. The Joint Committee may establish an additional list, consisting of individuals with demonstrated expertise in specific sectors covered by this Agreement, which may be used to compose the panel.

Article 21.20. Qualifications of Arbitrators

All arbitrators shall:

(a) have demonstrated expertise in law, international trade and other matters covered by this Agreement and, in case of a chairperson, also have experience in arbitration proceedings;

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

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with the Code of Conduct.

Article 21.21. Replacement of Arbitrators

If in arbitration proceedings under this Chapter, any of the arbitrators of the original panel is unable to participate, withdraws, or needs to be replaced because that arbitrator does not comply with the requirements of the Code of Conduct, the procedure set out in Article 21.8 shall apply.

Article 21.22. Functions of Panels

The panel established pursuant to Article 21.7:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of, and conformity of the measures at issue with, the covered provisions;

(b) shall set out, in its decisions, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for achieving a mutually agreed solution.

Article 21.13. Terms of Reference

1. Unless the Parties agree otherwise no later than 10 days after the date of the establishment of the panel, the terms of reference of the panel shall be:

"to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to decide on the conformity of the measure at issue with the relevant covered provisions of this Agreement and to issue a report in accordance with Articles 21.18 and 21.19".

2. If the Parties agree on other terms of reference than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than three days after their agreement.

Article 21.14. Decision on Urgency

If a Party so requests, the panel shall decide, no later than 15 days after the date of its establishment, whether a dispute concerns matters of urgency.

Article 21.15. Panel Proceedings

1. Any hearing of the panel shall be open to the public unless the Parties agree otherwise or the submissions and arguments of a Party contain confidential information. Hearings held in closed session shall be confidential.

2. Unless the Parties agree otherwise, the venue shall alternate between the Parties with the first hearing to be held in the Party complained against.

3. The panel and the Parties shall treat as confidential any information submitted by a Party to the panel which that Party has designated as confidential. Where that Party submits a confidential version of its written submissions to the panel, it shall also, on request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public with an explanation as to why the non-disclosed information is confidential.

4. The deliberations of the panel shall be kept confidential.

5. The Parties shall be given the opportunity to attend any of the presentations, statements, arguments or rebuttals in the proceedings. The Parties shall make available to each other any information or written submissions submitted to the panel, including any comments on the descriptive part of the interim report, responses to questions of the panel and written comments on those responses.

6. The interim report and the final report shall be drafted without the presence of the Parties, and in light of the information provided and the statements made. The arbitrators shall assume full responsibility for the drafting of the reports and shall not delegate this responsibility to any other person.

7. The panel shall attempt to make its decisions, including its final report, by consensus. It may also make its decisions, including its final report, by majority vote where a decision cannot be arrived at by consensus. Dissenting opinions of arbitrators shall not be published.

8. The decisions of the panel shall be final and binding on the Parties. They shall be unconditionally accepted by the Parties. They shall not add to or diminish the rights and obligations of the Parties under this Agreement. They shall not be construed as creating rights for and obligations on persons.

Article 21.16. Rules of Interpretation

The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law including those codified in the Vienna Convention on the Law of Treaties. The panel shall also take into account relevant interpretations in panel and Appellate Body reports adopted by the DSB.

Article 21.17. Receipt of Information

1. On request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.

2. On request of a Party, or on its own initiative, the panel may seek from any source any information, including confidential information, it considers appropriate. The panel also has the right to seek the opinion of experts as it considers appropriate.

3. Natural persons of a Party or legal persons established in a Party may submit amicus curiae briefs to the panel in accordance with the Rules of Procedure.

4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may submit comments on that information to the panel.

Article 21.18. Interim Report

1. The panel shall issue an interim report to the Parties setting out a descriptive part and its findings and conclusions no later than 120 days after the date of its establishment in a manner enabling the Parties to review it. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report no later than 15 days after the date of issuance of the interim report. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

3. In cases of urgency,

(a) the panel shall make every effort to issue its interim report no later than 60 days after the date of its establishment and shall in no circumstances issue the interim report later than 75 days after the date of its establishment; and

(b) each Party may submit to the panel written comments and a written request to review precise aspects of the interim report no later than seven days after the date of issuance of the interim report.

Article 21.19. Final Report

1. The panel shall issue its final report to the Parties no later than 30 days after the date of issuance of the interim report. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. In cases of urgency, the panel shall make every effort to issue its final report no later than 15 days after the date of issuance of the interim report and shall in no circumstances issue the final report later than 30 days after the date of issuance of the interim report.

3. The final report shall include an adequate discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

4. The Parties shall make the final report publicly available in its entirety no later than 10 days after the date of its issuance unless they decide, in order to protect confidential information, to publish the final report only in parts, or not to publish the final report.

Article 21.20. Compliance with the Final Report

1. The Party complained against shall take any measure necessary to comply promptly and in good faith with the final report issued pursuant to Article 21.19.

2. The Party complained against shall, no later than 30 days after the date of issuance of the final report, notify the complaining Party of the length of the reasonable period of time for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance. If there is disagreement between the Parties on the length of the reasonable period of time, the complaining Party may, no later than 20 days after the date of receipt of the notification made in accordance with this paragraph by the Party complained against, request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the Party complained against. The original panel shall notify its determination to the Parties no later than 30 days after the date of submission of the request.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

4. The Party complained against shall inform the complaining Party in writing of its progress to comply with the final report at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.

Article 21.21. Compliance Review

1. The Party complained against shall, no later than the date of expiry of the reasonable period of time for compliance with the final report, notify the complaining Party of any measures taken to comply with the final report.

2. Where there is disagreement on the existence of measures taken to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to examine the matter. That request shall be notified simultaneously to the Party complained against.

3. The request referred to in paragraph 2 shall provide the factual and legal basis for the complaint, including the specific measures at issue, in such a manner as to clearly present how such measures are inconsistent with the relevant covered provisions.

4. The panel shall notify its decision to the Parties no later than 90 days after the date of referral of the matter.

Article 21.22. Temporary Remedies In Case of Non-compliance

1. The Party complained against shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory compensation or any alternative arrangement if:

(a) in accordance with Article 21.21 the original panel finds that the measures taken to comply with the final report as notified by the Party complained against are inconsistent with the relevant covered provisions;

(b) the Party complained against fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time determined in accordance with paragraph 2 of Article 21.20; or

(c) the Party complained against notifies the complaining Party that it is impracticable to comply with the final report within the reasonable period of time determined in accordance with paragraph 2 of Article 21.20.

2. If the complaining Party decides not to make a request in accordance with paragraph 1 or if a request is made and no mutually satisfactory compensation nor any alternative arrangement has been agreed within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may notify the Party complained against in writing that it intends to suspend the application to the Party complained against of concessions or other obligations under the covered provisions. The notification shall specify the level of intended suspension of concessions or other obligations.

3. The complaining Party shall have the right to implement the suspension of concessions or other obligations referred to in the preceding paragraph 15 days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration in accordance with paragraph 6.

4. The suspension of concessions or other obligations:

(a) shall be at a level equivalent to the nullification or impairment that is caused by the failure of the Party complained against to comply with the final report; and

(b) may be applied to sectors that are subject to dispute settlement in accordance with Article 21.2 other than the sector or sectors in which the panel has found nullification or impairment, in particular if the complaining Party is of the view that such suspension is effective in inducing compliance.

5. The suspension of concessions or other obligations or the compensation or any alternative arrangement referred to in this Article shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions which has been found in the final report has been removed, or until the Parties have agreed on a mutually satisfactory compensation or any alternative arrangement.

6. If the Party complained against considers that the suspension of concessions or other obligations does not comply with paragraph 4, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify to the Parties its decision on the matter no later than 30 days after the date of submission of the request. Concessions or other obligations shall not be suspended until the original panel has notified its decision. The suspension of concessions or other obligations shall be consistent with the decision.

Article 21.23. Compliance Review after the Adoption of Temporary Remedies

1. Upon the notification by the Party complained against to the complaining Party of the measure taken to comply with the final report:

(a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 21.22, the complaining Party shall terminate the suspension of concessions or other obligations

no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or

(b) in a situation where mutually satisfactory compensation or an alternative arrangement has been agreed, the Party complained against may terminate the application of such compensation or arrangement no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the Party complained against. The decision of the panel shall be notified to the Parties no later than 45 days after the date of submission of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions, the suspension of concessions or other obligations, or the application of the compensation or alternative arrangement, shall be terminated no later than 15 days after the date of the decision. Where relevant, the level of suspension of concessions or other obligations, or of the compensation or alternative arrangement, shall be adapted in light of the decision of the panel.

Article 21.24. Suspension and Termination of Proceedings

On the joint request of the Parties, the panel shall suspend at any time the proceedings for a period agreed by the Parties not exceeding 12 consecutive months. In the event of such suspension, the relevant time periods shall be extended by the period of time for which the proceedings of the panel were suspended. The panel shall resume the proceedings at any time upon the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the chairperson of the panel, as well as to the other Party, where applicable. If the proceedings of the panel have been suspended for more than 12 consecutive months, the authority for establishment of the panel shall lapse and the proceedings of the panel shall be terminated. The Parties may agree at any time to terminate the proceedings of the panel. The Parties shall jointly notify such agreement to the chairperson of the panel.

Section D. General Provisions

Article 21.25. Administration of the Dispute Settlement Procedure

1. Each Party shall:

(a) designate an office which shall be responsible for the administration of the dispute settlement procedure under this Chapter;

(b) be responsible for the operation and costs of its designated office; and

(c) notify the other Party in writing of the office's location and contact information no later than three months after the date of entry into force of this Agreement.

2. Notwithstanding paragraph 1, the Parties may agree to jointly entrust an external body with providing support for certain administrative tasks for the dispute settlement procedure under this Chapter.

Article 21.26. Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 21.2.

2. If a mutually agreed solution is reached during panel proceedings or a mediation procedure, the Parties shall jointly notify the agreed solution to the chairperson of the panel or the mediator. Upon such notification, the panel proceedings or the mediation procedure shall be terminated.

3. Each Party shall take the measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures it has taken to implement the mutually agreed solution.

Article 21.27. Choice of Forum

1. Where a dispute arises with regard to the alleged inconsistency of a particular measure with an obligation under this

Agreement and a substantially equivalent obligation under any other international agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 1, that Party shall not initiate dispute settlement proceedings in another forum with respect to that particular measure unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.

3. For the purpose of paragraph 2:

(a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with paragraph 1 of Article 21.7;

(b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and

(c) dispute settlement proceedings under any other agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement panel in accordance with the relevant provisions of that agreement.

4. Nothing in this Agreement shall preclude a Party from implementing the suspension of concessions or other obligations authorised by the DSB. A Party shall not invoke the WTO Agreement to preclude the other Party from suspending concessions or other obligations under the covered provisions.

Article 21.28. Time Period

1. All time periods provided for in this Chapter shall be counted from the date following the act or fact to which they refer.

2. Any time period referred to in this Chapter may be modified for a particular dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal. On request of a Party, the panel shall decide whether to modify the time period referred to in paragraph 2 and subparagraph 3(b) of Article 21.18, stating the reasons for its decision, inter alia, in view of the complexity of the particular dispute.

Article 21.29. Expenses

Unless the Parties agree otherwise, the expenses of the panel, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares in accordance with the Rules of Procedure.

Article 21.30. Rules of Procedure and Code of Conduct

The panel proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators, to be adopted by the Joint Committee at its first meeting pursuant to subparagraph 4(f) of Article 22.1.

Chapter 22. INSTITUTIONAL PROVISIONS

Article 22.1. Joint Committee

1. The Parties hereby establish a Joint Committee comprising representatives of both Parties.

2. The Joint Committee shall hold its first meeting within three months of the date of entry into force of this Agreement. Thereafter, the Joint Committee shall, unless otherwise agreed by the representatives of the Parties, meet once a year, or in urgent cases on request of either Party. The Joint Committee may meet in person or by other means, as agreed by the representatives of the Parties.

3. The meetings of the Joint Committee shall take place in the European Union or Japan alternately, unless otherwise agreed by the representatives of the Parties. The Joint Committee shall be co-chaired by the Member of the European Commission and a representative of Japan at ministerial level responsible for matters under this Agreement, or their respective delegates.

4. In order to ensure that this Agreement operates properly and effectively, the Joint Committee shall:

(a) review and monitor the implementation and operation of this Agreement and, if necessary, make appropriate recommendations to the Parties;

(b) supervise and coordinate, as appropriate, the work of all specialised committees, working groups and other bodies established under this Agreement, and recommend to them any necessary action;

(c) without prejudice to Chapter 21, seek to solve problems that may arise under this Agreement or resolve disputes that may arise regarding the interpretation or application of this Agreement;

(d) consider any other matter of interest under this Agreement as the representatives of the Parties may agree;

(e) adopt at its first meeting its rules of procedure; and

(f) adopt at its first meeting the Rules of Procedure of a Panel and the Code of Conduct for Arbitrators as referred to in Article 21.30, as well as the Mediation Procedure as referred to in paragraph 2 of Article 21.6.

5. In order to ensure that this Agreement operates properly and effectively, the Joint Committee may:

(a) establish or dissolve specialised committees, working groups or other bodies, other than those referred to in Articles 22.3 and 22.4, and determine their composition, function and tasks;

(b) allocate responsibilities to specialised committees, working groups or other bodies;

(c) provide information on issues falling within the scope of this Agreement to the public;

(d) recommend to the Parties any amendments to this Agreement or adopt decisions to amend this Agreement in instances specifically provided for in paragraph 4 of Article 23.2;

(e) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all specialised committees, working groups and other bodies set up under this Agreement, including panels established under Chapter 21; and

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

Article 22.2. Decisions and Recommendations of the Joint Committee

1. The Joint Committee may take decisions where provided for in this Agreement. The decisions taken shall be binding on the Parties. Each Party shall take the measures necessary to implement the decisions taken.

2. The Joint Committee may make recommendations relevant for the implementation and operation of this Agreement.

3. All decisions and recommendations of the Joint Committee shall be taken by consensus and may be adopted either by meeting in person or in writing.

Article 22.3. Specialised Committees

1. The following specialised committees are hereby established under the auspices of the Joint Committee:

(a) the Committee on Trade in Goods;

(b) the Committee on Rules of Origin and Customs-Related Matters;

(c) the Committee on Sanitary and Phytosanitary Measures;

(d) the Committee on Technical Barriers to Trade;

(e) the Committee on Trade in Services, Investment Liberalisation and Electronic Commerce;

(f) the Committee on Government Procurement;

(g) the Committee on Intellectual Property;

(h) the Committee on Trade and Sustainable Development;

(i) the Committee on Regulatory Cooperation; and

(j) the Committee on Cooperation in the Field of Agriculture.

2. The responsibilities and functions of the specialised committees referred to in paragraph 1 are defined, as appropriate, in the relevant Chapters of this Agreement and can be modified by a decision of the Joint Committee but their responsibilities shall remain within the scope of the Chapters for the implementation and operation of which they are responsible.

3. Unless otherwise provided for in this Agreement, the specialised committees shall:

(a) meet once a year, unless otherwise agreed by the representatives of the Parties to the specialised committees, or on request of a Party or of the Joint Committee;

(b) be composed of representatives of the Parties;

(c) be co-chaired, at an appropriate level, by the representatives of the Parties;

(d) hold their meetings in the European Union or Japan alternately, unless otherwise agreed by the representatives of the Parties to the specialised committees, or by any other appropriate means of communication;

(e) agree on their meeting schedules and set their agenda by consensus; and

(f) take all decisions and make recommendations by consensus either by meeting in person or in writing.

4. The specialised committees may adopt their rules of procedure. As long as they do not adopt their rules of procedure the rules of procedure for the Joint Committee apply mutatis mutandis.

5. The specialised committees may submit proposals for decisions to be adopted by the Joint Committee or take decisions in accordance with the relevant provisions of this Agreement.

6. On request of a Party or on referral from the relevant specialised committee, the Joint Committee may address matters that have not been resolved by the relevant specialised committee.

7. Each specialised committee shall inform the Joint Committee of the schedules and agenda of its meetings sufficiently in advance and shall report to the Joint Committee on results and conclusions from each of its meetings.

8. The existence of a specialised committee shall not prevent a Party from bringing any matter directly to the Joint Committee.

Article 22.4. Working Groups

1. The Working Group on Wine and the Working Group on Motor Vehicles and Parts are hereby established under the auspices of the Committee on Trade in Goods. The responsibilities and functions of these working groups are defined in Article 2.35 and Article 20 of Annex 2-C.

2. The following working groups may be established in accordance with relevant Chapters:

(a) ad hoc working groups under the auspices of the Committee on Sanitary and Phytosanitary Measures;

(b) ad hoc technical working groups under the auspices of the Committee on Technical Barriers to Trade;

(c) ad hoc working groups under the auspices of the Committee on Regulatory Cooperation; and

(d) an Animal Welfare Technical Working Group under the auspices of the Joint Committee.

3. Unless otherwise provided for in this Agreement or unless otherwise agreed by the representatives of the Parties to the working groups, the working groups shall:

(a) meet once a year, or on request of a Party or of the Joint Committee;

(b) be co-chaired, at an appropriate level, by representatives of the Parties;

(c) hold their meetings alternately in the European Union or Japan, or by any other appropriate means of communication as agreed between the representatives of the Parties to the working groups;

(d) agree on their meeting schedules and set their agenda by consensus; and

(e) take all decisions and make recommendations by consensus either by meeting in person or in writing.

4. The working groups may adopt their own rules of procedure. As long as they do not adopt such rules of procedure, the rules of procedure of the Joint Committee apply mutatis mutandis.

5. The working groups shall inform the relevant specialised committees or the Joint Committee, as appropriate, of their schedule and agenda sufficiently in advance of their meetings. They shall report on their activities at each meeting of the relevant specialised committees or the Joint Committee, as appropriate.

6. The existence of a working group shall not prevent a Party from bringing any matter directly to the Joint Committee or the relevant specialised committees.

Article 22.5. Work of Specialised Committees, Working Groups and other Bodies

In carrying out their functions, the specialised committees, working groups and other bodies established under this Agreement shall avoid duplication of their work.

Article 22.6. Contact Points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Agreement and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.

2. The contact points shall:

(a) deliver and receive, unless otherwise provided for in this Agreement, all notifications and information to be provided between the Parties pursuant to this Agreement;

(b) facilitate any other communications between the Parties on any matter relating to this Agreement; and

(c) coordinate preparations for the meetings of the Joint Committee.

Chapter 23. FINAL PROVISIONS

Article 23.1. General Review

Without prejudice to the provisions concerning review in other Chapters, the Parties shall undertake a general review of the implementation and operation of this Agreement in the 10th year following the date of entry into force of this Agreement, or at such times as may be agreed by the Parties.

Article 23.2. Amendments

1. This Agreement may be amended by agreement between the Parties.

2. Such amendments shall enter into force on the first day of the second month, or on such later date as may be agreed by the Parties, following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of such amendments have been completed. The Parties shall make such notification through an exchange of diplomatic notes between the European Union and the Government of Japan.

3. In accordance with the respective domestic legal procedures of the Parties, the Joint Committee may adopt decisions to amend this Agreement in the instances referred to in paragraph 4. Notwithstanding paragraph 2, such amendments shall be confirmed by and enter into force upon the exchange of diplomatic notes between the European Union and the Government of Japan, unless otherwise agreed by the Parties.

4. Paragraph 3 shall apply to:

(a) Annex 2-A, provided that the amendments are made in accordance with the amendment of the Harmonized System and include no change on the rates of customs duty to be applied by a Party to the originating goods of the other Party in accordance with Annex 2-A;

(b) Annex 2-C, Appendices 2-C-1 and 2-C-2;

(c) Annex 2-E;

(d) Chapter 3, Annexes 3-A to 3-F and Appendix 3-B-1;

(e) Annex 10;

(f) Annex 14-A;

(g) Annex 14-B; and

(h) provisions of this Agreement referring to provisions of international agreements or incorporating them into this Agreement, in case of amendments or successor agreements thereto.

Article 23.3. Entry Into Force

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that their respective applicable legal requirements and procedures for entry into force of this Agreement have been completed, unless the Parties agree otherwise. The Parties shall make such notification through an exchange of diplomatic notes between the European Union and the Government of Japan.

Article 23.4. Termination

1. This Agreement shall remain in force unless terminated pursuant to paragraph 2.

2. Either Party may notify in writing the other Party of its intention to terminate this Agreement. The termination shall take effect six months after the date of receipt by the other Party of the notification, unless the Parties otherwise agree.

Article 23.5. No Direct Effect on Persons

Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, without prejudice to the rights and obligations of persons under other public international law.

Article 23.6. Annexes, Appendices and Footnotes

The Annexes and Appendices to this Agreement shall form an integral part of this Agreement. For greater certainty, the footnotes shall also form an integral part of this Agreement.

Article 23.7. Future Accessions to the European Union

1. The European Union shall notify Japan of any request for accession of a third country to the European Union.

2. During the negotiations between the European Union and a third country referred to in paragraph 1, the European Union shall:

(a) on request of Japan and, to the extent possible, provide any information regarding any matter covered by this Agreement; and

(b) take into account any concerns expressed by Japan.

3. The Joint Committee shall examine any effects of accession of a third country to the European Union on this Agreement sufficiently in advance of the date of such accession.

4. To the extent necessary, the Parties shall, before the entry into force of the agreement on the accession of a third country to the European Union:

(a) amend this Agreement in accordance with Article 23.2; or

(b) put in place by decision of the Joint Committee any other necessary adjustments or transitional arrangements regarding this Agreement.

Article 23.8. Authentic Texts

1. This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Japanese languages, all texts being equally authentic, except for Part 2 of Annex 2-A, Schedules of the European Union in Annexes I to IV and Section A of Part 2 of Annex 10, which are drawn up in duplicate in the Bulgarian,

Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, all of these texts being equally authentic.

2. In case of any divergence of interpretation, the text of the language in which this Agreement was negotiated shall prevail.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Agreement.

DONE at [PLACE] on this [DATE]th day of [MONTH] in the year [YEAR].

For the European Union:

For Japan:

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE EUROPEAN UNION AND JAPAN FOR AN ECONOMIC PARTNERSHIP

THE EUROPEAN UNION and JAPAN,

HAVING reassessed the need for inclusion of provisions on the free flow of data into the Agreement between the European Union and Japan for an Economic Partnership, signed at Tokyo on 17 July 2018 (hereinafter referred to as 'the Agreement'), in accordance with Article 8.81 of the Agreement,

HAVE AGREED AS FOLLOWS:

Article 1

The table of contents of the Agreement shall be amended by deleting the words 'Articles 8.70 to 8.81' and replacing them with the words 'Articles 8.70 to 8.82'.

Article 2

Article 8.71 of the Agreement shall be amended by deleting the word 'and' at the end of subparagraph (a), by deleting the period at the end of subparagraph (b)(ii) and replacing it with a semicolon, and by inserting the following subparagraphs immediately after subparagraph (b)(ii):

'(c) "covered person" means:

(i) a covered enterprise;

(ii) an entrepreneur of a Party; and

(iii) a service supplier of a Party; and

(d) "personal data" means any information, relating to an identified or identifiable natural person.'.

Article 3

Article 8.81 of the Agreement shall be replaced by the following:

'Article 8.81

Cross-border transfer of information by electronic means

1. The Parties are committed to ensuring the cross-border transfer of information by electronic means where this activity is for the conduct of the business of a covered person.

2. To that end, a Party shall not adopt or maintain measures which prohibit or restrict the cross-border transfer of information set out in paragraph 1 by:

(a) requiring the use of computing facilities or network elements in the territory of the Party for information processing,

including by requiring the use of computing facilities or network elements that are certified or approved in the territory of the Party;

(b) requiring the localisation of information in the territory of the Party for storage or processing;

(c) prohibiting storage or processing of information in the territory of the other Party;

(d) making the cross-border transfer of information contingent upon use of computing facilities or network elements in the territory of the Party or upon localisation requirements in the territory of the Party;

(e) prohibiting the transfer of information into the territory of the Party; or

(f) requiring the approval of the Party prior to the transfer of information to the territory of the other Party (1).

(1) For greater certainty, subparagraph 2(f) does not prevent a Party from: (a) subjecting the use of a specific transfer instrument or a particular cross-border transfer of information to approval on grounds relating to the protection of personal data and privacy, in compliance with paragraph 4; (b) requiring the certification or conformity assessment of ICT products, services and processes, including Artificial Intelligence, before their commercialisation or use in its territory, to ensure compliance with laws and regulations consistent with this Agreement or for cybersecurity purposes, in compliance with paragraphs 3 and 4, and Articles 1.5, 8.3 and 8.65; or (c) requiring that re-users of information protected by intellectual property rights or confidentiality obligations resulting from domestic laws and regulations consistent with this Agreement, respect such rights or obligations when transferring the information across borders, including with regard to access requests by courts and authorities of third countries, in compliance with Article 8.3.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraphs 1 and 2 to achieve a legitimate public policy objective (2), provided that the measure:

(2) For the purposes of this Article, "legitimate public policy objective" shall be interpreted in an objective manner and shall enable the pursuit of objectives such as the protection of public security, public morals, or human, animal or plant life or health, or the maintenance of public order or other similar objectives of public interest, taking into account the evolving nature of digital technologies.

(a) is 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; and

(b) does not impose restrictions on transfers of information that are greater than necessary to achieve the objective. (3)

(3) For greater certainty, this paragraph does not affect the interpretation of other exceptions in this Agreement and their application to this Article, and the right of a Party to invoke any of them.

4. Nothing in this Article shall prevent a Party from adopting or maintaining measures on the protection of personal data and privacy, including with respect to cross-border transfers of information, provided that the law of the Party provides for instruments enabling transfers under conditions of general application (4) for the protection of the information transferred.

(4) For greater certainty, in line with the horizontal nature of the protection of personal data and privacy, "conditions of general application" refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

5. This Article does not apply to cross-border transfer of information held or processed by or on behalf of a Party.

6. A Party may at any time propose to the other Party to review the measures listed in paragraph 2.'.

Article 4

The following Article shall be inserted after Article 8.81 of the Agreement:

'Article 8.82

Protection of personal data

1. The Parties recognise that individuals have a right to the protection of their personal data and privacy as provided for by the laws and regulations of each Party and that high standards in this regard contribute to trust in the digital economy and to the development of trade. Each Party recognises the right of the other Party to determine the appropriate level of the

protection of personal data and privacy, to be provided for by their respective measures.

2. Each Party shall endeavour to adopt measures that protect individuals, without discrimination based on grounds such as nationality or residence, from personal data protection violations occurring within its jurisdiction.

3. Each Party shall adopt or maintain a legal framework that provides for the protection of personal data related to electronic commerce. In the development of its legal framework for the protection of personal data and privacy, each Party should take into account the principles and guidelines of relevant international bodies. The Parties also recognise that high standards of privacy and data protection as regards government access to privately held data, such as those outlined in the OECD Principles for Government Access to Personal Data held by Private Sector Entities, contribute to trust in the digital economy.

4. Each Party shall publish information on the protection of personal data and privacy it provides to users of electronic commerce, including:

(a) how individuals can pursue remedies for a breach of the protection of personal data or privacy arising from digital trade; and

(b) guidance and other information regarding compliance of businesses with applicable legal requirements for the protection of personal data and privacy.'.

Article 5

Article 8.63 of the Agreement shall be deleted.

Article 6

This Protocol shall enter into force in accordance with paragraphs 1 and 2 of Article 23.2 of the Agreement.

Article 7

1. This Protocol, in conformity with Article 23.8 of the Agreement, is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Japanese languages, all of these texts being equally authentic.

2. In the event of any divergence of interpretation, the text of the language in which this Protocol was negotiated shall prevail.

IN WITNESS WHEREOF, the undersigned, duly authorised to this effect, have signed this Protocol.

Done at Brussels on the thirty-first day of January in the year two thousand and twenty-four.