

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

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

Inspired by their longstanding friendship and growing bilateral economic relationship since the establishment of diplomatic relations in 1972;

Desiring to strengthen their economic partnership and further liberalise bilateral trade and investment to bring economic and social benefits;

Resolved to establish transparent and predictable rules governing the trade and investment between the Parties;

Building on their rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "the WTO Agreement");

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

Recognising that the strengthening of their economic partnership through a free trade agreement will produce mutual benefits for the Parties,

Have agreed as follows:

## **Chapter 1. INITIAL PROVISIONS AND DEFINITIONS**

### **Article 1.1. ESTABLISHMENT OF a FREE TRADE AREA**

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

### **Article 1.2. RELATION TO OTHER AGREEMENTS**

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

### **Article 1.3. GEOGRAPHICAL APPLICABILITY**

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

2. For Mauritius, this Agreement shall apply to

(a) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;

(b) the territorial sea of Mauritius; and

(c) any area outside the territorial sea of Mauritius, which in accordance with international law, has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.

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

## **Article 1.4. GENERAL DEFINITIONS**

For the purposes of this Agreement, unless otherwise specified:

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

(a) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article II of the GATT 1994, in respect of like goods, directly competitive goods, or substitutable goods of a Party, or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(b) anti-dumping or countervailing duty applied in accordance with the domestic law of a Party, and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on the Implementation of Article VI of the GATT 1994, and the Agreement on Subsidies and Countervailing Measures;

(c) safeguard duty applied in accordance with the domestic law of a Party and applied consistently with the provisions of Article XIX of the GATT 1994, and the Agreement on Safeguards; or

(d) other fees or charges commensurate with the cost of services rendered. days means calendar days;

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

GATS means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;

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

Harmonised System or HS means the Harmonized Commodity Description and Coding System, which is set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, done at Brussels on 14 June 1983, and subsequent amendments thereto;

measure includes any law, regulation, procedure, requirement or practice; WTO means the World Trade Organization; and

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

## **Chapter 2. TRADE IN GOODS**

### **Article 2.1. SCOPE**

This Chapter applies to trade in goods between the Parties.

### **Article 2.2. DEFINITIONS**

For the purposes of this Chapter:

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

### **Article 2.3. NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION**

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

### **Article 2.4. ELIMINATION OF CUSTOMS DUTIES**

1. Except as otherwise provided in this Agreement, each Party shall eliminate its customs duties on originating goods of the other Party, as from the date of entry into force of this Agreement in accordance with the terms and conditions set out in its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)).

2. Neither Party shall increase any customs duty bound in its Schedule to Annex I (Schedules in Relation to Article 2.4

(Elimination of Customs Duties)) or introduce a new customs duty on imports of an originating good of the other Party other than in accordance with this Agreement.

3. For each product the base rate of customs duty, to which the successive reductions set out in its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) are to be applied, shall be the most-favoured-nation (hereinafter referred to as "MFN") customs duty rate applied on 1st January 2017. If at any moment a Party reduces its applied MFN customs duty rate after the entry into force of this Agreement, that duty rate shall apply as regards trade covered by this Agreement if and for as long as it is lower than the customs duty rate calculated in accordance with its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)).

## **Article 2.5. CLASSIFICATION OF GOODS**

The classification of goods traded between the Parties shall be in conformity with the Harmonized System, as adopted and implemented by the Parties in their respective tariff laws.

## **Article 2.6. NON-TARIFF MEASURES**

1. Unless otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition, restriction, or measure having equivalent effect, including any quantitative restrictions, on the importation of a good originating in the territory of the other Party, or on the exportation or sale for export of a good destined for the territory of the other Party except in accordance with Article XI of the GATT 1994. To this end, Article XI of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.

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

## **Article 2.7. IMPORT LICENSING**

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

## **Article 2.8. ADMINISTRATIVE FEES AND FORMALITIES**

1. Each Party shall ensure that all fees and charges imposed on or in connection with importation or exportation shall be consistent with their obligations under Article VIII:1 of the GATT 1994 and its interpretative notes, which are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

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

## **Article 2.9. ADMINISTRATION OF TRADE REGULATIONS**

1. In accordance with Article X of the GATT 1994, each Party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, judicial decisions and administrative rulings pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use.

2. In accordance with Article VIII of the GATT 1994, neither Party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectified and obviously made without fraudulent intent or gross negligence, shall be greater than necessary to serve merely as a warning.

## **Article 2.10. STATE TRADING ENTERPRISES**

Nothing in this Agreement shall prevent a Party from maintaining or establishing a state trading enterprise as provided in Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVI of the GATT 1994.

## **Article 2.11. TRADE FACILITATION**

1. To facilitate trade between China and Mauritius, the Parties shall:

(a) simplify, to the greatest extent possible, procedures for trade in goods;

(b) promote multilateral cooperation in order to enhance their participation in the development and implementation of international conventions and recommendations on trade facilitation; and

(c) cooperate on trade facilitation within the framework of the China- Mauritius Free Trade Area Joint Commission (hereinafter referred to as "the FTA Joint Commission") as referred to in Article 14.1 (Establishment of the China-Mauritius Free Trade Area Joint Commission), including on the implementation of the WTO Trade Facilitation Agreement.

## **Article 2.12. CUSTOMS COOPERATION AND MUTUAL ADMINISTRATIVE ASSISTANCE**

The Parties will seek to make arrangements regarding customs cooperation and mutual administrative assistance within their respective domestic laws and regulations.

## **Article 2.13. COUNTRY SPECIFIC TARIFF QUOTA**

1. For products in respect of which China establishes a Country Specific Tariff Quota (hereinafter referred to as "CSTQ") in its Schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)), China shall apply in-quota tariff rates at a level equal to that of its global tariff rate quotas (hereinafter referred to as "TRQ") to imports of such products of Mauritius origin up to the quantity for each year as specified in Chapter 2-Annex (Country Specific Tariff Quota) after the entry into force of this Agreement or starting from 1 January 2021, whichever is the later.

2. Imports of such products of Mauritius origin in excess of the specified quantity in Chapter 2-Annex (Country Specific Tariff Quota) in any given calendar year shall be subject to the MFN applied rate.

3. The quantities of the CSTQ beyond the last year specified in Chapter 2-Annex (Country Specific Tariff Quota) shall remain at the same level as the last year.

# **Chapter 3. RULES OF ORIGIN AND IMPLEMENTATION PROCEDURES**

## **Section A. Rules of Origin**

### **Article 3.1. DEFINITIONS**

For the purposes of this Chapter:

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

authorized body means any government authority or other entity authorized under the laws or regulations of a Party or recognized by a Party as competent to issue a Certificate of Origin;

Customs Valuation Agreement means the Agreement on Implementation of Article VI of the GATT 1994, which is part of the WTO Agreement;

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

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

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

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

procedures;

good means product or material; materials mean ingredients, parts, components, subassemblies and/or goods

that were physically incorporated into another product or were subject to a process in the production of another product;

originating materials mean materials which qualify as originating in accordance with this Chapter;

product means a product being produced, even if it is intended for later use in another production operation; and

production means any method of obtaining goods including, but not limited to, growing, raising, mining, harvesting, fishing, aquaculture, farming, trapping,

hunting, capturing, gathering, collecting, breeding, extracting, manufacturing, processing or assembling a good.

## **Article 3.2. ORIGINATING GOODS**

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

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

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

(c) goods produced from non-originating materials in a Party, provided that the goods conform to a regional value content of no less than 40%, except for the goods listed in the Annex II (Product Specific Rules of Origin) which must comply with the requirements specified therein.

## **Article 3.3. GOODS WHOLLY OBTAINED**

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

(a) live animals born and raised in a Party; (b) goods obtained from live animals referred to in subparagraph (a);

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

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

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

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

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

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

(i) scrap and waste derived from processing operations in a Party, which fit only for the recovery of raw materials;

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

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

## **Article 3.4. REGIONAL VALUE CONTENT**

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

$$RVC = \frac{V - VNM}{V} \times 100\%$$

where:

RVC is the regional value content, expressed as a percentage;

V is the value of the product, as defined in the Customs Valuation Agreement, adjusted on an FOB basis; and

VNM is the value of the non-originating materials, including materials of undetermined origin, as provided in paragraph 2.

2. The value of the non-originating materials shall be:

(a) the value of the materials, as defined in the Customs Valuation Agreement, adjusted on a CIF basis; or

(b) the earliest ascertained price paid or payable for the non-originating materials in a Party where the working or processing takes place. When the producer of a product acquires non-originating materials within that Party, the value of such materials shall not include freight, insurance, packing costs, and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

3. The value of the non-originating materials used by the producer in the production of a product shall not include, for the purposes of calculating the regional value content of the product, pursuant to paragraph 1, the value of non-originating materials used to produce originating materials that are subsequently used in the production of the product.

### **Article 3.5. DE MINIMIS**

1. A product that does not meet tariff classification change requirements, pursuant to Annex II (Product Specific Rules of Origin), shall nonetheless be considered to be an originating product, provided that:

(a) the value of all non-originating materials, determined pursuant to Article 3.4 (Regional Value Content), including materials of undetermined origin, that do not meet the tariff classification change requirement does not exceed 10% of the FOB value of the given product; and

(b) the product meets all the other applicable criteria of this Chapter.

### **Article 3.6. ACCUMULATION**

Originating materials of a Party, used in the production of a good in the other Party, shall be considered to be originating in the latter Party.

### **Article 3.7. MINIMAL OPERATIONS OR PROCESSES**

1. Notwithstanding Article 3.2(1)(c), a good shall not be considered as originating, if it has only undergone one or more of the following operations or processes:

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

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

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

(d) slaughtering of animals;

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

(f) ironing or pressing of textiles;

(g) simple painting and polishing operations;

(h) busking, partial or total bleaching, polishing, and glazing of cereals and tice;

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

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

(k) sharpening, simple grinding or simple cutting;

(l) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles), cutting, slitting, bending, coiling, or uncoiling;

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

- (n) affixing or printing marks, labels, logos or other like distinguishing signs on products or their packaging;
- (o) simple mixing of goods, whether or not of different kinds;
- (p) mere dilution with water or another substance that does not materially alter the characteristics of the goods; or
- (q) operations whose sole purpose is to ease port handling.

All operations in the production of a given good carried out in a Party shall be taken into account when determining whether the working or process undergone by that good is considered as minimal operations or processes referred to in paragraph 1.

### **Article 3.8. FUNGIBLE MATERIALS**

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

- (a) physical separation of the materials; or
- (b) an inventory management method recognized in the generally accepted accounting principles of the exporting Party, provided that the inventory management method selected is used for at least 12 continuous months.

### **Article 3.9. NEUTRAL ELEMENTS**

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

2. Neutral element means a good used in the production, testing or inspection of another good but not physically incorporated into that good by itself, including:

- (a) fuel, energy, catalysts and solvents;
- (b) plant, equipment and machine, including devices and supplies used for testing or inspecting the goods;
- (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (d) tools, dies and moulds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
- (g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

### **Article 3.10. PACKING, PACKAGES AND CONTAINERS**

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

2. The origin of the packaging materials and containers in which goods are packaged for retail sale shall be disregarded in determining the origin of the goods, provided that the packaging materials and containers are classified with the goods.

3. Notwithstanding paragraph 2, where goods are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the goods.

### **Article 3.11. ACCESSORIES, SPARE PARTS AND TOOLS**

1. Accessories, spare parts or tools presented and classified with the good shall be considered as part of the good, provided that:

- (a) they are invoiced together with the good; and

(b) their quantities and values are commercially customary for the good.

2. Where a good is subject to change in tariff classification criterion set out in Annex II (Product Specific Rules of Origin), accessories, spare parts, or tools described in paragraph 1 shall be disregarded when determining the origin of the good.

3. Where a good is subject to a regional value content requirement, the value of the accessories, spare parts or tools described in paragraph 1 shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

### **Article 3.12. SETS**

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non- originating products does not exceed 15% of total value of the set, determined pursuant to Article 3.4 (Regional Value Content).

### **Article 3.13. DIRECT CONSIGNMENT**

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

2. Notwithstanding paragraph 1, goods whose transport involves transit through one or more non-Parties, with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, shall still be considered as directly transported between the Parties, provided that:

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

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

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

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

## **Section B. Implementation Procedures**

### **Article 3.14. CERTIFICATE OF ORIGIN**

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

2. The Certificate of Origin shall:

(a) contain a unique certificate number;

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

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

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

(e) be completed in English.

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

4. Each Party shall inform the customs authority of the other Party of the name of each authorized body, as well as relevant contact details, and shall provide details of security features for relevant forms and documents used by each authorized



body, prior to the issuance of any certificate by that body. Any change in the information provided above shall be promptly notified to the customs authority of the other Party.

5. A Certificate of Origin may be issued retrospectively within 1 year from the date of shipment, bearing the words "ISSUED RETROSPECTIVELY" and remains valid for 1 year from the date of shipment, if it is not issued before or at the time of shipment due to force majeure, involuntary errors, omissions or other valid causes.

6. In cases of theft, loss, or accidental destruction of a Certificate of Origin, the exporter or producer may make a written request to the authorized bodies of the exporting Party for issuing a certified copy. The certified copy shall bear the words "CERTIFIED TRUE COPY of the original Certificate of Origin number\_dated \_\_". The certified copy shall be valid during the term of validity of the original Certificate of Origin.

### **Article 3.15. DECLARATION OF ORIGIN**

1. An approved exporter under Article 3.16 (Approved Exporter) in a Party may, for the purpose of obtaining preferential tariff treatment in the other Party, complete a Declaration of Origin on invoice or other commercial documents.

2. The Declaration of Origin shall contain the authorization number of the approved exporter and a unique invoice/commercial document number issued by the exporter.

3. A Declaration of Origin shall be produced only if the product concerned can be considered as originating in a Party subject to the provisions of this Chapter.

4. Where the approved exporter in the exporting Party is not the producer of the product, a Declaration of Origin for the product may be completed by the approved exporter in accordance with the laws and regulations of the exporting Party.

5. A Declaration of Origin shall be completed prior to the importation in the importing Party of the products to which it relates.

6. A Declaration of Origin shall be valid for 12 months from the date of completion.

7. The exporter making out a Declaration of Origin shall prepare to submit at any time, at the request of the customs authority of the exporting Party, all appropriate documents proving the originating status of the products concerned as well as the fulfillment of the other requirements of this Agreement.

8. A Declaration of Origin shall bear the following text:

"The exporter hereby declares that the stated information is correct and that the goods exported to (Importing Party) comply with the origin requirements specified in the China-Mauritius Free Trade Agreement."

### **Article 3.16. APPROVED EXPORTER**

1. A Party may implement an Approved Exporter System under this Agreement, which allows the approved exporter to complete a Declaration of Origin. The approved exporter shall be approved and administered by the exporting Party in accordance with its domestic legislation or customs administrative procedures.

2. The approved exporter shall be given a unique authorization number required to be marked on the Declaration of Origin when in use. The use of such number shall be monitored and supervised by the exporting Party.

3. Each Party shall provide the other Party with detailed information on the approved exporters, such as the names, authorization numbers and contact details of the approved exporters prior to the actual exportation of their products.

### **Article 3.17. RETENTION OF ORIGIN DOCUMENTS**

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

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

### **Article 3.18. OBLIGATIONS REGARDING IMPORTATIONS**

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

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

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

(c) submit the valid Certificate of Origin and other documentary evidence related to the importation of the goods, upon request of the customs administration of the importing Party.

### **Article 3.19. REFUND OF IMPORT CUSTOMS DUTIES OR DEPOSIT**

1. Where a Certificate of Origin is not submitted to the import customs at the time of importation pursuant to Article 3.18 (Obligation Regarding Importations), upon the request of the importer, the customs authorities of the importing Party may impose the applied non-preferential customs duties, or require a guarantee equivalent to the full amount of the customs duties on that good, provided that the importer formally declares to the customs authority at the time of importation that the good in question qualifies as an originating good.

2. The importer may apply for a refund of any excess customs duties imposed or guarantee paid provided that they can present all the necessary documentation required in Article 3.18 (Obligations Regarding Importations) within the period specified in the legislation of the importing Party.

### **Article 3.20. VERIFICATION OF ORIGIN**

1. For the purposes of determining the authenticity or accuracy of the Certificate of Origin, the originating status of the products concerned, or the fulfillment of the other requirements of this Chapter, the customs authority of the importing Party may conduct origin verification based on risk analysis and at random or whenever the customs authority of the importing Party has reasonable doubts, by means of:

(a) requests for additional information from the importer;

(b) requests to the customs authority of the exporting Party to verify the origin of a product;

(c) such other procedures as the customs authorities of the Parties may jointly decide; or

(d) conducting verification visit to the exporting Party, when necessary, in a manner to be jointly determined by the customs authorities of the Parties.

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

3. The importer or the exporting Party referred to in paragraph 1 receiving a request for verification, shall respond to the request promptly and reply within 3 months, from the date of raising the verification request. Upon request of the exporting Party, the above-mentioned period can be extended to another 3 months.

4. If the customs authority of the importing Party decides to suspend the granting of preferential treatment to the goods concerned while awaiting the results of the verification, the goods shall be released upon submission of guarantee, unless otherwise provided in the domestic legislations of the importing party.

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

6. The exporter, producer or manufacturer, who applied for the Certificate of Origin or made the Declaration of Origin related to the concerned goods, shall not deny any request for a verification visit agreed by the Parties. Any failure to consent to a verification visit shall be liable for a denial of preferential benefits claimed in accordance with this Agreement.

### **Article 3.21. DENIAL OF PREFERENTIAL TARIFF TREATMENT**

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

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

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

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

(d) in case stipulated in Article 3.20 (Verification of Origin).

### **Article 3.22. ELECTRONIC ORIGIN DATA EXCHANGE SYSTEM**

For the purposes of the effective and efficient implementation of this Chapter, both Parties may establish an Electronic Origin Data Exchange System to ensure real-time exchange of origin-related information between customs administrations upon a mutually agreed time framework.

### **Article 3.23. COMMITTEE ON RULES OF ORIGIN**

1. The Parties hereby establish a Committee on Rules of Origin under the FTA Joint Commission, composed of government representatives of each Party.

2. The Committee shall meet as necessary to consider any matter arising under this Chapter and consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the objectives of this Agreement.

### **Article 3.24. CONTACT POINTS**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter

2. Each Party shall notify the other Party in writing of its designated contact point no later than 60 days after the date of entry into force of this Agreement.

3. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials acting as or on behalf of its contact point.

## **Chapter 4. SANITARY AND PHYTOSANITARY MEASURES**

### **Article 4.1. OBJECTIVES**

1. The objectives of this Chapter are to:

(a) facilitate trade between the Parties while protecting human, animal or plant life or health in the territories of the Parties;

(b) enhance transparency in and mutual understanding of the application of each Party's Sanitary and Phytosanitary Measures (hereinafter referred to as "SPS measures")

(c) strengthen cooperation between the Parties; and

(d) facilitate implementation of the principles of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A of the WTO Agreement (hereinafter referred to as "the SPS Agreement").

### **Article 4.2. SCOPE**

This Chapter shall apply to all SPS measures of the Parties, which may, directly or indirectly, affect trade between the Parties.

### **Article 4.3. DEFINITIONS**

For the purposes of this Chapter, the definitions in Annex A of the SPS Agreement shall apply. Moreover, competent authorities shall mean the authorities within each Party recognised by the national government as responsible for developing and administering the SPS measures within that Party.

### **Article 4.4. GENERAL PROVISION**

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

## **Article 4.5. EQUIVALENCE**

The Parties shall strengthen co-operation on equivalence of SPS measures in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade.

## **Article 4.6. HARMONISATION**

The Parties shall base their SPS measures on international standards, guidelines and recommendations established by the Codex Alimentarius Commission (CAC), the World Organisation for Animal Health (OIE), and relevant international and regional organisations operating within the framework of the International Plant Protection Convention (IPPC), where they exist, except as otherwise provided for in paragraph 3 of Article 3 of the SPS Agreement.

## **Article 4.7. MEASURES AT THE BORDER**

Where a Party detains, at a port of entry, goods exported from the other Party due to a perceived failure to comply with sanitary or phytosanitary requirements, the reasons for the detention shall be promptly notified to the importer or his or her representative. Official measures taken in relation to such goods shall be proportionate to the risk associated with such goods.

## **Article 4.8. TRANSPARENCY AND INFORMATION EXCHANGE**

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended SPS measures is made available in accordance with the relevant requirements of the SPS Agreement.
2. Each Party shall make available the full text of its notified SPS measures, to the requesting Party within 15 working days after receiving the written request.
3. Each Party shall allow at least 60 days following the notification of its proposed SPS measures to WTO for the other Party to present comments except where risks to human, animal or plant life or health arising or threatening to arise warrant urgent actions.
4. Each Party may request information from the other Party on a matter arising under this Chapter. The requested Party shall endeavour to provide available information to the requesting Party within a reasonable period of time.
5. The Parties agree to notify each other of any emergency situation which may affect bilateral trade.
6. Each Party agrees to provide timely and appropriate information directly to the contact point of the other Party where:
  - (a) changes in animal or plant health status may affect existing trade between the Parties;
  - (b) significant non-compliance to SPS measures associated with a consignment is identified by the importing Party; or
  - (c) provisional SPS measures adopted by a Party against or affecting the exports of the other Party is considered necessary to protect human, animal or plant life or health.

## **Article 4.9. COOPERATION**

1. The Parties agree to explore the opportunities for further cooperation on SPS issues, with a view to enhancing the mutual understanding of the regulatory systems of the Parties and facilitating bilateral trade.
2. Each Party, on request, shall give due consideration to cooperation in areas of mutual interest relating to SPS issues, such as animal health, plant protection and/or food safety, subject to the availability of resources.

## **Article 4.10. CONTACT POINTS / COMPETENT AUTHORITIES AND CONTACT POINTS**

1. Each Party shall designate a contact point which shall, for that Party, have the responsibility for coordinating the implementation of this Chapter. The contact points shall be:
  - (a) for China, General Administration of Customs; and

(b) for Mauritius, the National Plant Protection Office (NPPO).

2. Each Party shall provide the other Party with the contact details of the relevant officials in their respective contact points, including telephone, facsimile, email, and any other relevant details.

3. Each Party shall notify the other Party promptly of any change in its contact point or any amendment to the details of the relevant officials acting as or on behalf of its contact point.

#### **Article 4. TECHNICAL CONSULTATIONS**

1. Where a Party considers that a relevant SPS measure of the other Party has constituted unnecessary obstacles to its exports, it may request technical consultations. The requested Party shall respond as early as possible to such request.

2. The requested Party shall enter into technical consultations within a period mutually agreed, with a view to reaching a solution. Technical consultations may be conducted via any means mutually agreed by the Parties.

### **Chapter 5. TECHNICAL BARRIERS TO TRADE**

#### **Article 5.1. OBJECTIVES**

1. The objectives of this Chapter are to: (a) facilitate and promote trade in goods between the Parties by ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary technical barriers to trade; (b) strengthen cooperation, including information exchange in relation to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures;

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

(d) facilitate implementation of the principles of the Agreement on Technical Barriers to Trade (hereinafter referred to as "the TBT Agreement") in Annex 1A of the WTO Agreement.

#### **Article 5.2. SCOPE**

1. This Chapter shall apply to all standards, technical regulations, and conformity assessment procedures of each Party that may, directly or indirectly, affect trade in goods between the Parties. It shall exclude:

(a) the SPS measures which are covered in Chapter 4 (Sanitary and Phytosanitary Measures); and

(b) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies, as provided by Article 1.4 of the TBT Agreement.

#### **Article 5.3. DEFINITIONS**

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

#### **Article 5.4. GENERAL PROVISION**

Except as otherwise provided for in this Chapter, the TBT Agreement shall apply between the Parties and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

#### **Article 5.5. INTERNATIONAL STANDARDS**

For the purpose of this Chapter, standards issued, in particular, by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC) shall be considered as relevant international standards in the sense of Article 2.4 of the TBT Agreement.

#### **Article 5.6. CONFORMITY ASSESSMENT PROCEDURES**

1. The Parties, with a view to increasing efficiency and ensuring cost effectiveness of conformity assessment, shall seek to

enhance the acceptance of the results of conformity assessment procedures conducted by the designated conformity assessment bodies in the other Party, through negotiating a mutual recognition agreement.

2. When cooperating in the area of conformity assessment, the Parties shall take into consideration their participation in relevant international organizations.

## **Article 5.7. MEASURES AT THE BORDER**

Where a Party detains, at a port of entry, goods exported from the other Party due to a perceived failure to comply with a technical regulation or a conformity assessment procedure, the reasons for the detention shall be promptly notified to the importer or his or her representative. Official measures taken in relation to such goods shall be proportionate to the risk associated with such goods.

## **Article 5.8. TRANSPARENCY AND INFORMATION EXCHANGE**

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended technical regulations or conformity assessment procedures is made available in accordance with the Article 2.9 and Article 5.6 of the TBT Agreement.

2. Each Party shall make available the full text of its notified technical regulations and conformity assessment procedures to the requesting Party within 15 working days of receiving the written request.

3. Each Party shall allow at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures to WTO for the other Party to present comments except where risks to health, safety, and the environment arising or threatening to arise warrant urgent actions.

4. Each Party may request information from the other Party on a matter arising under this Chapter. The requested Party shall endeavour to provide available information to the requesting Party within a reasonable period of time.

## **Article 5.9. TECHNICAL CONSULTATIONS**

1. Where a Party considers that a relevant technical regulation or conformity assessment procedure of the other Party has constituted unnecessary obstacles to its exports, it may request technical consultations. The requested Party shall respond as early as possible to such a request.

2. The requested Party shall enter into technical consultations within a period mutually agreed, with a view to reaching a solution. Technical consultations may be conducted via any means mutually agreed by the Parties.

## **Article 5.10. COOPERATION**

1. With a view to increasing mutual understanding of their respective systems and facilitating bilateral trade, the Parties shall strengthen their technical cooperation in the following areas:

(a) communication between competent authorities of the Parties;

(b) exchange of information in respect of standards, technical regulations, conformity assessment procedures, and good regulatory practices;

(c) encouraging, where possible, cooperation between standardization and conformity assessment bodies of the Parties including training programmes, workshops and related activities;

(d) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;

(e) activities defined in ISO/IEC Guide 2; and

(f) other areas mutually agreed by the Parties.

## **Article 5.11. CONTACT POINTS**

1. Each Party shall designate contact points which shall, for that Party, have the responsibility for coordinating the implementation of this Chapter. The contact points will be:

(a) for China, State Administration for Market Regulation and General Administration of Customs; and

(b) for Mauritius, the Mauritius Standards Bureau.

2. Each Party shall provide the other Party with the contact details of the relevant officials in their respective contact points, including telephone, facsimile, email, and any other relevant details.

3. Each Party shall notify the other Party promptly of any change in its contact points or any amendment to the details of the relevant officials acting as or on behalf of its contact point.

## **Chapter 6. TRADE REMEDIES**

### **Section A. General Trade Remedies**

#### **Article 6.1. ANTI-DUMPING AND COUNTERVAILING MEASURES**

Each Party retains its rights and obligations under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Subsidies and Countervailing Measures contained in Annex 1A to the WTO Agreement.

#### **Article 6.2. GLOBAL SAFEGUARD MEASURES**

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards contained in Annex 1A to the WTO Agreement.

2. A Party proposing to apply or extend a global safeguard measure shall provide adequate opportunity for prior consultations with the other Party. The prior consultations shall take place as soon as possible.

### **Section B. Bilateral Safeguard Measures**

#### **Article 6.3. DEFINITIONS**

For the purposes of this Chapter:

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

bilateral safeguard measure means a measure described in Article 6.4;

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

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

transition period means, in relation to a particular product, the five-year period from the date of entry into force of this Agreement. In the case of a product where the liberalisation progress as set out in Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) lasts five or more years, the transition period shall be extended to the date on which such a product reaches zero tariff in accordance with the Schedule in that Annex plus two years; and

WTO Safeguards Agreement means the Agreement on Safeguards contained in Annex 1A to the WTO Agreement.

#### **Article 6.4. APPLICATION OF a BILATERAL SAFEGUARD MEASURE**

1. During the transition period only, if as a result of the reduction or elimination of a customs duty provided for in this Agreement, any product originating in a Party is being imported into the territory of 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 domestic industry producing a like or directly competitive product, the importing Party may apply a bilateral safeguard measure described in paragraph 2 of this Article.

2. If the conditions in paragraph 1 are met, a Party may, only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment:

- (a) suspend the further reduction of any rate of customs duty on the product provided for under this Agreement; or
- (b) increase the rate of customs duty on the product to a level not exceeding the lesser of:
  - (i) the MFN applied rate of customs duty in effect on the product on the day immediately preceding the date of entry into force of this Agreement; or
  - (ii) the MFN applied rate of customs duty in effect on the product on the date on which the bilateral safeguard measure is applied.

## **Article 6.5. SCOPE AND DURATION OF BILATERAL SAFEGUARD MEASURES**

1. Neither Party may apply or maintain a safeguard measure:

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

(b) for a period exceeding two years; except that the period may be extended by up to two years, if the competent authorities of the applying Party determine, in conformity with the procedures set out in this Chapter, that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting. Regardless of its duration, such measure shall terminate at the end of the transition period.

2. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party applying the measure shall progressively liberalize it at regular intervals during the period of application. A measure extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

3. A Party shall not apply any bilateral safeguard measure again on a product which has been subject to such a bilateral safeguard measure for a period of time equal to that during which the previous bilateral safeguard measure had been applied, provided that the period of non-application is at least two years. However, no bilateral safeguard measure may be applied more than twice on the same product.

4. Neither Party may apply any bilateral safeguard measure on a product that is subject to a measure that the Party has applied pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement, and neither Party shall maintain any bilateral safeguard measure on a product that becomes subject to a measure that the Party imposed pursuant to Article XIX of the GATT 1994 and the WTO Safeguards Agreement.

5. On the termination of a bilateral safeguard measure, the Party that applied the bilateral safeguard measure shall apply the rate of customs duty set out in its schedule to Annex I (Schedules in Relation to Article 2.4 (Elimination of Customs Duties)) on the date of termination as if the bilateral safeguard measure had never been applied.

## **Article 6.6. INVESTIGATION PROCEDURES AND TRANSPARENCY REQUIREMENTS**

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

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

## **Article 6.7. PROVISIONAL MEASURES**

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

2. The duration of a provisional bilateral safeguard measure shall not exceed 200 days, during which period the pertinent requirements of Article 6.3 (Definitions), 6.4 (Application of A Bilateral Safeguard Measure), 6.5 (Scope and Duration on Bilateral Safeguard Measures) and 6.6 (Investigation Procedures and Transparency Requirements) shall be met. The duration of such provisional bilateral safeguard measures shall be counted as part of the final safeguard measure.



3. The Party intending to apply a provisional bilateral safeguard measure shall before its application, immediately notify the other Party, and shall initiate consultations after applying such a measure. 4. Such a provisional bilateral safeguard measure should take the form of an increase in the customs duty not exceeding the lesser of the rates in Article 6.4.2 (b). Any customs duty collected shall be promptly refunded if the subsequent investigation referred to in Article 6.6.1 determines that increased imports have not caused or threatened to cause serious injury to a domestic industry.

## **Article 6.8. NOTIFICATION AND CONSULTATION**

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

(a) initiating a bilateral safeguard investigation;

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

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

(d) taking a decision to liberalise a bilateral safeguard measure previously applied in accordance with Article 6.5.2.

2. In making the notifications referred to in paragraphs 1(b) and paragraph 1(c), the Party applying a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved, the proposed bilateral safeguard measure, the grounds for introducing such a bilateral safeguard measure, the proposed date of introduction and its expected duration and timetable for progressive liberalization. In the case of an extension of a bilateral safeguard measure, the written results of the determination required by Article 6.6 (Investigation Procedures and Transparency Requirements), including evidence that the continued application of the measure is necessary to prevent or remedy serious injury and that the industry is adjusting shall also be provided.

3. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party, with a view to, inter alia, reviewing the information provided under paragraph 2, exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 6.9.1.

4. A party shall provide to the other Party a copy of the public version of the report of its competent authorities required in accordance with Article 6.6 (Investigation Procedures and Transparency Requirements) as soon as it is available.

## **Article 6.9. COMPENSATION**

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

2. If the Parties are unable to reach an agreement on compensation within 30 days of the consultation commencing, the exporting Party may consider the possibility to suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure.

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

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

# **Chapter 7. TRADE IN SERVICES**

## **Section A. Scope and Definition**

### **Article 7.1. SCOPE**

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

2. This Chapter shall not apply to:

(a) measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights and air traffic control and air navigation services, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system ("CRS") services; and

(iv) ground handling services. The Parties note the multilateral negotiations pursuant to the review of the Annex on Air Transport Services of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

(b) government procurement;

(c) cabotage in maritime transport services;

(d) services provided in the exercise of governmental authority in the territory of a Party;

(e) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, except to the extent provided in Article 7.17 (Subsidies); or

(f) measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. With regard to delivery of services through movement of natural persons mode, this Chapter shall be read in conjunction with the Chapter 7-Annex-B (Movement of Natural Persons).

4. New services shall be considered for possible incorporation into this Chapter on a mutually agreed basis at future reviews held in accordance with Article 7.23 (Review) or at the request of either Party. The supply of services which is not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation on a mutually agreed basis at future reviews or at the request of either Party.

## **Article 7.2. DEFINITIONS**

For the purposes of this Chapter:

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

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

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

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

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

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

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

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

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

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

(i) natural persons of that Party; or

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

a juridical person is:

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

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

Measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, measures by Parties taken by:

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

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

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

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

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

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

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

natural person of the other Party means a natural person who resides in the territory of the other Party or elsewhere,

(a) for China, is a natural person who under the Chinese law is a national of China; and

(b) for Mauritius, is a natural person who under Mauritian law is a national of Mauritius;

person of a Party means either a natural person or a juridical person of a Party;

qualification procedures mean administrative procedures relating to the administration of qualification requirements;

qualification requirements mean substantive requirements which a service supplier is required to fulfill in order to obtain certification or a licence;

sector of a service means, with reference to a specific commitment, one or more or all subsectors of that service, as specified in a Party's Schedule, or otherwise the whole of that service sector, including all of its subsectors;

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

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

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

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

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

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

trade in services mean the supply of a service:

(a) from the territory of a Party into the territory of the other Party ("cross-border supply mode");

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

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

(d) by a service supplier of a Party, through presence of natural persons of that Party in the territory of the other Party ("presence of natural persons mode" or "movement of natural persons mode");

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

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

## **Section B. General Obligations and Disciplines**

### **Article 7.3. SCHEDULING OF SPECIFIC COMMITMENTS**

1. Each Party shall set out in its Schedule the specific commitments it undertakes under Articles 7.4 (National Treatment), 7.5 (Market Access) and 7.7 (Additional Commitments). With respect to sectors where such commitments are undertaken, its Schedule of Specific Commitments shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 7.4 (National Treatment) and 7.5 (Market Access) shall be inscribed in the column relating to Article 7.5 (Market Access). In this case the inscription will be considered to provide a condition or qualification to Article 7.4 (National Treatment) as well.

3. Schedules of Specific Commitments shall be annexed to this Agreement as Annex III (Schedule of Specific Commitments on Trade in Services) and shall form an integral part thereof.

### **Article 7.4. NATIONAL TREATMENT**

1. In the sectors inscribed in its Annex III (Schedule of Specific Commitments on Trade in Services), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (2)

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

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

(2) Specific commitments assumed under this Article shall not be construed to require the Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

### **Article 7.5. MARKET ACCESS**

1. With respect to market access through the modes of supply identified in Article 7.2 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms,

limitations and conditions agreed and specified in Annex II (Schedule of Specific Commitments on Trade in Services). (3)

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (4)

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

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

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

(3) If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) of the definition of trade in services contained in Article 7.2 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (c) of the definition of trade in services contained in Article 7.2, it is thereby committed to allow related transfers of capital into its territory.

(4) Sub-paragraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

## **Article 7.6. MOST-FAVoured-NATION TREATMENT**

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex III (Schedules of Specific Commitments on Trade in Services), each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of the other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party. (5)

2. Treatment granted under other existing or future agreements concluded by a Party and notified under Article V or Article V bis of the GATS shall not be subject to paragraph 1.

3. If a Party concludes or amends an agreement of the type referred to in paragraph 2, it will, upon request from the other Party, accord due consideration to extend to the other Party treatment no less favourable than that provided under that agreement. The former Party shall, upon request from the other Party, afford adequate opportunity to the other Party to negotiate the incorporation into this Agreement of a treatment no less favourable than that provided under the former agreement.

4. The provisions of this Chapter shall not be so construed as to prevent a Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

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

## **Article 7.7. ADDITIONAL COMMITMENTS**

A Party may also negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.4 (National Treatment) and 7.5 (Market Access), including but not limited to those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in Annex III (Schedule of Specific Commitments on Trade in Services).

## **Section C. Other Provisions**

### **Article 7.8. DOMESTIC REGULATION**

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

2.

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

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

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

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

(b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

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

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

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the results of the negotiations on disciplines on these measures pursuant to paragraph 4 of Article VI of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are, inter alia:

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

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

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

5.

(a) Pending the incorporation of the disciplines referred to in paragraph 4, for sectors where a Party has undertaken specific commitments and subject to terms, limitations, conditions, or qualifications set out therein, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

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

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

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for

adequate procedures to verify the competence of professionals of the other Party in accordance with provisions of paragraph 5.

7. A Party shall, in accordance with its laws and regulations, permit services suppliers of the other Party to use enterprise names under which they trade in the territory of the other Party.

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

## **Article 7.9. RECOGNITION**

1. For the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or maybe accorded autonomously.

2. Where a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted in the territory of a non-Party, nothing in Article 7.6 (Most-Favoured-Nation Treatment) shall be construed to automatically require the Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 2, whether existing or in the future, shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education, experience, licences or certifications obtained or requirements met in that other Party should also be recognised.

4. After the entry into force of this Agreement, the Parties shall ensure that their relevant professional bodies negotiate and conclude, as soon as the date of entry into force of this Agreement, any such agreement or arrangement providing mutual recognition of the education or experience obtained, qualification requirements and procedures and licensing requirements and procedures.

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

6. In respect of regulated service sectors, other than those mentioned in paragraph 4, upon a request being made in writing by a Party to the other Party in such sectors, the Parties shall encourage that their respective professional bodies negotiate, in that service sector, agreements for mutual recognition of education, or experience obtained, qualifications requirements and procedures, and licensing requirements and procedures in that service sector, with a view to the achievement of early outcome.

## **Article 7.10. QUALIFICATIONS RECOGNITION COOPERATION**

1. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of vocational qualifications to strengthen cooperation and to explore possibilities for mutual recognition of respective vocational qualifications.

2. The Parties may discuss, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to vocational services.

## **Article 7.11. PAYMENTS AND TRANSFERS**

1. Except in the circumstances envisaged in Article 7.18 (Restrictions to Safeguard the Balance of Payment), a Party shall not apply any restriction on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the

Articles of Agreement, provided that a Party shall not impose any restriction on any capital transaction inconsistently with its specific commitments regarding such transaction, except under Article 7.18 (Restrictions to Safeguard the Balance of Payment), or at the request of the Fund.

## **Article 7.12. TRANSPARENCY**

1. Each Party shall ensure that:

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

(b) its measures relating to public networks or services are made publicly available, including the requirements, if any, for permits.

2. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public networks or services are made publicly available, including:

(a) the circumstances in which a licence is required;

(b) all applicable licencing procedures;

(c) the period of time normally required to reach a decision concerning a licence application;

(d) the cost of, or fees for applying for, or obtaining, a licence; and (e) the period of validity of a licence.

3. Each Party shall, in accordance with its laws and regulations, ensure that, on request, an applicant receives reasons for the denial of, revocation of, refusal to renew, or the imposition or modification of conditions on, a licence.

4. The provisions of this Chapter shall not require any Party to disclose confidential information that would impede law enforcement or otherwise be contrary to public interest or which would prejudice the legitimate commercial interest of particular enterprises, public or private.

## **Article 7.13. CONTACT POINTS**

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

## **Article 7.14. MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS**

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under specific commitments in its Schedule in Annex II (Schedule of Specific Commitments on Trade in Services).

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

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

4. If, after the date of entry into force of this Agreement, a Party grants monopoly rights regarding the supply of a service covered by its specific commitments in its Schedule in Annex II, (Schedule of Specific Commitments on Trade in Services), it shall notify the other Party no later than three months before the intended implementation of the grant of monopoly rights, and paragraphs 1(b) and 2 of Article 7.22 (Modification of Schedules) shall apply.

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

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

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



## **Article 7.15. BUSINESS PRACTICES**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 7.11 (Payments and Transfers), may restrain competition and thereby restrict trade in services.

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

## **Article 7.16. SAFEGUARD MEASURES**

The Parties note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

## **Article 7.17. SUBSIDIES**

1. The Parties note the multilateral negotiations pursuant to Article XV of the GATS on the question of subsidies. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Chapter so as to incorporate the results of such multilateral negotiations.

2. Where a Party considers that it is adversely affected by a subsidy of the other Party, it may request consultations with that Party. Such requests shall be accorded sympathetic consideration.

## **Article 7.18. RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services in respect of which it has undertaken specific commitments, including on payments or transfers for transactions relating to such commitments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

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

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

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

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

(e) be applied in such a manner that the other Party is treated no less favourably than any country that is not a Party to this Agreement.

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

4. Any restriction adopted or maintained under paragraph 1, or any change therein, shall be promptly notified to the other Party.

## **Article 7.19. DISCLOSURE OF CONFIDENTIAL INFORMATION**

Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, be in breach 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.

## **Article 7.20. GENERAL EXCEPTIONS**

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

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

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

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

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

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

(iii) safety; or

(d) inconsistent with Article 7.4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

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

## **Article 7.21. SECURITY EXCEPTIONS**

1. Nothing in this Chapter shall be construed:

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

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

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

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

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

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

2. Each Party shall inform the other Party to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

## **Article 7. MODIFICATION OF SCHEDULES**

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

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

(b) At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall endeavour to maintain a general level of mutually

advantageous commitment that is not less favourable to trade than provided for in its Schedule in Annex II (Schedule of Specific Commitments on Trade in Services) prior to such negotiations.

3. The Parties shall endeavour to conclude negotiations on such compensatory adjustment to the satisfaction of both Parties within a mutually agreed timeframe, failing which the matter may be resolved in accordance with the provisions of Chapter 15 (Dispute Settlement) of this Agreement.

4. The modifying Party may not modify or withdraw its commitment until it has made the compensatory adjustments in conformity with the findings of the arbitral tribunal in accordance with paragraph 3 of this Article.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitral tribunal, the affected Party may modify or withdraw substantially equivalent benefits in conformity with the findings of the arbitral tribunal.

## **Article 7.23. REVIEW**

1. The Parties shall consult within two years of the date of entry into force of this Agreement and every two years thereafter, or as otherwise agreed, to review the implementation of this Chapter and consider other trade in services issues of mutual interest, with a view to the progressive liberalisation of the trade in services between them on a mutually advantageous basis.

2. Upon request by a Party, and with the consent of the other Party, they may proceed to review this Chapter and specifically its Schedule in Annex III (Schedule of Specific Commitments on Trade in Services), with the view to facilitating the reduction and elimination of adverse effects on trade in services.

3. Where a Party unilaterally liberalises a measure affecting market access of a service supplier or suppliers of the other Party, the other Party may request consultations to discuss the measure. Following such consultations, if the Parties agree to incorporate the liberalised measure into the Agreement as a new commitment, the relevant Schedule in Annex III (Schedule of Specific Commitments on Trade in Services) shall be amended.

4. The supply of any service which are not technically or technologically feasible when this Agreement comes into force shall, when it becomes feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

## **Article 7.24. DENIAL OF BENEFITS**

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is a juridical person:

(a) owned or controlled by persons of a non-Party or of the denying Party; and

(b) who does not meet the requirement of "juridical person of a Party" provided in Article 7.2 of this Chapter.

## **ANNEX A. FINANCIAL SERVICES**

### **Article 1. SCOPE**

1. This Annex provides for measures additional to Chapter 7 (Trade in Services) in relation to financial services.

2. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a financial service:

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

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

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

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

### **Article 2. DEFINITIONS**

1. For the purposes of this Annex, "services supplied in the exercise of governmental authority" as referred to in Chapter 7

(Trade in Services) of this Agreement means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; or
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government, except where a Party allows the activities referred to in paragraph 1(b) or paragraph 1(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

2. The definition of "service supplied in the exercise of governmental authority" in Article 7.2 (Definitions) of Chapter 7 (Trade in Services) shall not apply to services covered by this Annex.

For the purposes of this Annex:

(a) financial service is 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:

Insurance and insurance-related services

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

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(vii) financial leasing;

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

(ix) guarantees and commitments;

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

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

(B) foreign exchange;

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

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

(E) transferable securities; and

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

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

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension

fund management, custodial, depository and trust services;

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

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

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in paragraphs 3(a)(v) through 3(a)(xv), 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; and

(c) 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 monetary authority, when exercising those functions.

### **Article 3. DOMESTIC REGULATION**

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from adopting or maintaining reasonable measures for prudential reasons, including for:

(a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or

(b) ensuring the integrity and stability of that Party's financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding that Party's commitments or obligations under this Chapter.

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

### **Article 4. RECOGNITION**

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

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

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

### **Article 5. REGULATORY TRANSPARENCY**

1. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market.

2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.

3. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations (8) of the Party are promptly published or otherwise made publicly available.

4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons (9) of the other Party regarding measures of general application to which this Annex applies.

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

6. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of the other Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision where possible in writing, without undue delay:

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

(b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

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

(8) In the case of China, "self-regulatory organisation" means an organisation recognised as a self-regulatory body by the central government according to China's laws and regulations; and in the case of Mauritius, "self-regulatory organisation" means a self-regulatory organisation whose object is to regulate the operations of its members or of the users of its services, their standards of practice and business conduct in order to better protect investors and consumers of securities or related services and includes such other organisation as may be declared or recognised as a self-regulatory organisation by the Financial Services Commission.

(9) "Interested persons" in this Article should only be persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

## **Article 6. DISPUTE SETTLEMENT**

Arbitrators on an arbitral tribunal established in accordance with Chapter 15 (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

## **Article 7. CONSULTATIONS**

A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request.

## **ANNEX B. MOVEMENT OF NATURAL PERSONS**

### **Article 1. SCOPE**

1. This Annex shall apply to measures affecting the movement of natural persons of a Party into the territory of the other Party under categories as referred to in Annex III (Schedules of Specific Commitments on Trade in Services).

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

3. Nothing contained in this Agreement shall prevent a Party from applying measures to regulate the entry or temporary stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Annex. (10)

(10) The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying

or impairing the benefits accruing to that other Party under this Annex.

## **Article 2. DEFINITIONS**

1. For the purposes of this Annex:

(a) natural person of a Party means a natural person of a Party as defined in Chapter 7 (Trade in Services).

(b) temporary entry means entry by a natural person covered by Annex III (Schedules of Specific Commitments on Trade in Services) without the intent to establish permanent residence and for the purpose of engaging in activities, which are clearly related to their respective business purposes.

(c) immigration measure means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, affecting the entry and stay of foreign nationals in the territory of a Party.

## **Article 3. OBJECTIVES**

This Annex reflects the preferential trading relationship between the Parties, their mutual desire to facilitate temporary entry for a natural person in accordance with Annex III (Schedules of Specific Commitments on Trade in Services), while recognizing the need to ensure border security and to protect domestic labour force and permanent employment in their respective territories.

## **Article 4. GENERAL PRINCIPLES FOR GRANT OF TEMPORARY ENTRY**

1. Each Party shall set out in Annex III (Schedules of Specific Commitments on Trade in Services) the specific commitments it undertakes for each of the categories of natural persons specified therein.

2. Where a Party makes a commitment under paragraph 1, that Party shall grant temporary entry of natural persons of the other Party, as provided for in the commitment, given that such natural persons are otherwise qualified under all applicable immigration measures.

3. Temporary entry granted in accordance with this Annex does not replace the requirements needed to carry out a profession or activity in accordance with the applicable laws and regulations in force in the territory of the Party authorizing the temporary entry.

## **Article 5. TRANSPARENCY**

Each Party shall, upon modifying or amending an immigration measure that affects the temporary entry of natural persons, ensure that such modifications or amendments are promptly published and made available in such a manner as will enable natural persons of the other Party to become acquainted with them.

## **Article 6. RELATION WITH OTHER CHAPTERS OF THE AGREEMENT**

1. Except for this Annex, Chapters 1 (Initial Provisions and Definitions), 13 (Transparency), 14 (Administrative and Institutional Provisions), 15 (Dispute Settlement), 16 (Exceptions), and 17 (Final Provisions), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures within the scope of this Annex.

2. Nothing in this Annex shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

# **Chapter 8. Investment**

## **Section A.**

### **Article 8.1. DEFINITIONS**

For purposes of this Chapter:

1996 Agreement means the Agreement between the Government of the People's Republic of China and the Government of the Republic of Mauritius for the Reciprocal Promotion and Protection of Investments done at Port Louis on 4th May, 1996;

central level of government means:

(a) for the People's Republic of China, the central level of government; and (b) for the Republic of Mauritius, the Government of the Republic of Mauritius;

Centre means the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID") established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

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

disputing parties mean the claimant and the respondent;

disputing party means either the claimant or the respondent;

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

enterprise of a Party means an enterprise constituted or organized under the

law of a Party and a branch located in the territory of a Party and carrying out business activities there;

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

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

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

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

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

(a) an enterprise;

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

(c) bonds, debentures, loans, and other debt instruments, including debt instruments issued by a Party or an enterprise; (1)

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

(e) intellectual property rights;

(f) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (2) (3) and

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

investment agreement means a written agreement (4) between a national authority (5) of a Party and a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or the investor:

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

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



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

investor of a non-Party means, with respect to a Party, an investor that has made an investment in the territory of that Party, that is not an investor of either Party.

investor of a Party means a Party, a national or an enterprise of a Party, that has made an investment in the territory of the other Party;

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

national means:

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

(b) for Mauritius, a natural person who is a citizen of Mauritius within the meaning of its national laws.

For the purposes of this definition, a natural person who is a dual national shall be deemed to be exclusively a national of the State where he or she ordinarily or permanently resides;

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

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

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

respondent means the Party that is a party to an investment dispute; Secretary-General means the Secretary-General of ICSID;

territory (6) means:

(a) with respect to China,

(i) the customs territory of China; (7)

(ii) the territorial sea thereof and any area beyond the territorial sea within which China may exercise sovereign rights or jurisdiction under its law;

(b) with respect to Mauritius,

(i) all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;

(ii) the territorial sea of Mauritius; and

(iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; (8)

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

(1) For greater certainty, some forms of debts, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment while other forms of debts, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics. Investment does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to a national or enterprise in the territory of the other Party, a bank letter of credit or an extension of credit in connection with a commercial transaction, such as trade financing or any other claims to money that do not involve the kind of interests set out in subparagraphs (a) through (d).

(2) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment also depends on such factors as the nature and extent of the rights that the

holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(3) The term "investment" does not include an order or judgment delivered in a judicial or administrative action.

(4) "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 8.29 (Governing Law)(2). For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

(5) For purposes of this definition, "national authority" means an agency of the central government.

(6) For greater certainty, the definition of "territory" for each Party is for the purposes of this Chapter only and is without prejudice to the position of either Party regarding the recognition of any territorial or maritime claims.

(7) For purposes of this Chapter, "customs territory of China" means China's entire customs territory to which the World Trade Organization Agreement applies, as defined in paragraph 2(A)(1) of Part I of the Protocol on the Accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization.

(8) For greater certainty, "TRIPS Agreement" includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## **Article 8.2. SCOPE AND COVERAGE**

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

- (a) investors of the other Party; and
- (b) covered investments.

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

- (a) to all levels of government of that Party; and
- (b) to any non-governmental body when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party (9).

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

4. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 7 (Trade in Services).

5. Notwithstanding paragraph 4, for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 8.5 (Minimum Standard of Treatment), 8.6 (Compensation for Losses), 8.7 (Expropriation and Compensation), 8.8 (Transfers), 8.15 (Subrogation), 8.16 (Denial of Benefits) shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party, only to the extent that they relate to a covered investment. Section B of this Chapter shall apply to Articles 8.5 (Minimum Standard of Treatment), 8.6 (Compensation for Losses), 8.7 (Expropriation and Compensation), 8.8 (Transfers), 8.15 (Subrogation), 8.16 (Denial of Benefits) with respect to the supply of a service through commercial presence, only to the extent that they relate to a covered investment.

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

### **Article 8.3. NATIONAL TREATMENT (10)**

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

(10) For greater certainty, whether treatment is accorded in "like circumstances" under Article 8.3 (National Treatment) or Article 8.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

### **Article 8.4. MOST-FAVOURED-NATION TREATMENT (11)**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments.
3. Paragraph 1 and 2 of this Article shall not be construed to oblige any Party to extend to the investors of the other Party or covered investment any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement.
4. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B of this Chapter, that are provided for in international investment or trade agreements.

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

### **Article 8.5. MINIMUM STANDARD OF TREATMENT**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
  - (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with due process of law; and
  - (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

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

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

6. This Article shall be interpreted in accordance with Chapter 8-Annex-A (Customary International Law).

## **Article 8.6. COMPENSATION FOR LOSSES**

1. Notwithstanding Article 8.12(3), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, a state of national emergency, or civil strife.

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

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

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such a loss. Any compensation shall be made in accordance with Article 8.7(2) through (4), mutatis mutandis.

## **Article 8.7. EXPROPRIATION AND COMPENSATION (12)**

1. Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

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

(d) in accordance with due process of law.

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

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation took place (hereinafter referred to as "the date of expropriation"), whichever is earlier; and

(c) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value determined in accordance with paragraph 2(b), plus interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

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

(a) the fair market value determined in accordance with paragraph 2(b), converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

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

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in

accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

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

(12) Article 8.7 (Expropriation and Compensation) shall be interpreted in accordance with Chapter 8-Annex-B (Expropriation).

## **Article 8.8. TRANSFERS (13)**

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

- (a) contributions to capital;
- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (c) interest, royalty payments, management fees, technical assistance and other fees;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 8.6 (Compensation for Losses) and Article 8.7 (Expropriation and Compensation);
- (f) payments arising out of a dispute; and
- (g) earnings and remuneration of a national of a Party who works in a covered investment in the territory of the other Party.

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

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

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

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

(13) Article 8.8 (Transfer) does not affect each Party's ability to administer its capital account for the maintenance of the stability and soundness of its financial system, such as the foreign exchange market, stock market, bond market and financial derivatives market.

## **Article 8.9. PERFORMANCE REQUIREMENTS**

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of the other Party or of a non-Party in its territory, impose or enforce

any requirement or enforce any commitment or undertaking: (14)

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content of goods or services;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons 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 investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market;

(h) to locate the headquarters for a specific region or the world market in its territory; or

(i) to achieve a given percentage or value of research and development in its territory.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content of goods or services;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons 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 investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3.

(a) Nothing in paragraph 1 shall be construed to prevent a Party, in connection with an investment in its territory of an investor of the other Party or of a non-Party, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such measure is consistent with paragraph 1(f).

(b) Nothing in paragraph 2 shall be construed to prevent a Party, in connection with an investment in its territory of an investor of the other Party or of a non-Party, from conditioning the receipt or continued receipt of an advantage 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.

(c) Paragraph 1(f) does not apply:

(i) when a Party authorizes the use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the competition laws of the Party. (15)

(d) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraph 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with the laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living and non-living exhaustible natural resources.

(e) Paragraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(f) Paragraphs 1(b), (c), and (f), and 2(a) and (b), do not apply to government procurement.

(g) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(14) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.

(15) The Parties recognize that a patent does not necessarily confer market power.

## **Article 8.10. SENIOR MANAGEMENT AND BOARD OF DIRECTORS**

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management position natural persons of any particular nationality.

2. A Party may require that the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, comprises a minimum number of persons resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 8.11. TRANSPARENCY**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Chapter are promptly published or otherwise made publicly available.

2. For purposes of this Article, "administrative ruling of general application" means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular covered investment or investor of the other Party in a specific case; or

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

3. Publication

(a) To the extent possible, each Party shall:

(i) publish in advance any measure referred to in paragraph 1 of this Article that it proposes to adopt; and

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

(b) With respect to proposed laws and regulations of general application respecting any matter covered by this Chapter that are published in accordance with paragraph 3(a)(i) of this Article, each Party:

(i) shall publish the proposed laws and regulations on an official website or in an official journal of national circulation;

(ii) should, to the extent possible, publish the proposed laws and regulations at least 30 days before the date public comments are due; and

(iii) shall endeavour to take into account the comments received from interested persons with respect to such proposed

laws and regulations.

(c) With respect to laws and regulations of general application that are adopted respecting any matter covered by this Chapter, each Party shall:

(i) publish the laws and regulations on an official website or in an official journal of national circulation; and

(ii) to the extent possible, ensure that there is reasonable time between publication and entry into force of the laws and regulations.

#### 4. Provision of Information

(a) At the request of the other Party, a Party shall, within a reasonable period of time, provide information and respond to questions pertaining to any measure referred to in paragraph 1 of this Article that the requesting Party considers might materially affect the operation of this Chapter or otherwise substantially affect its interests under this Chapter.

(b) Any request or information under this paragraph shall be provided to the other Party through the relevant contact points as referred to in Article 14.4 (Overall Contact Points).

(c) Any information provided under this paragraph shall be without prejudice as to whether the measure is consistent with this Chapter.

#### 5. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures referred to in paragraph 1 of this Article, each Party shall ensure that in its administrative proceedings applying such measures to particular covered investments or investors of the other Party in specific cases:

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

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

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

#### 6. Review and Appeal

(a) Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Chapter. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

(b) Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

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

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

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

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

### **Article 8.12. NON-CONFORMING MEASURES**

1. Article 8.3 (National Treatment), Article 8.4 (Most-Favoured-Nation Treatment), Article 8.9 (Performance Requirements) and Article 8.10 (Senior Management and Board of Directors) do not apply to:

(a) any existing non-conforming measures maintained within its territory;



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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not increase the non-conformity of the measure, as it existed immediately before the amendment, with those obligations.

2. Articles 8.3 (National Treatment) and 8.4 (Most-Favoured-Nation Treatment) do not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

3. Articles 8.3 (National Treatment) and 8.4 (Most-Favoured-Nation Treatment) do not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

4. Articles 8.3 (National Treatment) and 8.4 (Most-Favoured-Nation Treatment) do not apply to government procurement.

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

### **Article 8.13. SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS**

1. Nothing in Article 8.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement on the filing for establishment of and changes to the covered investments of the other Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 8.3 (National Treatment) and 8.4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational, statistical or administrative purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment.

Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.

### **Article 8.14. NON-DEROGATION**

This Chapter shall not derogate from any of the following that entitle a covered investment, or, with respect to a Party, an investor of the other Party, to treatment more favourable than that accorded by this Chapter:

(a) laws or regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;

(b) international legal obligations of a Party; or

(c) obligations assumed by a Party, including those contained in an investment agreement.

### **Article 8.15. SUBROGATION**

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

### **Article 8.16. DENIAL OF BENEFITS**

1. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B of this Chapter, deny the benefits (16) of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if a non-Party, or a person of a non-Party owns or controls the enterprise and the denying Party:

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

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with

the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may, at any time, including after the institution of arbitration proceedings in accordance with Section B of this Chapter, deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities (17) in the territory of the other Party and a non-Party, a person of a non- Party, or of the denying Party, owns or controls the enterprise.

(16) For greater certainty, benefits referred to in this Article include the rights of an investor of a Party to resort to the dispute settlement mechanism set out in Section B of this Chapter.

(17) It is understood that an enterprise shall have substantial business activities in the territory of a Party where - (a) it conducts its core and relevant income generating activities, through the employment of a reasonable number of suitably qualified persons and by having a minimum level of expenditure which is proportionate to its level of the relevant activities in the territory of that Party; or (b) it is centrally managed and controlled from the territory of that Party.

## **Article 8.17. DISCLOSURE OF INFORMATION**

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

## **Article 8.18. ESSENTIAL SECURITY INTERESTS**

1. Nothing in this Chapter shall be construed:

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

(b) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. With respect to investors of the other Party and covered investments affected by such measures, each Party shall accord non-discriminatory treatment to them, regardless of whether they are governmentally or privately owned.

## **Article 8.19. PRUDENTIAL MEASURES**

1. Notwithstanding any other provision of this Chapter, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of the financial system. (18).

2. Nothing in this Chapter applies to non-discriminatory measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies. (19) This paragraph shall not affect a Party's obligations under Article 8.8 (Transfers).

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

4. Pursuant to a request for a report received in accordance with the above paragraph, the financial services authorities (20) of the Parties shall engage in consultations. If the financial services authorities of the Parties reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, they shall prepare a written report describing their joint decision. The report shall be transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal.

5. If, after 120 days, the financial services authorities of the Parties are unable to reach a joint decision on the issue of whether and to what extent the relevant paragraphs of this Article is a valid defence to the claim of the investor, the issue shall, within 30 days, be referred by either Party to a State-State arbitral tribunal established pursuant to Chapter 15

(Dispute Settlement). In such a case, the provisions requiring consultations between the Parties in Chapter 15 (Dispute Settlement) shall not apply. The decision of the State-State arbitral tribunal shall be transmitted to the investor-State tribunal, and shall be binding on the investor-State tribunal. All of the members of any such State-State arbitral tribunal shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

6. If the respondent or the non-disputing Party has not submitted such issue to arbitration in accordance with Chapter 15 (Dispute Settlement) pursuant to paragraph 5 within 10 days of the expiration of the 120-day period referred to in paragraph 5, the arbitration under Section B may proceed with respect to the claim.

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

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

(20) For the purposes of this Article, the "financial services authorities" means: (a) for China, People's Bank of China, China Banking and Insurance Regulatory Commission, China Securities Regulatory Commission or State Administration of Foreign Exchange, as the case may be or their respective authorized representatives; and (b) for Mauritius, Bank of Mauritius or the Financial Services Commission, as the case may be or their respective authorized representatives.

## **Article 8.20. TAXATION**

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

2. Article 8.7 (Expropriation and Compensation) shall apply to all taxation measures (21), provided that a claimant asserting that a taxation measure involves an expropriation may submit a claim to arbitration under Section B only if

(a) the claimant has first referred to the competent tax authorities (22) of both Parties in writing the issue of whether that taxation measure involves an expropriation; and

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

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

(21) For greater certainty, measures regarding tax preservation or punishment against illegal activities that are non-discriminatory and adopted or implemented for the purpose of levying or collecting taxes in a fair and effective manner, do not constitute expropriations as provided in Article 8.7 (Expropriation and Compensation) of this Chapter.

(22) For the purposes of this Article, the "competent tax authorities" means: (a) for China, the Ministry of Finance and State Administration of Taxation or their respective authorized representative; and (b) for Mauritius, the Ministry responsible for the subject of finance and Mauritius Revenue Authority or their respective authorized representative.

## **Article 8.21. TRANSITION**

1. Upon entry into force of this Agreement, the 1996 Agreement shall terminate. (23)

2. Notwithstanding paragraph 1:

(a) a claim may be submitted pursuant to relevant provisions of the 1996 Agreement, regarding any act or fact that took place or any situation that existed while the 1996 Agreement was in force, and provided that not more than three years

have elapsed since the date of the entry into force of this Agreement;

(b) a claim submitted pursuant to the relevant provisions of the 1996 Agreement, prior to the entry into force of this Agreement shall continue to be subject to the provisions of the 1996 Agreement.

(23) For greater certainty, Article 15(4) of the 1996 Agreement shall not apply after its termination.

## **Section B.**

### **Article 8.22. SCOPE**

This section applies to investment disputes between an investor of a Party and the other Party.

### **Article 8.23. CONSULTATIONS**

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, it shall deliver a request for consultations to the respondent (24) at least 180 days prior to submission of the dispute to arbitration. The request shall:

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

(b) list evidence that the claimant is an investor under this Chapter;

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

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

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

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

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall enter into consultations (25) with a view to reaching a mutually satisfactory solution.

(24) For greater certainty, the request for consultations shall be sent to the central government body as listed out in Annex D (Service of Documents on a Party).

(25) Unless otherwise agreed by the parties to the dispute, the place for consultation should be the capital of the respondent.

### **Article 8.24. SUBMISSION OF a CLAIM TO ARBITRATION**

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultations pursuant to Article 8.23 (Consultations) and 180 days have elapsed since the date of the request for consultations:

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

(i) that the respondent has breached:

(A) an obligation under Article 8.3 (National Treatment), Article 8.4 (Most-Favoured Nation Treatment), Article 8.5 (Minimum Standard of Treatment), Article 8.6 (Compensation for Losses), Article 8.7 (Expropriation and Compensation), Article 8.8 (Transfers) and Article 8.10 (Senior Management and Board of Directors); or

(B) an investment agreement; and

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

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

(i) that the respondent has breached:

(A) an obligation under Article 8.3 (National Treatment), Article 8.4 (Most-Favoured Nation Treatment), Article 8.5 (Minimum Standard of Treatment), Article 8.6 (Compensation for Losses), Article 8.7 (Expropriation and Compensation), Article 8.8 (Transfers) and Article 8.10 (Senior Management and Board of Directors); or

(B) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach (26),

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

2. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under this Article and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

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

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

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

3. Provided that 24 months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

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

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

(c) under the UNCITRAL Arbitration Rules (27); or

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

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

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

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

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

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

When the claimant submits a claim pursuant to subparagraphs 1(a)(i)(B) or 1(b)(i)(B), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.

5. In addition to any other information required by the applicable arbitral rules, the notice of arbitration shall also include information addressing each of the categories in Article 8.23 (Consultations).

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

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

(27) In the case of arbitration under Section B pursuant to the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-

based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.

## **Article 8.25. CONSENT OF EACH PARTY TO ARBITRATION**

1. Each Party, in respect of an investment dispute under this Section, consents to the submission of a claim to arbitration under this Section in accordance with this Chapter.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:
  - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
  - (b) Article II of the New York Convention for an "agreement in writing".

## **Article 8.26. CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY**

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 8.24(1) and knowledge that the claimant (for claims brought under Article 8.24(1)(a)) or the enterprise (for claims brought under Article 8.24(1)(b)) has incurred loss or damage.
2. No claim may be submitted to arbitration under this Section by national who had the nationality of the Party to the dispute on the date on which the parties consented to submit such dispute to arbitration pursuant to Article 8.24 (Submission of a Claim to Arbitration).
3. No claim may be submitted to arbitration under this Section unless:
  - (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Section;
  - (b) the claim arises from measures included in the request for consultations submitted by the claimant in accordance with Article 8.23 (Consultations); and
  - (c) the notice of arbitration is accompanied,
    - (i) for claims submitted to arbitration under Article 8.24(1)(a), by the claimant's written waiver, and
    - (ii) for claims submitted to arbitration under Article 8.24(1)(b), by the claimant's and the enterprise's written waivers,of any right to initiate or continue before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 8.24 (Submission of a Claim to Arbitration).
4. Notwithstanding paragraph 3(c)(ii), a waiver from the enterprise shall not be required if the respondent has deprived the claimant of its ownership or control of the enterprise.

## **Article 8.27. CONSTITUTION OF THE TRIBUNAL**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion and after consulting with the disputing parties, the arbitrator or arbitrators not yet appointed.
4. The appointing authority may not appoint a presiding arbitrator who is a national of a Party, unless both parties to the dispute otherwise agree.
5. In the event that the appointing authority appoints a presiding arbitrator in accordance with relevant arbitration rules, the presiding arbitrator being appointed should be a recognized expert in public international law, and should be experienced

in investor-State dispute settlement.

## **Article 8.28. CONDUCT OF THE ARBITRATION**

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 8.24(3). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consulting the disputing parties, the tribunal may allow a person or entity that is not a disputing party to file a written amicus curiae submission with the tribunal regarding a matter within the scope of the dispute. Such a submission shall provide the identity of such person or entity (including any controlling entity and any source of substantial financial assistance in either of the two years preceding the submission, e.g. funding around 20% of an entity's overall operations annually), disclose any connection with any disputing party, and identify any person, government or other entity that has provided or will provide any financial or other assistance in preparing the submission. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

(a) the amicus curiae submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;

(b) the amicus curiae submission would address a matter within the scope of the dispute; and

(c) the amicus curiae has a significant interest in the proceeding. 4. The tribunal shall ensure that the amicus curiae submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the amicus curiae submission.

5. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under this Section.

6. In deciding an objection under paragraph 5, the tribunal shall assume to be true the claimant's factual allegations. The tribunal may also consider any relevant facts not in dispute. The tribunal shall decide on the objection on an expedited basis, and issue a decision or award on the objection(s) no later than 150 days after the date of the request.

7. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

8. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 8.30 (Awards) should be subject to that appellate mechanism.

## **Article 8.29. GOVERNING LAW**

1. Subject to paragraph 3, when a claim is submitted under Article 8.24 (1)(a)(A) or (1)(b)(D)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law (28).

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 8.24(1)(a)(i)(B) or Article 8.24(1)(b)(i)(B), the tribunal shall apply:

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

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

(i) the law of the respondent, including its rules on the conflict of laws; (29) and

(ii) such rules of customary international law as may be applicable. 3. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any

decision or award issued by such a tribunal must be consistent with that joint decision.

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

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

## **Article 8.30. AWARDS**

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

(a) monetary damages and any applicable interest; and

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

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

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 8.24(1)(b):

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

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

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

3. A tribunal may not award punitive damages.

4. The award shall be made available to the public promptly unless opposed by the respondent. (30)

5. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 8.24 (Submission of a Claim to Arbitration):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

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

(30) For greater certainty, nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 8.17 (Disclosure of Information) or Article 8.18 (Essential Security Interests).

## **Article 8.31. EXPERT REPORTS**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.



## **Article 8.32. DOMESTIC REMEDIES**

Nothing in this Section shall prevent the claimant from resorting to remedies before domestic fora within twenty-four months of the event giving rise to an investment dispute where there has been no amicable settlement of the dispute.

## **Article 8.33. SERVICE OF DOCUMENTS**

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

## **ANNEX A. CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 8.5 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 8.5 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

## **ANNEX B. EXPROPRIATION**

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 8.7(1) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 8.7(1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
4. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
  - (b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
  - (c) the character and objective of the government action.
5. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public moral, public health, safety, and the environment, do not constitute indirect expropriation.

## **ANNEX C. TEMPORARY SAFEGUARD MEASURES**

1. In the event of serious balance-of-payments difficulties, external financial difficulties, or threat thereof, nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital.
2. Any measures adopted or maintained under paragraph 1 shall:
  - (a) be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;
  - (b) be temporary and be phased out progressively as the situation specified in paragraph 1 improves, and shall not exceed 18 months in duration; however, if extremely exceptional circumstances arise, a Party may extend such measures for one twelve-month period after advance notice and consultations with the other Party;
  - (c) not be inconsistent with Article 8.3 (National Treatment) and Article 8.4 (Most-Favoured-Nation Treatment);
  - (d) not be inconsistent with Article 8.7 (Expropriation and Compensation); (e) not result in multiple exchange rates; and
  - (f) be promptly notified to the other Party and published as soon as practicable.

## **ANNEX D. SERVICE OF DOCUMENTS ON A PARTY**

### **China**

Notices and other documents shall be served on China by delivery to:

Department of Treaty and Law

Ministry of Commerce of the People's Republic of China 2 Dong Chang'an Avenue

Beijing, 100731

People's Republic of China

### **Mauritius**

Notices and other documents shall be served on Mauritius by delivery to:

Ministry of Finance and Economic Development

Old Government Centre

Port Louis

Mauritius

## **Chapter 9. COMPETITION**

### **Article 9.1. OBJECTIVES**

Each Party understands that proscribing anticompetitive business conduct, implementing competition policies and cooperating on competition issues contribute to preventing the cross border trade and investments from being deterred through artificial barriers to entry and to prohibiting economic efficiency and consumer welfare.

### **Article 9. COMPETITION LAWS AND AUTHORITIES**

1. Each Party shall maintain or adopt competition laws that promote and protect the competitive process in its market by proscribing anticompetitive business conduct.
2. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws.

### **Article 9.3. PRINCIPLES IN LAW ENFORCEMENT**

1. Each Party shall be consistent with the principles of transparency, non-discrimination, and procedural fairness in the competition law enforcement field.
2. Each Party shall treat persons who are not persons of the Party no less favorably than persons of the Party in like circumstances in the competition law enforcement field.
3. Each Party shall ensure that before it imposes administrative punishment or restrictive conditions against a person for violating its national competition laws, it affords that person a reasonable opportunity to present opinion or evidence in its defense.
4. Each Party shall provide a person that is subject to the imposition of administrative punishment or restrictive conditions for violation of its national competition laws with an opportunity to apply for administrative reconsideration and/or to initiate a litigation following an administrative decision under that Party's laws.

### **Article 9. TRANSPARENCY**

1. Each Party shall make public its competition laws and regulations, including procedural rules for the investigation.
2. Each Party shall ensure that a final administrative decision finding a violation of its national competition laws is in writing

and sets out the relevant findings of fact and the legal basis on which the decision is based.

3. Each Party shall make public a final decision and any order implementing the decision in accordance with its national competition laws and regulations. Each Party shall ensure that the version of the decision or the order that is made available to the public does not include business confidential information protected from public disclosure by its national law.

## **Article 9.5. COOPERATION IN LAW ENFORCEMENT**

1. The Parties recognize the importance of cooperation and coordination in the competition field, to promote effective competition law enforcement in the free trade area. Accordingly, each Party shall cooperate through notification, consultation, exchange of information and experience, and technical cooperation.

2. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resource.

## **Article 9.6. TECHNICAL COOPERATION**

The Parties may promote technical cooperation, including exchange of experiences, capacity building through training programs, workshops and research collaborations for the purpose of enhancing each Party's capacity related to competition policy and law enforcement.

## **Article 9.7. INDEPENDENCE OF COMPETITION LAW ENFORCEMENT**

This chapter should not intervene with the independence of each Party in enforcing its respective competition laws.

## **Article 9.8. DISPUTE SETTLEMENT**

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

## **Article 9.9. DEFINITIONS**

For the purposes of this Chapter:

anticompetitive business conduct means a business conduct or transaction that adversely affects competition in the territory of a Party, such as:

(a) agreements between enterprises, decisions by associations of enterprises and concerted practices, which have as their object or effect of the prevention, restriction, or distortion of competition in the territory of either Party as a whole or in a substantial part thereof;

(b) any abuse by one or more enterprises of a dominant position in the territory of either Party as a whole or in a substantial part thereof; or

(c) concentrations between enterprises, which significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the territory of either Party as a whole or in a substantial part thereof; and

competition laws mean:

(a) for China, the Antimonopoly Law and its implementing regulations and amendments; and

(b) for Mauritius, the Competition Act and its implementing regulations, rules of procedure and amendments.

# **Chapter 10. INTELLECTUAL PROPERTY**

## **Article 10.1. GENERAL PROVISIONS**

The protection and enforcement of intellectual property rights should strike a balance between the legitimate interests of the right owners and the public.

## **Article 10.2. INTERNATIONAL CONVENTION**

The Parties reaffirm their existing rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement").

### **Article 10.3. INTELLECTUAL PROPERTY AND PUBLIC HEALTH**

The Parties recognize the principles established in the Doha Declaration on the TRIPS Agreement and Public Health.

### **Article 10.4. COOPERATION**

1. The Parties recognize that cooperation is an essential element for bilateral relations on intellectual property.
2. Cooperation should be for the mutual benefit of the Parties, including to the advantage of both businesses and consumers, and should enhance predictability and transparency in matters related to the protection, administration and enforcement of intellectual property rights.
3. The Parties have agreed to exchange relevant information regarding recent and ongoing bilateral cooperation initiatives on intellectual property matters.
4. The Parties shall endeavour to cooperate in the area of intellectual property rights, including by providing training and building capacity.

### **Article 10.5. FINAL PROVISIONS**

This Chapter is without prejudice to future decisions or positions that either Party may take in the context of future exploratory discussions or potential negotiations.

## **Chapter 11. ELECTRONIC COMMERCE**

### **Article 11.1. PURPOSE AND OBJECTIVE**

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of avoiding barriers to its use and development, and the applicability of relevant WTO rules.
2. The objective of this Chapter is to promote electronic commerce between the Parties, including by encouraging cooperation on electronic commerce.
3. The Parties shall endeavour to ensure that bilateral trade through electronic commerce is not more restrictive than other forms of trade.

### **Article 11.2. DEFINITIONS**

For the purposes of this Chapter:

digital certificates means electronic documents or files that are issued or otherwise linked to a party to an electronic communication or transaction for the purpose of establishing the party's identity;

electronic signature means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory's approval of the information contained in the data message;

electronic version of a document means a document in electronic format prescribed by a Party, in accordance with domestic laws, regulations and administrative rules including a document sent by facsimile transmission;

personal data means any information relating to a data subject who is an identified or identifiable individual, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that individual;

personal information means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information; and

trade administration documents mean forms issued or controlled by the government of a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

### **Article 11.3. CUSTOMS DUTIES (1)**

1. The Parties shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties, consistent with the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/65 - WT/L/1032).

2. The Parties reserve the right to adjust its practice referred to in paragraph 1 of this Article in accordance with any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

(1) The inclusion of the provisions on electronic commerce in this article is made without prejudice to the Parties' position on whether deliveries by electronic means should be categorized as trade in services or goods.

### **Article 11.4. TRANSPARENCY**

1. The Parties shall promptly publish, or otherwise promptly make publicly available where publication is not practicable, all relevant measures of general application which pertain to, or affect, the operation of this Chapter.

2. A Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1 of this Article.

### **Article 11.5. ELECTRONIC AUTHENTICATION AND DIGITAL CERTIFICATES**

1. The Parties shall maintain laws regulating electronic signatures that allow:

(a) parties to electronic transactions to mutually determine the appropriate electronic signature and authentication methods; and

(b) electronic authentication service providers, including agencies, to have the opportunity to prove before judicial or administrative authorities that their electronic authentication services comply with the relevant legal requirements.

2. The Parties shall work towards the mutual recognition of digital certificates and electronic signatures.

3. The Parties shall encourage the use of digital certificates in the business sector.

### **Article 11.6. ONLINE CONSUMER PROTECTION**

The Parties shall, to the extent possible and in a manner it considers appropriate, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under their respective laws, regulations and policies.

### **Article 11.7. ONLINE DATA PROTECTION**

1. Notwithstanding the differences in existing systems for personal information/data protection in the territories of the Parties, the Parties shall take such measures as they consider appropriate and necessary to protect the personal information /data of users of electronic commerce.

2. In the development of data protection standards, the Parties shall, to the extent possible, take into account international standards and the criteria of relevant international organisations.

### **Article 11.8. PAPERLESS TRADING**

1. The Parties shall accept the electronic versions of trade administration documents as the legal equivalent of paper documents except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

2. The Parties shall cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.

3. In developing initiatives which provide for the use of paperless trading, the Parties shall endeavour to take into account the methods agreed by international organisations.

4. The Parties shall endeavour to make all trade administration documents available to the public as electronic versions.

## **Article 11.9. COOPERATION ON ELECTRONIC COMMERCE**

1. The Parties shall endeavour to share information and experience about regulatory frameworks, including laws, regulations, policies and best practices;

2. The Parties shall endeavour to undertake cooperative activities with the aim of promoting the effectiveness of electronic commerce, including electronic commerce business exchanges, project cooperation and joint study.

3. The Parties shall endeavour to explore innovative forms of cooperation that build on existing cooperation initiatives pursued in international forums.

## **Article 11.10. DISPUTE SETTLEMENT PROVISIONS**

The provisions in Chapter 15 (Dispute Settlement) shall not apply to the provisions of this Chapter.

# **Chapter 12. ECONOMIC COOPERATION**

## **Section A. General Provisions**

### **Article 12.1. OBJECTIVES**

1. The Parties agree to strengthen economic cooperation with the aim of enhancing the mutual benefits of this Agreement in accordance with their national strategies and policy objectives.

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

(a) promoting economic and social development of the Parties;

(b) strengthening the capacities of the Parties to maximize opportunities and benefits derived from this Agreement;

(c) stimulating productive synergies and promoting competitiveness and innovation;

(d) reinforcing collaboration and exchanges in areas of mutual interest; and

(e) examining the opportunities of international cooperation through the Belt and Road Initiative in full respect of sovereignty and territorial integrity of all states, and the implementation of the 2030 Agenda for Sustainable Development.

3. Collaboration will be in line with the measures agreed at the Forum on China-Africa Cooperation (FOCAC), focusing on areas including industrialisation, agricultural modernization, infrastructure development, green development, trade and investment facilitation, public health, cultural and people-to-people exchanges.

### **Article 12.2. METHODS AND MEANS**

1. The Parties shall cooperate with the objective of identifying and employing effective methods and means for the implementation of this Chapter.

2. Cooperation between the Parties may be effected through separate exchange of diplomatic notes, memoranda of understanding, agreements or protocols or agreed frameworks to be concluded between authorised institutions or bodies in accordance with the laws and regulations in force in each Party.

### **Article 12.3. SCOPE**

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

2. The Parties affirm the importance of all forms of cooperation in contributing towards implementation of the objectives and principles of this Agreement.

3. The areas of cooperation include, but are not limited to, those listed in Section B, and shall be subject to revision and update as may be decided after mutual consultation between the Parties.

## **Article 12.4. NON-APPLICATION OF DISPUTE SETTLEMENT**

Neither Party shall recourse to any dispute settlement procedure under this Agreement in respect of the provisions of this Chapter. For this purpose, Chapter 15 (Dispute Settlement) shall not apply to this Chapter.

## **Section B. Areas of Cooperation**

### **Article 12.5. AGRO INDUSTRY AND FOOD SECURITY**

1. The Parties recognize that agriculture constitutes a core activity for both Parties, and that enhancing this sector can improve quality of life and economic development.

2. The Parties agree to cooperate as follows:

(a) promotion of sustainable agriculture and organic farming through enhanced food safety and security, environment friendly production techniques and efficient management of natural resources which include use of renewable energy and water savings system to reduce production cost and increase resilience to climate change; and

(b) facilitating exchanges of skilled labour and experts in relevant fields of agriculture, food crop and livestock, including tea plant propagation and processing, mushroom cultivation and processing, enhanced use of organic fertilizers as well as, promotion of low cost sheltered farming system and treatment of pig waste.

### **Article 12.6. INNOVATION AND RESEARCH AND DEVELOPMENT (R & D)**

1. The Parties acknowledge the driving force of innovation and R&D in promoting economic transformation, creating new engines of development and strengthening new dynamics for development.

2. The Parties agree to cooperate as follows:

(a) promoting public and private sector partnerships to support the development of innovative products and services;

(b) increasing competitiveness of the industry sector including SMEs by promoting the use of science, technology and innovation;

(c) promoting exchanges of specialists, researchers and professors with the aim of disseminating scientific know-how and providing support in the field of technology and innovation;

(d) cooperating on the modernisation of the transport system using technology that can better estimate bus arrival times, use of mobile apps, GPS technology, cashless transaction systems as well as developing appropriate road safety environments and facilities established to minimize accidents; and

(e) exploring the possibility to cooperate on the modernization of airport infrastructure.

### **Article 12.7. BUSINESS COOPERATION**

1. Recognizing that there are vast opportunities for business on the African continent, the Parties agree to enhance collaboration in the following manner:

(a) encouraging Chinese and Mauritian enterprises to expand their business towards the market in Africa, while examining the possibility of exploiting the existing protocols and government to government agreements; and

(b) Encouraging entrepreneurship activities as an instrument to strengthen export capabilities and promote investment;

### **Article 12.8. FINANCIAL SERVICES**

1. The Parties recognize the need to modernize and diversify the financial services industry in their respective economies.

2. The Parties agree to enhance collaboration in the following manner:

(a) sharing of expertise in Fintech to promote innovation in financial services;

- (b) strengthening capacity building, including facilitating exchanges of professionals and experts;
- (c) reinforcing regulatory cooperation with the signature of Memoranda of Understanding between the regulators of China and Mauritius;
- (d) exploring further the possibility of cooperation in the implementation of best international standards in Anti-Money Laundering practices; and
- (e) promoting the development of a Renminbi clearing and settlement facility in the territory of Mauritius.

## **Article 12.9. PHARMACEUTICALS, MEDICAL SERVICES AND COSMETICS**

1. The Parties recognize the need to cooperate for mutual growth and development in the sector of pharmaceuticals, medical services and cosmetics and to promote Traditional Chinese Medicine (TCM) and TCM-related industries.
2. The Parties agree to enhance collaboration in the following manner:
  - (a) encouraging cooperation between private sectors of the Parties by means of:
    - (i) exchange of researchers, students and those involved in relevant industries;
    - (ii) joint research programs and projects and their commercialization;
    - (iii) product quality upgrade, supply-chain networking and technology trade; and
    - (iv) promotion and facilitation of mutual investment opportunities;
  - (b) encouraging training and capacity building in areas such as manufacturing of pharmaceutical products, pharmaco-vigilance practices, and clinical pharmacy practices, and enhancing quality control systems and testing of pharmaceutical products;
  - (c) signing of a cooperative agreement between State Administration of Traditional Chinese Medicine of P.R.C. and Ministry of Health of the Republic of Mauritius in TCM, aiming to promote communication and cooperation, including information and personnel exchanges, and building TCM centres in Mauritius to provide high-quality TCM service etc.;
  - (d) strengthening future exchanges and collaboration to facilitate trade in TCM in accordance with the domestic law of the Parties, including the gradual reduction in import barriers; and
  - (e) encouraging universities and research institutions to conduct joint research in the field of TCM.

## **Article 12.10. EDUCATION**

1. The Parties acknowledge the potential for bilateral cooperation in education.
2. The Parties agree to cooperate in the following areas:
  - (a) further promoting exchanges between and among their respective education related agencies, institutions, and organizations in tertiary education and technical education;
  - (b) exchange of information, teaching aids, and demonstration materials;
  - (c) exchange of teaching staff, administrators, researchers and students in relation to programs that will be of mutual benefit, such as ocean economy, bio-technology, disaster prevention and reduction and artificial intelligence; and
  - (d) development of innovative quality assurance resources to support learning and assessment, and the professional development of teachers and trainers.

## **Article 12.11. FILM**

1. With a view to strengthening exchanges and cooperation in the area of film, the Parties agree to cooperate in the following areas:
  - (a) developing film co-production agreement between the Government of China and the Government of Mauritius;



- (b) encouraging film production companies of the Parties to do the post-production work in each other's territory;
- (c) encouraging films shooting in each other's territory
- (d) encouraging the Parties to organize film festivals and screenings in each other's country, and encouraging films and filmmakers to participate in the festivals of each other's territory; and
- (e) encouraging cinematographic exchanges between the film industries of the Parties through seminars, visits and forums.

## **Article 12.12. OCEAN ECONOMY**

1. The Parties recognize that the Ocean Economy including the fisheries sector holds enormous potential for sustainable economic diversification, job creation, and wealth generation, and investment opportunities exist in various areas in the Ocean Economy Sector.
2. The Parties agree to enhance cooperation through:
  - (a) exploring to establish ocean economic demonstration zone and conducting research and cooperation on its planning with synergies in the field of ocean economy, including infrastructure, investment and financing, R&D, sea water desalination, ocean energy development, know-how and technology transfer;
  - (b) enhanced trade and investment in seafood industry, including aquaculture, warehousing, processing and value addition;
  - (c) capacity building for fisheries and aquaculture development, fish stock assessment, fisheries management, and policy planning; and
  - (d) facilitating conservation and sustainable management of marine living resources.

## **Article 12.13. TOURISM**

1. The Parties recognize the importance of tourism and people-to-people flows to the development of their respective economies and the need to expand and deepen cooperation in tourism promotion and exchanges.
2. The Parties agree to cooperate in the following areas:
  - (a) exploring the possibility of undertaking joint research on tourism development and promotion to increase inbound visitors to each Party;
  - (b) cooperating in joint campaigns to promote tourism in the territories of the Parties;
  - (c) exchanging information on relevant statistics, promotional materials, and policies in tourism and related sectors;
  - (d) encouraging tourism and civil aviation authorities and agencies to improve the aviation connectivity between the Parties;
  - (e) developing infrastructure relevant to the tourism industry;
  - (f) promoting cruise tourism and stop overs in China and Mauritius;
  - (g) cooperating in the branding and image building, event creation and promotion, restoration of historical and cultural monuments, eco-tourism and nature conservation; and
  - (h) undertaking training and skills development programs.

## **Article 12.14. ARTS, CULTURE AND SPORTS**

1. The Parties acknowledge the importance to promote cultural exchanges between China and Mauritius, considering that China and Mauritius share unique bonds based on their shared cultural heritage and traditions, as well as recognizing the significance of sports as a way of consolidating and promoting friendship and enhancing mutual understanding.
2. The Parties agree to:
  - (a) encourage exchanges of expertise and best practices regarding the protection of cultural heritage sites and historic monuments, including environmental surroundings and cultural landscapes;
  - (b) further promote cooperation in broadcasting and audio-video services sectors, for the purpose of deepening mutual

understanding between the Parties;

(c) promote exchanges of artists in the restoration of documents in National Archives, National Library and restoration of paintings;

(d) collaborate in promoting Chinese culture in the context of organizing cultural events and presenting different forms of Chinese culture such as traditional operas, music, martial art, and cuisine.

(e) enhance the infrastructural and logistical development of the Multi-Sport Complex through sports equipment and facilities;

(f) maintain and continuously upgrade major sports infrastructure; and

(g) strengthen capacity and standards of local sports persons, especially those who will participate at regional and international levels.

## **Chapter 13. TRANSPARENCY**

### **Article 13.1. PUBLICATION**

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

2. To the extent possible, each Party shall publish in advance and provide interested persons of the other Party and the other Party a reasonable opportunity to comment on any law, regulation, procedure and administrative ruling of general application referred to in paragraph 1 that it proposes to adopt.

### **Article 13.2. NOTIFICATION AND PROVISION OF INFORMATION**

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

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

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

4. Any notification, request, or information under this Article shall be conveyed to the other Party through the Contact Points in Article 14.4 (Overall Contact Points).

### **Article 13.3. ADMINISTRATIVE PROCEEDINGS**

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

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

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

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

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

## **Article 13.4. REVIEW AND APPEAL**

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

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

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

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

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

## **Chapter 14. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS**

### **Article 14.1. ESTABLISHMENT OF THE CHINA-MAURITIUS FREE TRADE AREA JOINT COMMISSION**

1. The Parties hereby establish the FTA Joint Commission, composed of government representatives of each Party at the level of senior officials.

2. The FTA Joint Commission aims at ensuring the effective operation and implementation of this Agreement and any other agreement or legal instrument concluded or to be concluded under this Agreement.

### **Article 14.2. FUNCTIONS OF THE FTa JOINT COMMISSION**

1. The FTA Joint Commission shall:

(a) consider any matter relating to the implementation or operation of this Agreement;

(b) consider any proposal to amend this Agreement;

(c) supervise the work of all committees and any other subsidiary body established under this Agreement;

(d) consider issues referred to it by either Party, or by the committees or any other subsidiary body established under this Agreement; and

(e) in accordance with the objectives of this Agreement, explore ways to further enhance trade and investment between the Parties.

2. The FTA Joint Commission may:

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

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

(c) issue interpretations of the provisions of this Agreement;

(d) seek the advice of interested parties on any matter falling within the functions of the FTA Joint Commission; and

(e) take any other action as the Parties may agree.

### **Article 14.3. RULES OF PROCEDURE OF THE FTa JOINT COMMISSION**

1. The FTA Joint Commission shall take decisions by consensus.

2. The FTA Joint Commission shall meet within one year of the date of entry into force of this Agreement and thereafter as

the Parties may decide. Meetings of the FTA Joint Commission shall be chaired successively by each Party.

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

4. Each Party shall be responsible for the composition of its own delegation to the meeting of the FTA Joint Commission.

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

#### **Article 14.4. OVERALL CONTACT POINTS**

1. Each Party shall designate an overall contact point to facilitate communication between the Parties on any matter covered by this Chapter.

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

3. Each Party shall notify the other Party in writing of its designated overall contact point no later than 60 days after the date of entry into force of this Agreement.

4. A Party shall promptly notify the other Party of any change of its overall contact point.

### **Chapter 15. DISPUTE SETTLEMENT**

#### **Article 15.1. COOPERATION**

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

#### **Article 15.2. SCOPE OF APPLICATION**

Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties wherever a Party considers that a measure of the other Party is inconsistent with its obligations under this Agreement or that the other Party has otherwise failed to carry out its obligations under this Agreement.

#### **Article 15.3. CHOICE OF FORUM**

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

2. The forum selected by the complaining Party in paragraph 1 shall be used to the exclusion of other fora.

#### **Article 15.4. CONSULTATIONS**

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

2. A request for consultations shall be made in writing and the reasons for such a request shall be set out, including identification of the measure at issue and an indication of the legal basis for the complaint. The complaining Party shall deliver the request to the responding Party.

3. If a request for consultations is made, the responding Party shall reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith, with a view to reaching a mutually satisfactory resolution, within a period of no more than:

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

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

4. If the responding Party does not reply or enter into consultations within the timeframe specified in paragraph 3, the complaining Party may proceed directly to request the establishment of an arbitral tribunal.

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

### **Article 15.5. GOOD OFFICES, CONCILIATION AND MEDIATION**

1. The Parties may at any time voluntarily agree to good offices, conciliation and mediation. These procedures may begin at any time and be terminated at any time.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during those proceedings, shall be confidential and without prejudice to the rights of either Party in any further or other proceedings.

3. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal established under Article 15.6 (Establishment of an Arbitral Tribunal).

### **Article 15.6. ESTABLISHMENT OF AN ARBITRAL TRIBUNAL**

1. If a consultation referred to in the Article 15.4 (Consultations) fails to resolve a matter within 60 days or 30 days in relation to urgent matters concerning perishable goods, after receipt of the request for consultations, the complaining Party may request in writing the establishment of an arbitral tribunal to consider the matter.

2. The complaining Party shall:

(a) indicate in the request whether consultations were held;

(b) identify the specific measures at issue;

(c) provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly; and

(d) deliver the request to the responding Party.

3. An arbitral tribunal is established upon receipt of a request.

### **Article 15.7. COMPOSITION OF AN ARBITRAL TRIBUNAL**

1. An arbitral tribunal shall comprise three arbitrators.

2. Within 15 days after the establishment of an arbitral tribunal, each Party shall appoint one arbitrator of the arbitral tribunal respectively.

3. The Parties shall appoint by common agreement the third arbitrator within 30 days after the establishment of an arbitral tribunal. The arbitrator thus appointed shall chair the arbitral tribunal.

4. If any arbitrator of the arbitral tribunal has not been appointed within 30 days after the establishment of an arbitral tribunal, either Party may request that the Director-General of the WTO designate an arbitrator within 30 days of that request. If one or more arbitrators are designated under this paragraph, the Director-General of the WTO shall be authorized to designate the chair of the arbitral tribunal.

5. The chair of the arbitral tribunal shall:

(a) not be a national of either Party;

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

(c) not be employed by either Party; and (d) not have dealt with the matter in any capacity.

6. All arbitrators shall:

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

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgment;

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

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

7. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner and timeframe as prescribed for the appointment of the original arbitrator, and the successor shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the replacement of the successor.

## **Article 15.8. FUNCTIONS OF ARBITRAL TRIBUNAL**

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

2. Unless the Parties otherwise agree within 20 days from the date of the establishment of the arbitral tribunal, the terms of reference shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 15.6 (Establishment of an Arbitral Tribunal) and to make findings of law and fact together with the reasons as well as recommendations, if any, for the resolution of the dispute."

3. Where an arbitral tribunal concludes that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement.

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

## **Article 15.9. RULES OF PROCEDURE OF ARBITRAL TRIBUNAL**

Unless the Parties agree otherwise, the arbitral tribunal shall follow the rules of procedure set out in Chapter 15-Annex (Rules of Procedure of Arbitral Tribunal) and may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with Chapter 15-Annex (Rules of Procedure of Arbitral Tribunal).

## **Article 15.10. SUSPENSION OR TERMINATION OF PROCEEDINGS**

1. The Parties may agree that the arbitral tribunal suspends its work at any time for a period not exceeding 12 months from the date of such an agreement. In the event of such suspension, all relevant timeframes set out in this Chapter shall be extended by the amount of time that the work was suspended. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal. In such an event, the Parties to the dispute shall jointly notify the arbitral tribunal.

## **Article 15.11. REPORT OF THE ARBITRAL TRIBUNAL**

1. The arbitral tribunal shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties and any information or technical advice, if any, it has obtained pursuant to paragraph 13 of Chapter 15- Annex (Rules of Procedure of Arbitral Tribunal).

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall issue the initial report to the Parties within 120 days after the date of its composition or in case of urgent matters concerning perishable goods, within 90 days after the date of its composition.

3. In exceptional cases, if the arbitral tribunal considers that it cannot issue its initial report within the time specified in paragraph 2, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.

4. Each Party may submit written comments to the arbitral tribunal within 15 days of the issuance of the initial report. After considering these written comments by the Parties and making any further examination it considers appropriate, the arbitral tribunal shall present to the Parties its final report within 30 days of issuance of the initial report, unless the Parties otherwise agree.

5. The arbitral tribunal shall make every effort to make its decisions by consensus. If the arbitral tribunal is unable to reach consensus, it may make its decision by majority vote. Arbitrators may furnish separate opinions on matters not unanimously agreed upon. All opinions expressed in the arbitral tribunal's report by individual arbitrators shall be anonymous.
6. The final report of the arbitral tribunal is final and has no binding force except between the Parties and in respect of the matter to which the report refers.
7. Unless either Party disagrees, the final report shall be made available to the public no later than 15 days after its issuance to the Parties, subject to the protection of confidential information.

## **Article 15.12. IMPLEMENTATION OF ARBITRAL TRIBUNAL'S FINAL REPORT**

1. Where the arbitral tribunal concludes that a Party has not conformed with its obligations under this Agreement, the resolution, whenever possible, shall be to eliminate the non-conformity.
2. Unless the Parties reach agreement on compensation or other mutually satisfactory solution, the responding Party shall implement the recommendations and rulings in the final report of the arbitral tribunal. If it is not practicable to comply immediately, the responding Party shall implement the recommendations and rulings within a reasonable period of time.

## **Article 15.13. REASONABLE PERIOD OF TIME**

1. The reasonable period of time referred to in Article 15.12 (Implementation of Arbitral Tribunal's Final Report) shall be mutually determined by the Parties. Where the Parties fail to agree on the reasonable period of time within 30 days after the issuance of the arbitral tribunal's final report, either Party may, to the extent possible, refer the matter to the original arbitral tribunal, which shall determine the reasonable period of time. If the arbitral tribunal cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 15.7 (Composition of an Arbitral Tribunal).
2. The arbitral tribunal shall provide its determination to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its determination. Any delay shall not exceed a further period of 30 days unless the Parties otherwise agree.
3. The reasonable period of time normally should not exceed 15 months from the date of issuance of the arbitral tribunal's final report.

## **Article 15.14. COMPLIANCE REVIEW**

1. Where there is disagreement as to the existence or consistency with this Agreement of measures taken to comply with the recommendations and rulings of the arbitral tribunal, such dispute shall be resolved by recourse to the dispute settlement procedures under this Chapter, including wherever possible by resorting to the original arbitral tribunal.
2. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. Where the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will provide its report. Any delay shall not exceed a further period of 30 days, unless the Parties otherwise agree.
3. The provisions in this Chapter concerning the procedure of an arbitral tribunal shall apply mutatis mutandis to the procedure under this Article.

## **Article 15. COMPENSATION AND SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS**

1. If the arbitral tribunal under Article 15.14 (Compliance Review) finds that the responding Party fails to bring the measure found to be inconsistent with this Agreement into compliance with the recommendations and rulings of the arbitral tribunal within the reasonable period of time established, or the responding Party expresses in writing that it will not implement the recommendations and rulings, such Party shall, if so requested by the complaining Party, enter into negotiation with the complaining Party, with a view to agreeing on a mutually acceptable compensation. If the Parties fail to reach an agreement on compensation within 15 days after entering into negotiation for compensation, or if no such a request has been made, the complaining Party may suspend the application of concessions or other obligations to the Party complained against. The

complaining Party shall notify the responding Party 30 days before suspending concessions or other obligations. The notification shall indicate the level and scope of the suspension of concessions or other obligations.

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

3. In considering what concessions or other obligations to suspend:

(a) the complaining Party should first seek to suspend concessions or other obligations in the same sector(s) as that affected by the measure that the arbitral tribunal has found to be inconsistent with the obligations under this Agreement; and

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

4. Upon written request of the responding Party, the original arbitral tribunal shall determine whether the level of concessions or other obligations to be suspended by the complaining Party is excessive pursuant to paragraph 2 and/or whether paragraph 3 has not been complied with. If the arbitral tribunal cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 15.7 (Composition of an Arbitral Tribunal).

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

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

## **Article 15.16. POST SUSPENSION**

1. Without prejudice to the procedures in Article 15.15 (Compensation and Suspension of Concessions or other Obligations), if the responding Party considers that it has eliminated the non-conformity that the arbitral tribunal has found, it may provide written notice to the complaining Party with a description of how the non-conformity has been removed. If the complaining Party disagrees, it may refer the matter to the original arbitral tribunal within 60 days after receipt of such a written notice. Otherwise, the complaining Party shall promptly stop the suspension of concessions or other obligations.

2. If the arbitral tribunal under paragraph 1 cannot be established with its original members, it shall be composed in accordance with the procedures set out in Article 15.7 (Composition of an Arbitral Tribunal). The arbitral tribunal shall issue its report within 60 days after the referral of the matter by the complaining Party pursuant to paragraph 1. If the arbitral tribunal concludes that the responding Party has eliminated the non-conformity, the complaining Party shall promptly stop the suspension of concessions or other obligations.

## **Article 15.17. PRIVATE RIGHTS**

Neither Party shall provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

## **Article 15.18. REMUNERATION AND EXPENSES**

Unless the Parties otherwise agree, the remuneration of the arbitrators and other expenses of the arbitral tribunal shall be borne by the Parties in equal shares.

## **Annex. RULES OF PROCEDURE OF ARBITRAL TRIBUNAL**

### First Written Submissions

1. The complaining Party shall deliver its first written submission no later than 20 days after the appointment of the last arbitrator. The responding Party shall deliver its first written submission no later than 30 days after the date of delivery of the complaining Party's first written submission, unless the arbitral tribunal otherwise decides.

2. A Party shall provide a copy of its first written submission to each of the arbitrators and to the other Party. A copy of the documents shall also be provided in electronic format.

### Hearings



3. The chair of the arbitral tribunal shall fix the date and time of the hearing after consultation with the Parties and other members of the arbitral tribunal. The venue of the hearings shall be agreed by the Parties. If there is no agreement, the venue shall alternate between the territories of the Parties with the first hearing to be held in the territory of the Party complained against. The chair of the arbitral tribunal shall notify in writing to the Parties of the date, time and venue of the hearing. Unless either Party disagrees, the arbitral tribunal may decide not to convene a hearing.

4. The arbitral tribunal may convene additional hearings.

5. All arbitrators shall be present at hearings.

6. The hearings of the arbitral tribunal shall be held in closed session. Supplementary Written Submissions

7. Where the arbitral tribunal so agrees, each Party may, within 20 days after the date of the hearing, deliver a supplementary written submission responding to any matter that arose during the hearing. The supplementary written submission shall be delivered in accordance with paragraph 2 of this Annex.

#### Questions in Writing

8. The arbitral tribunal may at any time during the proceedings put questions in writing to the Parties. A Party shall deliver the written reply to the arbitral tribunal and the other Party in accordance with the timetable established by the arbitral tribunal. Each Party shall be given the opportunity to provide written comments on the reply of the other Party.

#### Confidentiality

9. The arbitral tribunal's hearings and the documents submitted to it shall be kept confidential. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public. The information submitted by a Party to the arbitral tribunal which that Party has designated as confidential shall be treated as confidential.

#### Ex parte Contacts

10. The arbitral tribunal shall not meet or contact a Party in the absence of the other Party.

11. No Party may contact any arbitrator in relation to the dispute in the absence of the other Party and the other arbitrators.

12. No arbitrator may discuss any aspect of the subject matter of the proceeding with a Party or the Parties in the absence of the other arbitrators.

#### Role of Experts

13. Upon request of a Party or on its own initiative, the arbitral tribunal may seek information and technical advice from any individual or body that it deems appropriate. Any information so obtained shall be provided to the Parties for comments.

#### Working Language

14. Unless otherwise agreed by the Parties, English shall be the working language of the dispute settlement proceedings.

## **Chapter 16. EXCEPTIONS**

### **Article 16.1. GENERAL EXCEPTIONS**

1. For the purposes of Chapter 2 (Trade in Goods), 3 (Rules of Origin and Origin Implementation Procedures), 4 (Sanitary and Phytosanitary Measures), 5 (Technical Barriers to Trade) and 6 (Trade Remedies) and 11 (Electronic Commerce), Article XX of the GATT 1994, including its interpretative notes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 7 (Trade in Services) and 11 (Electronic Commerce), Article XIV of the GATS, including the footnotes, is incorporated into and made part of this Agreement, *mutatis mutandis*.

### **Article 16.2. ESSENTIAL SECURITY**

1. Nothing in this Agreement shall be construed to:

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

(b) preclude a Party from applying measures that it considers in good faith necessary for the fulfillment of its obligations

under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

### **Article 16.3. TAXATION**

1. For the purposes of this Article:

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

(b) taxation measures do not include:

(i) a customs duty defined in Article 1.4 (General Definition); or

(ii) the measures listed in subparagraphs (b) and (c) of the definition of customs duty set out in Article 1.4 (General Definition).

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

3.

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

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

4. Notwithstanding paragraph 3, this Agreement shall only grant rights or impose obligations with respect to taxation measures:

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

(b) under Article 8.20 (Taxation) of this Agreement.

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

(a) for China, the Ministry of Finance and the State Taxation Administration; and

(b) for Mauritius, the Ministry of Finance and Economic Development.

### **Article 16.4. DISCLOSURE OF INFORMATION**

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

### **Article 16.5. MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS**

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, adopt measures deemed necessary.

## **Chapter 17. FINAL PROVISIONS**

### **Article 17.1. ANNEXES**

The Annexes to this Agreement constitute an integral part of this Agreement.

### **Article 17.2. ENTRY INTO FORCE**

This Agreement shall enter into force 30 days after the date on which the Parties exchange through diplomatic channels written notifications certifying that they have completed their respective necessary internal requirements or on such other

date as the Parties may agree and confirm by written notifications.

### **Article 17.3. AMENDMENTS**

1. The Parties may agree in writing to amend this Agreement. Any amendment shall enter into force in accordance with the procedures required for entry into force of this Agreement.

2. If any provision of the WTO Agreement or any other agreement to which both Parties are party that has been incorporated into this Agreement is amended, the Parties shall consult on whether to amend this Agreement, unless this Agreement provides otherwise.

### **Article 17.4. TERMINATION**

1. This Agreement shall remain in force unless either Party notifies the other Party in writing to terminate this Agreement through diplomatic channels. Such termination shall take effect 180 days following the date of receipt of the notification.

2. Within 30 days of a notification under paragraph 1, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect on a later date than provided under paragraph 1. Such consultations shall commence within 30 days of a Party's delivery of such a request.

### **Article 17.5. AUTHENTIC TEXTS**

This Agreement shall be done in Chinese and English. Both texts are equally valid and authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Beijing, on October 17, 2019, in duplicate, each Party shall keep one copy in the Chinese and English languages.

For the Government of The People's Republic of China

For the Government of The Republic of Mauritius