

# **AGREEMENT BETWEEN JAPAN AND BRUNEI DARUSSALAM FOR AN ECONOMIC PARTNERSHIP**

Japan and Brunei Darussalam,

Inspired by the warm friendship and strong economic and political ties, which have developed through mutually beneficial cooperation and shared regional interests;

Determined to enhance their relationship by forging mutually beneficial economic partnership through liberalisation and facilitation of trade and investment, and cooperation;

Recognising that a dynamic and rapidly changing global environment brought about by globalisation and technological progress presents various economic and strategic challenges and opportunities to the Parties;

Reaffirming that the economic partnership will provide a useful framework for enhanced cooperation and serve the common interests of the Parties in various fields as agreed in this Agreement and lead to the improvement of economic efficiency and the development of trade, investment and human resources;

Recognising that the economic partnership would create larger and new market, and enhance the attractiveness and vibrancy of their markets;

Recognising that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development and that the economic partnership can play an important role in promoting sustainable development;

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services in Annex 1A and Annex 1B, respectively, to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

Convinced that this Agreement would open a new era for the relationship between the Parties; and

Determined to establish a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

## **Chapter 1. General Provisions**

### **Article 1. Objectives**

The objectives of this Agreement are to:

- (a) liberalise and facilitate trade in goods and services between the Parties;
- (b) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (c) establish a framework for further bilateral cooperation and improvement of business environment; and
- (d) create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

### **Article 2. General Definitions**

For the purposes of this Agreement:

- (a) "Area" means:

(i) with respect to Brunei Darussalam, the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, over which it exercises its sovereign rights and jurisdiction in accordance with international law; and

(ii) with respect to Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan;

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

(b) "customs authority" means the authority that, according to the legislation of each Party or non-Parties, is responsible for the administration and enforcement of customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Brunei Darussalam, the Royal Customs and Excise Department;

(c) "GATS" means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended;

(d) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(e) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended, and adopted and implemented by the Parties in their respective laws;

(f) "Parties" means Japan and Brunei Darussalam and "Party" means either Japan or Brunei Darussalam; and

(g) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994, as may be amended.

### **Article 3. Transparency**

1. Each Party shall make publicly available its laws, regulations and judicial decisions of general application as well as international agreements to which the Party is a party, that pertain to, or affect any matter covered by this Agreement.

2. Each Party shall make easily available to the public, the names and addresses of the competent authorities responsible for laws and regulations referred to in paragraph 1.

3. Each Party shall, upon the request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party in the English language with respect to matters referred to in paragraph 1.

### **Article 4. Administrative Procedures**

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of the Government of a Party, the competent authorities shall, in accordance with the applicable laws and regulations of the Party:

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 3; and

(bob) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.

2. The competent authorities of the Government of a Party shall, in accordance with the applicable laws and regulations of the Party, establish standards for taking administrative decisions in response to submitted applications. The competent authorities shall:

(a) make such standards as specific as possible; and

(bob) make such standards publicly available except when it would extraordinarily raise administrative difficulties for the Government of the Party.

3. The competent authorities of the Government of a Party shall, in accordance with the applicable laws and regulations of the Party, endeavour to:

(a) establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to submitted applications; and

(b) make publicly available such periods of time, if established.

4. The competent authorities of the Government of a Party shall, in accordance with the applicable laws and regulations of the Party, prior to any final decision which adversely affects the interests of a person, provide that person with:

(a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of position of such person,

provided that time, nature of the measure and public interest permit.

## **Article 5. Review and Appeal**

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of prompt review and, where justified, appropriate remedies for actions taken by its Government regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial.

2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:

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

(b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its applicable laws and regulations, that such decision is implemented by the relevant authorities with respect to the action at issue which is taken by its Government.

## **Article 6. Confidential Information**

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information.

2. Nothing in this Agreement shall be construed to require a Party to provide confidential information, the disclosure of which would:

(a) be contrary to the public interest;

(b) impede enforcement of its laws and regulations; or

(c) prejudice legitimate commercial interests of particular enterprises, public or private.

3. In the event of the termination of this Agreement, the Parties agree that the provision of this Article shall continue to apply.

## **Article 7. Taxation**

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Articles 3 and 6 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

## **Article 8. General and Security Exceptions**

1. For the purposes of Chapters 2,3,4,5 other than Article 64, and 7, Article XX of the GATT 1994 is incorporated into and forms part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 5 other than Article 64, and Chapter 6, Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

3. Nothing in this Agreement other than Article 64, 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 production or supply of, or traffic in, arms, ammunition and implements of war and to such production or supply of, or traffic in, other goods and materials, or such supply of services, as is carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;

(ii) taken in time of war, or armed conflict, or other domestic or international emergency; or

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

4. In cases where a Party takes any measure or action pursuant to this Article, the Party shall make reasonable effort to notify the other Party of the description of such measure or action either before the measure or action is taken or as soon as possible thereafter.

## **Article 9. Relation to other Agreements**

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

2. In the event of any inconsistency between this Agreement and the WTO Agreement or any other agreements to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

## **Article 10. Implementing Agreement**

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as the Implementing Agreement).

## **Article 11. Joint Committee**

1. A Joint Committee shall be established under this Agreement. 2. The functions of the Joint Committee shall be:

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

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting:

(i) Operational Procedures referred to in Chapter 3; and

(ii) any necessary decisions; and

(e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

(a) shall be composed of representatives of the Parties; and

(b) may establish and delegate its responsibilities to Sub-Committees.

4. The Joint Committee shall meet at such venues and times as may be agreed by the Parties.

## **Article 12. Communications**

Each Party shall designate an enquiry point to facilitate communications between the Parties on any matter relating to this Agreement.

## **Chapter 2. Trade In Goods**

### **Article 13. Definitions**

For the purposes of this Chapter:

- (a) "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 2 of Article 21;
- (b) "customs duty" means any customs or import duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a good, but does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like goods or, directly competitive or substitutable goods of the Party or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;
  - (ii) anti-dumping or countervailing duty applied pursuant to a Party's law and applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, as may be amended, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as may be amended; or
  - (iii) fees or other charges commensurate with the cost of services rendered;
- (c) "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;
- (d) "domestic industry" means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (e) "export subsidies" means export subsidies listed in subparagraphs I(a), (b), (c), (d), (e) and (f) of Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Chapter as "the Agreement on Agriculture");
- (f) "originating good" means a good which qualifies as an originating good under the provisions of Chapter 3;
- (g) "provisional bilateral safeguard measure" means a provisional bilateral safeguard measure provided for in subparagraph 9(a) of Article 21;
- (h) "serious injury" means a significant overall impairment in the position of a domestic industry; and
- (i) "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.

### **Article 14. Classification of Goods**

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

### **Article 15. National Treatment**

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

### **Article 16. Elimination of Customs Duties**

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

2. Except as otherwise provided for in this Agreement, neither Party shall increase any customs duty on originating goods of the other Party from the rate to be applied in accordance with its Schedule in Annex 1.

3. Upon the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedules in Annex 1, in accordance with the terms and conditions set out in such Schedules.

4. If, as a result of the elimination or reduction of its most-favoured-nation applied rate of customs duty on a particular good, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.

5. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

## **Article 17. Customs Valuation**

For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WIO Agreement, as may be amended (hereinafter referred to in this Agreement as "the Agreement on Customs Valuation"), shall apply *mutatis mutandis*.

## **Article 18. Export Duties**

Neither Party shall introduce any export duties on goods exported from the Party to the other Party.

## **Article 19. Export Subsidies**

Neither Party shall introduce any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

## **Article 20. Non-tariff Measures**

1. Each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.

2. Each Party shall promote the transparency of its non-tariff measures which are not inconsistent with its obligations under the WTO Agreement.

## **Article 21. Bilateral Safeguard Measures**

1. Subject to the provisions of this Article, each Party may take a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 16, is being imported into the former Party in such increased quantities, in absolute terms, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry of the former Party.

2. A Party may, as a bilateral safeguard measure:

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

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

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

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

3. (a) A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and subparagraph 2(c) of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement, as may be amended (hereinafter referred to in this Article as "the Agreement on Safeguards").

(b) The investigation referred to in subparagraph (a) shall in all cases be completed within one year following its date of initiation.

(c) In the investigation referred to in subparagraph (a) to determine whether increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry under the terms of this Article, the competent authorities of a Party who carry out the investigation shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good in absolute terms, the share of the domestic market taken by the increased imports of the originating good, and the changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat of serious injury. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

4. The following conditions and limitations shall apply with regard to a bilateral safeguard measure:

(a) A Party shall immediately deliver a written notice to the other Party upon:

(d) The determination that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry shall not be made unless the investigation referred to in subparagraph (a) demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat of serious injury. When factors other than the increased imports of the originating good are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased imports of the originating good.

4. The following conditions and limitations shall apply with regard to a bilateral safeguard measure:

(a) A Party shall immediately deliver a written notice to the other Party upon:

(i) initiating an investigation referred to in subparagraph 3(a) relating to serious injury, or threat of serious injury, and the reasons for it; and

(ii) taking a decision to apply or extend a bilateral safeguard measure.

(b) The Party making the written notice referred to in subparagraph (a), shall provide the other Party with all pertinent information, which shall include:

(i) in the written notice referred to in subparagraph (a) (i), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and

(ii) in the written notice referred to in subparagraph (a) (ii), evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading of the Harmonized System, a precise description of the bilateral safeguard measure, and the proposed date of the introduction and expected duration of the bilateral safeguard measure.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultation with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a), exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5.

(d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed four years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise the bilateral safeguard measure at regular

intervals during the period of application.

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

(f) Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the bilateral safeguard measure.

5. (a) A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

(b) If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultation pursuant to subparagraph 4(c), the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects.

6. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good of the other Party in accordance with:

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

(b) Article 5 of the Agreement on Agriculture.

7. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to bilateral safeguard measure.

8. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to bilateral safeguard measure.

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

(b) A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is taken.

(c) The duration of a provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 3 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 4(d).

(d) Subparagraph 4(f) and paragraphs 7 and 8 shall be applied mutatis mutandis to a provisional bilateral safeguard measure. The customs duty imposed as a result of a provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 3(a) does not determine that increased imports of an originating good of the other Party have caused or threatened to cause serious injury to a domestic industry.

10. A written notice referred to in subparagraphs 4(a) and 9(b) and any other communication between the Parties shall be done in the English language.

11. The Parties shall review the provisions of this Article, if necessary, after five years of the date of entry into force of this Agreement.

## **Article 22. Restrictions to Safeguard the Balance of Payments**

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

2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with



the Articles of Agreement of the International Monetary Fund, as may be amended.

## Chapter 3. Rules of Origin

### Article 23. Definitions

For the purposes of this Chapter:

(a) "competent governmental authority" means the authority that is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry, and in the case of Brunei Darussalam, the Ministry of Foreign Affairs and Trade;

(b) "exporter" means a person located in an exporting Party who exports a good from the exporting Party;

(c) "factory ships of the Party" or "vessels of the Party" respectively means factory ships or vessels:

(i) which are registered in the Party;

(ii) which sail under the flag of the Party;

(iii) which are owned to an extent of at least 50 percent by nationals of the Parties, or by a juridical person with its head office in either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Parties, and which is owned by:

(A) nationals or juridical persons of the Parties to an extent of at least 50 percent; or

(B) nationals or juridical persons of the Parties, together with nationals or juridical persons of one of the non- Parties which are member countries of the Association of Southeast Asian Nations (hereinafter referred to in this Agreement as "ASEAN"), to an extent of at least 75 percent; and

(iv) of which at least 75 percent of the total of the master, officers and crew are nationals of the Parties or non-Parties which are member countries of the ASEAN;

(d) "fungible originating goods of a Party" or "fungible originating materials of a Party" respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;

(e) "Generally Accepted Accounting Principles" means the recognised consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(f) "importer" means a person who imports a good into the importing Party;

(g) "indirect materials" means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(i) fuel and energy;

(ii) tools, dies and moulds;

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

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

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

(vi) equipment, devices and supplies used for testing or inspection;

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into another good but whose use in the production of the good can

reasonably be demonstrated to be a part of that production;

(h) "material" means a good that is used in the production of another good;

(i) "originating material of a Party" means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to paragraph 1 of Article 25;

(j) "packing materials and containers for shipment" means goods that are used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 34;

(k) "preferential tariff treatment" means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 16; and

(l) "production" means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

## **Article 24. Originating Goods**

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

(a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2;

(b) the good is produced entirely in the Party exclusively from originating materials of the Party; or

(c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials.

2. For the purposes of subparagraph 1(a), the following goods shall be considered as being wholly obtained or produced entirely in a Party:

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

(b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;

(c) goods obtained from live animals in the Party;

(d) plants and plant products harvested, picked or gathered in the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a), (b), (c) and (d), extracted or taken in the Party;

(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial sea of the Parties;

(g) goods produced on board factory ships of the Party, outside the territorial sea of the Party from the goods referred to in subparagraph (f);

(h) goods taken from the sea-bed or subsoil beneath the sea-bed outside the territorial sea of the Party, provided that the Party has rights to exploit such sea-bed or subsoil in accordance with the provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982;

(i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;

(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;

(k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and

(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a), (b), (c), (d), (e), (f), (9g), (h), (1), (3) and (k).

3. For the purposes of subparagraph 1(c), the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.

4. (a) For the purposes of subparagraph 1(c), the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b), is not less than the percentage specified by the rule for the good.

(b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

F.O.B.

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 5, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1, 2, 3, 4, 5, 6, 7 and 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b), the value of a non-originating material used in the production of the good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) in determining whether the good qualifies as an originating good of a Party, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply mutatis mutandis to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

## **Article 25. Accumulation**

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

2. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of Article 24 in determining whether the good qualifies as an originating good of a Party, the value of a non-originating material produced in either Party and to be used in the production of the good may be limited to the value of non-originating materials used in the production of such non-originating material, provided that the good qualifies as an originating good of that Party under subparagraph 1(c) of Article 24.

## **Article 26. De Minimis**

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good, shall be disregarded, provided that the totality of such materials

does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

## **Article 27. Non-qualifying Operations**

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 solely by reason of:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;
- (e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles; or
- (g) any combination of operations referred to in subparagraphs (a), (b), (c), (d), (e) and (f).

## **Article 28. Consignment Criteria**

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:

- (a) transported directly from the other Party; or
- (b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1, that good shall not be considered as an originating good of the other Party.

## **Article 29. Exhibitions**

Notwithstanding Article 28, an originating good of a Party imported into the other Party after an exhibition in a non-Party shall continue to qualify as an originating good of the former Party when it:

- (a) remained under the control of the customs authority of the non-Party while it was in the non-Party; and
- (b) was transported:
  - (i) directly to and from the non-Party; or
  - (ii) through other non-Parties for the purpose of transit or temporary storage in warehouses in such other non-Parties, provided that it did not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

## **Article 30. Unassembled or Disassembled Goods**

1. Where a good satisfies the requirements of the relevant provisions of Articles 24, 25, 26 and 27 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 24, 25, 26 and 27 had each of the non-originating materials among the

unassembled or disassembled materials been imported into the Party separately and not as an unassembled or disassembled form,

## **Article 31. Fungible Goods and Materials**

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading and any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

## **Article 32. Indirect Materials**

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where the good is produced.

## **Article 33. Accessories, Spare Parts and Tools**

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If a good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## **Article 34. Packaging Materials and Containers for Retail Sale**

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If a good is subject to a qualifying value content requirement, the value of packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

## **Article 35. Packing Materials and Containers for Shipment**

Packing materials and containers for shipment shall be disregarded:

(a) in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and

(b) in calculating the qualifying value content of a good.

## **Article 36. Claim for Preferential Tariff Treatment**

1. The importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1, the importing Party shall not require a certificate of origin from importers for:

(a) an importation of originating goods of the exporting Party whose aggregate customs value does not exceed 200 United States dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish, provided that the importation does not form part of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirement for a certificate of origin; or

(b) an importation of an originating good of the exporting Party, for which the importing Party has waived the requirement for a certificate of origin.

3. In the case where an originating good of the exporting Party is imported after an exhibition in a non-Party, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

(a) a certificate or any other information given by the customs authority of that non-Party or other relevant entities, which evidences that the good meets the requirements of subparagraph(a) of Article 29; and

(b) (i) a copy of through bill of lading; or

(ii) if the good was transported through other non-Parties, a certificate or any other information given by the customs authorities of such other non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those other non-Parties.

4. Where an originating good of the exporting Party is imported through one or more non-Parties except for the case referred to in paragraph 3, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

(a) a copy of through bill of lading; or

(b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non-Parties.

## **Article 37. Certificate of Origin**

1. A certificate of origin referred to in paragraph 1 of Article 36 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorised agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of certificate of origin, under the authorisation given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish each Party's format of certificate of origin in the English language in the Operational Procedures referred to in Article 45.

5. A certificate of origin shall be completed in the English language.

6. The competent governmental authority of the exporting Party shall provide the other Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority of the exporting Party or its designees.

7. An issued certificate of origin shall be applicable to a single importation of originating goods of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.

8. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a certificate of origin on the basis of:

(a) a declaration provided by the exporter to the competent governmental authority of the exporting Party or its designees based on the information provided by the producer of the good to that exporter; or

(b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority of the exporting Party or its designees by the request of the exporter.

9. A certificate of origin shall be issued only after the exporter who requests the certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 8(b), proves to the competent governmental authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party.

10. Each Party shall ensure that the competent governmental authority of the exporting Party or its designees shall keep a record of issued certificate of origin for a period of three years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

## **Article 38. Advance Rulings**

The importing Party shall endeavour to, prior to the importation of a good, issue a written advance ruling as to whether the good to be imported qualifies as an originating good of the exporting Party to importers of the good of the exporting Party or their authorised agents and exporters and producers of the good in the exporting Party or their authorised agents, where a written application is made with all the necessary information.

## **Article 39. Obligations Regarding Exportations**

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 8(b) of Article 37:

(a) shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when such exporter or producer knows that such good does not qualify as an originating good of the exporting Party; and

(bo) shall keep the records relating to the origin of the good for three years after the date on which the certificate of origin was issued.

## **Article 40. Request for Checking of Certificate of Origin**

1. For the purposes of determining whether a good imported from the other Party under preferential tariff treatment qualifies as an originating good of the other Party, the relevant authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of the certificate of origin, where it has reasonable doubt as to the authenticity of the certificate of origin or the accuracy of the information included in the certificate of origin.

Note: For the purposes of Articles 40, 41, 42 and 43, "relevant authority of the importing Party" means:

(a) in the case of Brunei Darussalam, the Ministry of Foreign Affairs and Trade; and

(b) in the case of Japan, the Ministry of Finance.

2. For the purposes of paragraph 1, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide the information requested in a period not exceeding three months after the date of receipt of the request.

If the relevant authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the relevant authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested in a period not exceeding two months after the date of receipt of the request.

3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party may request the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 8(b) of Article 37, to provide the former with the information requested.

## **Article 41. Verification Visit**

1. If the relevant authority of the importing Party is not satisfied with the outcome of the request for checking pursuant to Article 40, it may request the exporting Party to:

(a) collect and provide information relating to the origin of a good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the relevant authority of the importing Party to the premises of the exporter to whom the certificate of origin has been issued,

or the producer of the good in the exporting Party referred to in subparagraph 8(b) of Article 37; and

(b) provide information relating to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designees during or after the visit pursuant to subparagraph (a).

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1, the relevant authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party whose premises are to be visited.

3. The communication referred to in paragraph 2 shall include:

(a) the identity of the relevant authority of the importing Party issuing the communication;

(b) the name of the exporter, or the producer of the good in the exporting Party, whose premises are requested to be visited;

(c) the proposed date and place of the visit;

(d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and

(e) the names and titles of the officials of the relevant authority of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1.

5. The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide within 45 days or any other mutually agreed period from the last day of the visit, to the relevant authority of the importing Party the information obtained pursuant to paragraph 1.

6. (a) In cases where the relevant authority of the importing Party considers as urgent, that relevant authority may, before or during the request for checking referred to in Article 40, make a request referred to in paragraph 1 to the exporting Party.

(b) Where the request referred to in subparagraph (a) is made, Article 40 shall be no longer applied.

## **Article 42. Determination of Origin and Preferential Tariff Treatment**

1. The relevant authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the relevant authority of the importing Party except where the certificate has been returned to the competent governmental authority of the exporting Party. The relevant authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment when it receives the notification.

3. The relevant authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:

(a) where the requirements to provide the information within the period referred to in paragraph 2 of Article 40 or paragraph 5 of Article 41 or to respond to the communication referred to in paragraph 2 of Article 41 within the period referred to in paragraph 4 of Article 41 are not met;

(b) where the request referred to in subparagraph 1(a) of Article 41 is refused; or

(c) where the information provided to the relevant authority of the importing Party pursuant to Article 40 or 41, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 40 or 41 as the case may be, the relevant authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the



determination. The competent governmental authority of the exporting Party shall inform such determination by the relevant authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject of the visit referred to in Article 41.

## **Article 43. Confidentiality**

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the relevant authority of the importing Party pursuant to this Chapter:

(a) may only be used by such authority for the purposes of this Chapter; and

(b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless a request for the information is made to the exporting Party and such information is provided to the importing Party, through the diplomatic channels or other channels established in accordance with the applicable laws and regulations of the exporting Party.

## **Article 44. Penalties and Measures Against False Declaration**

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 8(b) of Article 37, for providing false declaration or documents to the competent governmental authority of the exporting Party or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and the producers of a good in the exporting Party referred to in subparagraph 8(b) of Article 37, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

## **Article 45. Operational Procedures**

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures that provide detailed regulations pursuant to which the competent governmental authorities and other authorities concerned of the Parties shall implement their functions under this Chapter.

## **Article 46. Miscellaneous**

1. Communications between the importing Party and the exporting Party shall be conducted in the English language.

2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

## **Article 47. Sub-committee on Rules of Origin**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

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

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 or 3, proposed by either Party; and

(iii) the Operational Procedures referred to in Article 45;

(b) considering any other matter as the Parties may agree related to this Chapter;

- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.
3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties; and
- (b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

## **Chapter 4. Customs Procedures**

### **Article 48. Scope and Objectives**

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.
2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations of each Party and within the available resources of their respective customs authorities.
3. The objectives of this Chapter are to establish a framework to ensure transparency, proper application of customs laws and prompt clearance of goods and to promote cooperation in the field of customs procedures, with a view to facilitating trade in goods between the Parties.

### **Article 49. Definition**

For the purposes of this Chapter, "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, as they relate to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party.

### **Article 50. Transparency**

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person.
2. When information that has been made available must be revised due to changes in its customs laws, each Party shall make the revised information readily available, wherever possible in advance of the entry into force of the changes, to enable interested persons to take account of them.
3. At the request of any interested person of the Parties, each Party shall provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

### **Article 51. Customs Clearance**

1. Both Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance of goods traded between the Parties, each Party shall:
  - (a) make use of information and communications technology;
  - (b) simplify its customs procedures;
  - (c) harmonise its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and
  - (d) promote cooperation, wherever appropriate, between its customs authority and:

- (i) other national authorities of the Party;
- (ii) the trading communities of the Party; and
- (iii) the customs authorities of non-Parties.

3. Each Party shall provide affected parties with easily accessible processes of judicial or administrative review in relation to the action taken by the Party. Such review shall be independent of the authorities entrusted with the administrative enforcement of such actions and shall be carried out in an impartial and fair manner.

## **Article 52. Goods In Transit**

Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994.

## **Article 53. Cooperation and Exchange of Information**

1. The Parties shall, subject to the laws and regulations of each Party, cooperate and exchange information with each other in the field of customs procedures, including their enforcement against the trafficking of prohibited goods and the importation and exportation of goods suspected of infringing intellectual property rights.
2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

## **Article 54. Sub-committee on Customs Procedures**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) reporting the findings of the Sub-Committee to the Joint Committee;
  - (c) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.
3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.
4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

# **Chapter 5. Investment**

## **Article 55. Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party; and
  - (b) investments of investors of the other Party in the Area of the former Party.
2. This Chapter shall not apply to:
  - (a) government procurement; and
  - (b) services supplied in the exercise of governmental authority as defined in subparagraph (q) of Article 74.
3. In the event of any inconsistency between this Chapter and Chapter 6:
  - (a) with respect to matters covered by Articles 57, 58 and 61, Chapter 6 shall prevail to the extent of inconsistency; and
  - (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.

4. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

## **Article 56. Definitions**

For the purposes of this Chapter:

(a) “enterprise” means any legal person or any other entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(b) an enterprise is:

(i) “owned” by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and

(ii) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

(c) “enterprise of a Party” means an enterprise constituted or organised under the applicable law of a Party;

(d) “freely usable currency” means any currency designated as such by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as may be amended;

(e) “ICSID” means the International Centre for Settlement of Investment Disputes;

(f) “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, as may be amended;

(g) “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965, as may be amended;

(h) “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(iii) bonds, debentures, loans and other forms of securities, including rights derived therefrom;

(iv) futures, options and other derivatives;

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) claims to money or to any performance under contract having a financial value, which relate to a business activity;

(vii) intellectual property rights;

(viii) goodwill;

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

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

Note 1: Investments also include amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note 2: Investments do not include an order or judgment entered in a judicial or administrative action.

Note 3: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

(i) “investment activities” means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

- (j) "investor of a Party" means a Party or a natural person or an enterprise of a Party that seeks to make, is making, or has made, investments;
- (k) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (l) "measure adopted or maintained by a Party" means any measure adopted or maintained by:
- (i) central or local governments and authorities of a Party; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;
- (m) "natural person of a Party" means a natural person who under the law of a Party:
- (i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei Darussalam; and
  - (ii) in respect of Japan, is a national of Japan;
- (n) "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, as may be amended; and
- (o) "TRIPS Agreement" means the Agreement on Trade Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended.

## **Article 57. National Treatment**

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities.
2. Notwithstanding paragraph 1, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as compliance with registration requirements, provided that such special formalities do not impair the substance of the rights of such investors under this Chapter.

## **Article 58. Most-favoured-nation Treatment**

Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

## **Article 59. Minimum Standard of Treatment**

Each Party shall accord to investments of investors of the other Party, treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Note: 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 customary international law minimum standard of treatment of aliens.

## **Article 60. Access to the Courts of Justice**

Each Party shall in its Area accord to investors of the other Party, treatment no less favourable than that it accords in like circumstances to its own investors or investors of a non-Party, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

## **Article 61. Prohibition of Performance Requirements**

1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, *mutatis mutandis*.
2. The Parties shall enter into further consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement.

## **Article 62. Reservations and Exceptions**

1. Articles 57 and 58 shall not apply to:

(a) any non-conforming measure that is maintained by the central government or authorities of a Party, on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex 4;

(b) any non-conforming measure that is maintained by local governments or authorities of a Party on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b);

(d) an amendment or modification to any non-conforming measure referred to in:

(i) subparagraph (a), unless the sectors or matters are indicated with an asterisk (\*) in Annex 4; and

(ii) subparagraph (b),

provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 57 and 58; and

(e) an amendment or modification to any non-conforming measure referred to in subparagraph (a), where the sectors or matters are indicated with an asterisk ("\*") in Annex 4, provided that the amendment or modification:

(i) does not decrease the conformity of that measure with Articles 57 and 58; and

(ii) is not more restrictive to existing investors and existing investments than the measure applied to such investors and investments immediately before the amendment or modification.

2. For the purposes of this Article:

(a) "existing investors" and "existing investments" mean respectively investors whose investments are present in the Area of a Party, and investments that are present in the Area of a Party, immediately before the amendment or modification of any non-conforming measure; and

(b) any expansion or diversification of existing investments by existing investors after the amendment or modification of any non-conforming measure shall not be regarded as existing investments to the extent of such expansion or diversification.

3. Each Party shall, on the date of entry into force of this Agreement, notify the other Party of the following information on any non-conforming measure referred to in subparagraph 1(a):

(a) the sector or matter, with respect to which the measure is maintained;

(b) the domestic or international industry classification codes, where applicable, to which the measure relates;

(c) the obligations under this Agreement with which the measure does not conform;

(d) the source of the measure; and (e) the succinct description of the measure.

4. Articles 57 and 58 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5.

5. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure:

(a) the sector or matter, with respect to which the measure is maintained;

(b) the domestic or international industry classification codes, where applicable, to which the measure relates;

(c) the obligations under this Agreement with which the measure does not conform;

(d) the source of the measure; and (e) the succinct description of the measure.

6. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.

7. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 3 or 5, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, prior to the amendment or modification or the adoption of the new measure, or in exceptional circumstances, as soon as possible thereafter:

- (a) notify the other Party of detailed information on such amendment, modification or new measure; and
- (b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure.

8. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains with respect to the sectors or matters specified in Annexes 4 and 5 respectively.

9. Articles 57 and 58 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3, 4 and 5 of the TRIPS Agreement.

## **Article 63. Expropriation and Compensation**

1. Neither Party shall expropriate or nationalise investments in its Area of investors of the other Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with law; and
- (d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4,

2. The compensation shall be equivalent to the fair market value of the expropriated investments:

- (a) at the time when the expropriation was publicly announced; or
- (b) when the expropriation occurred, whichever is the earlier.

3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

4. The compensation shall:

- (a) be paid without undue delay;
- (b) include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment; and
- (c) be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely usable currencies.

5. (a) This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.

(b) Where subparagraph (a) applies, Articles 60 and 67 shall also apply in respect of taxation measures.

## **Article 64. Protection from Strife**

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party owing to war, armed conflict or state of emergency such as revolution, insurrection, civil disturbance, riot or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.

## **Article 65. Transfers**

1. Each Party shall allow all transfers relating to investments in its Area of an investor of the other Party to be made freely into and out of its Area without undue delay. Such transfers shall include those of:

- (a) the initial capital and additional amounts to maintain or expand investments;
- (b) net profits, capital gains, dividends, royalties, interest, fees, and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;
- (d) payments made under a contract, including loan payments in connection with investments;
- (e) net earnings and remuneration of personnel from the other Party who are employed and allowed to work in connection with investments in the Area of the former Party;
- (f) payments made pursuant to Articles 63 and 64; and
- (g) payments arising out of the settlement of a dispute under Article 67.

2. Each Party shall further ensure that such transfers may be made in a freely usable currency at the market exchange rate prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities, futures, options or other derivatives;
  - (c) criminal or penal offences;
  - (d) ensuring compliance with orders or judgments in judicial proceedings or administrative rulings; and
  - (e) obligations of investors arising from social security, and public retirement or compulsory savings scheme.
- (e) obligations of investors arising from social security, and public retirement or compulsory savings scheme.

## **Article 66. Subrogation**

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment of that investor within the Area of the other Party, the other Party shall:

- (a) recognise the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and
- (b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. Articles 63, 64 and 65 shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

## **Article 67. Settlement of Investment Disputes between a Party and an Investor of the other Party**

1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Chapter with respect to the investor and its investments.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties").

4. If the investment dispute cannot be settled through such consultation or negotiation within five months from the date on



which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the ICSID Convention, so long as the ICSID Convention is in force between the Parties;

(b) conciliation or arbitration under the ICSID Additional Facility Rules, so long as the ICSID Convention is not in force between the Parties;

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; and

(d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. For greater certainty, an investor of a Party may not submit to conciliation or arbitration referred to in paragraph 4 a dispute arising out of events which occurred, or a dispute which had been settled, prior to the date of entry into force of this Agreement.

6. A disputing investor may not submit to conciliation or arbitration referred to in paragraph 4 an investment dispute with respect to the establishment, acquisition or expansion of its investments.

7. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article.

8. A disputing investor who intends to submit an investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached;

(c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose; and

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

9. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor.

(b) The consent given by subparagraph (a) and the submission by a disputing investor of an investment dispute to arbitration shall satisfy the requirements of:

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

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

10. Notwithstanding paragraph 9, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

11. Notwithstanding paragraph 4, a disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the applicable laws of the disputing Party.

12. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 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. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the ICSID may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 13 and 14.

13. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

14. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

15. Unless the disputing parties agree otherwise, an arbitration shall be held in a country that is a party to the New York Convention.

16. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

17. The disputing Party shall deliver to the other Party:

(a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

18. On written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

19. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties.

The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

20. The award rendered by the arbitral tribunal shall include:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Chapter with respect to the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and

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

Costs may also be awarded in accordance with the applicable arbitration rules.

21. The award rendered in accordance with paragraph 20 shall be final and binding upon the disputing parties.

The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

22. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

## **Article 68. Temporary Safeguard Measures**

1. A Party may adopt or maintain measures not conforming with its obligations under Article 57 relating to crossborder capital transactions and Article 65:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary, fiscal and exchange rate policies.

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
- (b) not exceed those necessary to deal with the circumstances set out in paragraph 1;
- (c) be temporary and eliminated as soon as conditions permit;
- (d) be promptly notified to the other Party;
- (e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party; and
- (f) ensure that the other Party is treated as favourably as any non-Party.

3. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

## **Article 69. Prudential Measures**

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the 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 the Party's commitments or obligations under this Chapter.

Note: For the purposes of this Article, "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS.

## **Article 70. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party 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 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. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the enterprise has no substantial business activities in the Area of the other Party.

## **Article 71. Environmental Measures**

Each Party recognises that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

## **Article 72. Sub-committee on Investment**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "SubCommittee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

- (a) exchanging information on any matters related to this Chapter;
- (b) reviewing the implementation and operation of this Chapter;

- (c) discussing any issues related to this Chapter;
- (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties; and
- (b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

## **Chapter 6. Trade In Services**

### **Article 73. Scope**

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

2. This Chapter shall not apply to:

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

- (i) aircraft repair and maintenance services;
- (ii) the selling and marketing of air transport services; and
- (iii) computer reservation system (CRS) services;

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

(c) cabotage in maritime transport services;

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

(e) subsidies provided by a Party or a state enterprise thereof, including grants, government supported loans, guarantees and insurance.

3. Article 79 shall not apply to any measure by a Party pursuant to immigration laws and regulations.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

5. Annex 6 provides supplementary provisions to this Chapter with respect to financial services.

### **Article 74. Definitions**

For the purposes of this Chapter:

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

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

- (i) the constitution, acquisition or maintenance of a juridical person; or
- (ii) the creation or maintenance of a branch or a representative office, within the Area of a Party for the purposes of supplying services;
- (c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;
- (d) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmental owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (e) "juridical person of the other Party" means a juridical person which is either:
  - (i) constituted or organised under the law of the other Party; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of the other Party; or
    - (B) juridical persons of the other Party identified under subparagraph (i);
- (f) a juridical person is:
  - (i) "owned" by persons of a Party or a non-Party if more than 50 percent of the equity interests in it is beneficially owned by such persons;
  - (ii) "controlled" by persons of a Party or a nonParty if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
  - (iii) "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;
- (g) "measure" means any measure, including that of taxation, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (h) "measures by a Party" means measures taken by:
  - (i) central or local governments and authorities of a Party; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;
- (i) "measures by a Party affecting trade in services" includes measures by a Party in respect of:
  - (i) the purchase, payment or use of services;
  - (ii) the access to and use of, in connection with the supply of services, services which are required by the Party to be offered to the public generally; and
  - (iii) the presence, including commercial presence, of persons of the other Party for the supply of services in the Area of the former Party;
- (j) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (k) "natural person of the other Party" means a natural person who under the law of the other Party:
  - (i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei Darussalam; and
  - (ii) in respect of Japan, is a national of Japan;
- (l) "person" means either a natural person or a juridical person;
- (m) "sector" of a service means:
  - (i) with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Party's Schedule of Specific Commitments in Annex 7; or

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

(n) "service consumer" means any person that receives or uses a service;

(o) "service of the other Party" means a service which is supplied:

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

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

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

(q) "services supplied in the exercise of governmental authority" means any services which are supplied neither on a commercial basis nor in competition with one or more service suppliers;

(r) "service supplier" means any person that supplies a service;

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

(s) "service supplier of the other Party" means any natural person of the other Party or juridical person of the other Party, that supplies a service;

(t) "state enterprise" means an enterprise owned or controlled by a Party;

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

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

(w) "trade in services" means the supply of a service:

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

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

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

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

(x) "traffic rights" means the rights 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 a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## **Article 75. Market Access**

1. With respect to market access through the modes of supply defined in subparagraph (w) of Article 74, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 7.

Note: 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 (w) (i) of Article 74 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 (w) (iii) of Article 74, it is thereby committed to allow related transfers of capital into its Area.

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 Area, unless otherwise specified in its Schedule of Specific Commitments in Annex 7, 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;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

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

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

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

## **Article 76. National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 7, 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.

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

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

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

## **Article 77. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 75 and 76, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 7.

## **Article 78. Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 75, 76 and 77. Schedules of Specific Commitments shall be annexed to this Agreement as Annex 7.

2. With respect to sectors where specific commitments are undertaken by each Party, its Schedule of Specific Commitments in Annex 7 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.

3. Measures inconsistent with both Articles 75 and 76 shall be inscribed in the column relating to Article 75. This inscription will be considered to provide a condition or qualification to Article 76 as well.

## **Article 79. Most-favoured-nation Treatment**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 8.

3. If a Party has entered into an agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, with respect to sectors, sub-sectors or activities included in its Schedule in Annex 8, it shall, upon the request of the other Party, consider according to services and service suppliers of the other Party, treatment no less favourable than that it accords to like services and service suppliers of that non-Party pursuant to such an agreement.

## **Article 80. Qualifications, Technical Standards and Licensing**

With a view to ensuring that measures by a Party relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure that such measures:

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

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

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

## **Article 81. Mutual Recognition**

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

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

3. Where a Party recognises, unilaterally or by agreement or arrangement between the Party and a non-Party, the education or experience obtained, requirements met or licences or certifications granted in the non-Party:

(a) nothing in Article 79 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the other Party; and

(b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Party should also be recognised.

## **Article 82. Transparency**

1. The competent authorities referred to in paragraph 2 of Article 3 shall endeavour, upon request by service suppliers of the other Party, to promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3.

2. Within two years from the date of entry into force of this Agreement, each Party shall prepare, forward to the other Party and make public a list providing all existing measures, within the scope of this Chapter, which are inconsistent with Article 75 and/or 76, whether or not these measures are included in its specific commitments in Annex 7. The list shall include the following elements and shall be reviewed every three years and revised as necessary:

(a) sector and sub-sector;

(b) type of inconsistency (i.e. Market Access and/or National Treatment) ;

(c) legal source or authority of the measure; and



(d) succinct description of the measure.

Note: The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect any rights and obligations of a Party under this Chapter.

## **Article 83. Monopolies and Exclusive Service Suppliers**

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

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

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

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

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

## **Article 84. Payments and Transfers**

1. Except under the circumstances envisaged in Article 85, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, as may be amended, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 85, or at the request of the International Monetary Fund.

## **Article 85. 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 on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.

2. The restrictions referred to in paragraph 1:

(a) shall ensure that the other Party is treated as favourably as any non-Party;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;

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

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

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

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

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

5. Where a Party has adopted restrictions pursuant to paragraph 1, that Party shall, upon request, commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party.

## **Article 86. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party, where the denying Party establishes

that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that denying Party:

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

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

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party, where the denying Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and that has no substantive business operations in the Area of the other Party.

## **Article 87. Sub-committee on Trade In Services**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

(a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;

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

(c) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee may hold its inaugural meeting within two years from the date of entry into force of this Agreement. The subsequent meeting of the Sub-Committee shall be held at such frequency as the Parties may agree upon.

## **Article 88. Review of Commitments**

1. The Parties shall review commitments on trade in services with the first review within two years from the date of entry into force of this Agreement, with the aim of improving the overall commitments undertaken by the Parties under this Agreement.

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

# **Chapter 7. Energy**

## **Article 89. Basic Principle**

The Parties recognise the importance of strengthening stable and mutually beneficial relationship in the energy sector.

## **Article 90. Definitions**

For the purposes of this Chapter:

(a) "energy good" means any good classified in subheading 2709.00, 2711.11 and 2711.21 of the Harmonized System;

(b) "energy regulatory bodies" means governmental bodies or state enterprises that regulate and control the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of an energy good; and

Note: For the purposes of this subparagraph, in the case of Brunei Darussalam, "state enterprise" means the Brunei National Petroleum Company Sendirian Berhad.

(c) "energy regulatory measure" means any measure by energy regulatory bodies that directly affects an activity in the energy sector.

## **Article 91. Import and Export Restrictions**

1. In the application of any prohibition or restriction on the importation or exportation of energy goods, each Party shall give due consideration to contractual relationships and implement such prohibition or restriction in an orderly, fair and equitable manner.

2. When introducing any new prohibition or restriction on the importation or exportation of energy goods, each Party shall give to the other Party written notice thereof, wherever possible prior to the introduction of such prohibition or restriction or, if not, as soon as possible thereafter, providing relevant information, where available, concerning the procedure of the prohibition or restriction, statistics on importation, exportation and domestic demand of the energy goods and hold, upon the request of the other Party, consultation with the other Party on such prohibition or restriction. Each Party shall accord sympathetic consideration to views presented by the other Party in the course of such consultation.

## **Article 92. Energy Regulatory Measures**

1. Each Party shall seek to ensure that, in the application of any energy regulatory measure, energy regulatory bodies of the Party minimise adverse effects upon contractual relationships and implement such measure in an orderly, fair and equitable manner.

2. If energy regulatory bodies of a Party adopt any new energy regulatory measure and where such measure may have substantial effects on contractual relationships, the Party shall give written notice to the other Party of such measure, where possible prior to the effective date of the measure or, if not, as soon as possible thereafter.

3. Where energy regulatory bodies of a Party adopt any new energy regulatory measure under paragraph 2 that substantially affects the transportation, transmission or distribution, purchase or sale of an energy good, the Party shall hold, upon the request of the other Party, consultation with the other Party. Each Party shall accord sympathetic consideration to views presented by the other Party in the course of such consultation.

Note: For the purposes of this paragraph, an energy regulatory measure taken by energy regulatory bodies of a Party with respect to the liquefaction and re-gasification of goods classified in subheading 2711.21 of the Harmonized System shall be considered as an energy regulatory measure that substantially affects the transportation, transmission or distribution, purchase or sale of such goods.

## **Article 93. Environmental Aspects**

1. In pursuit of sustainable development and taking into account its obligations under those international agreements concerning environment to which it is a party, each Party shall endeavour to minimise, in accordance with its applicable laws and regulations, in an economically efficient manner, harmful environmental impacts of all activities related to energy in its Area.

2. Each Party shall:

(a) take account of environmental considerations throughout the process of formulation and implementation of its policy on energy;

(b) encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights; and

(c) promote public awareness of environmental impacts of activities related to energy and of the scope for and the costs associated with the prevention or abatement of such impacts.

## **Article 94. Cooperation**

1. The Parties shall, in accordance with their respective laws and regulations, promote cooperation under this Chapter for strengthening stable and mutually beneficial relationship in the energy sector. For this purpose, the Parties shall cooperate

and, where necessary and appropriate, encourage and facilitate cooperation between their relevant entities in the private sector in the energy sector.

2. The Parties shall endeavour to make available the necessary funds and other resources for the implementation of cooperation under this Article in accordance with their respective laws and regulations.

3. (a) Areas of cooperation under this Article may include:

(i) policy development;

(ii) human resource development;

(iii) technological development; and

(iv) other areas of cooperation to be mutually agreed by the Parties.

(b) Forms of cooperation under this Article shall be set forth in the Implementing Agreement.

4. Costs of cooperation under this Article shall be borne in such manner to be mutually agreed by the Parties.

5. The dispute settlement procedures provided for in Chapter 10 shall not apply to this Article.

## **Article 95. Sub-committee on Energy**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Energy (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

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

(b) exchanging information on any matters related to this Chapter;

(c) discussing any issues related to this Chapter, including the interpretation and application of this Chapter;

(d) reporting the findings of the Sub-Committee and, where appropriate, making recommendations, to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

## **Chapter 8. Improvement of Business Environment**

### **Article 96. Basic Principles**

1. Each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the benefit of the enterprises of the other Party conducting their business activities in the former Party.

2. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in the respective Parties.

### **Article 97. Intellectual Property**

Each Party, recognising the importance of protecting intellectual property in further improving the business environment in the Party, shall:

- (a) endeavour to improve its intellectual property protection system;
- (b) comply with the obligations set out in the international agreements relating to intellectual property to which it is a party;
- (c) endeavour to become a party to international agreements relating to intellectual property to which it is not a party;
- (d) endeavour to ensure transparent and streamlined administrative procedures concerning intellectual property;
- (e) endeavour to ensure adequate and effective enforcement of intellectual property rights; and
- (f) endeavour to further promote public awareness of protection of intellectual property.

## **Article 98. Government Procurement**

Each Party, recognising the importance of enhancing liberalisation of its government procurement markets in further improving the business environment in the Party, shall endeavour to:

- (a) accord most-favoured-nation treatment to goods, services and suppliers of the other Party;
- (b) enhance transparency of the measures regarding government procurement; and
- (c) implement in a fair and effective manner the measures regarding government procurement.

## **Article 99. Sub-committee on Improvement of Business Environment**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Improvement of Business Environment (hereinafter referred to in this Article as "Sub-Committee" shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

- (a) addressing issues that the Sub-Committee considers appropriate in cooperation with other relevant sub-committee(s) with a view to avoiding unnecessary overlap with the works of such other relevant sub-committee (s);
- (b) making, as needed, recommendations to the Parties on appropriate measures to be taken by the Parties;
- (c) receiving information on the implementation of such recommendations from the relevant authorities of the Governments of the Parties;
- (d) making public, as needed, such recommendations in an appropriate manner;
- (e) reporting the findings of the Sub-Committee to the Joint Committee; and
- (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties; and
- (b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

## **Article 100. Non-application of Chapter 10**

The dispute settlement procedures provided for in Chapter 10 shall not apply to this Chapter.

# **Chapter 9. Cooperation**

## **Article 101. Basic Principles**

1. The Parties shall, in accordance with their respective laws and regulations, promote cooperation under this Agreement for

their mutual benefits in order to liberalise and facilitate trade and investment between the Parties and to promote the well-being of the peoples of both Parties. For this purpose, the Parties shall cooperate and, where necessary and appropriate, encourage and facilitate cooperation between their respective entities in the private sector.

2. The main objective of this Chapter is to provide a framework for cooperation in order to:

- (a) diversify economic relations between the Parties;
- (b) strengthen economic competitiveness of the Parties;
- (c) advance human resource development in the Parties;
- (d) promote sustainable development in the Parties; and
- (e) improve overall well-being of the peoples of both Parties.

## **Article 102. Fields of Cooperation**

The fields of cooperation under this Chapter shall include:

- (a) trade and investment promotion;
- (b) small and medium enterprises;
- (c) agriculture, forestry and fisheries;
- (d) tourism;
- (e) education and human resource development;
- (f) information and communications technology;
- (g) science and technology;
- (h) environment;
- (i) intellectual property;
- (j) land transportation; and
- (k) other fields to be mutually agreed upon by the Parties.

## **Article 103. Areas and Forms of Cooperation**

Areas and forms of cooperation under this Chapter shall, as appropriate, be set forth in the Implementing Agreement.

## **Article 104. Costs of Cooperation**

1. The Parties shall endeavour to make available the necessary funds and other resources for the implementation of cooperation under this Chapter in accordance with their respective laws and regulations.

2. Costs of cooperation under this Chapter shall be borne in such manner to be mutually agreed by the Parties.

## **Article 105. Sub-committee on Cooperation**

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Cooperation (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

- (a) identifying and proposing priority fields for cooperation under this Chapter;
- (b) reviewing, monitoring and facilitating the proper coordination for the implementation and operation of this Chapter;
- (c) discussing any issues related to this Chapter;

(d) reporting the findings and the outcome of discussions of the Sub-Committee, and where necessary, making recommendations to the Joint Committee regarding issues relating to the implementation of this Chapter, including the measures to be taken by the Parties; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by officials of the Governments of the Parties.

4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

## **Article 106. Non-application of Chapter 10**

The dispute settlement procedures provided for in Chapter 10 shall not apply to this Chapter.

# **Chapter 10. Dispute Settlement**

## **Article 107. Scope**

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.

2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

3. Notwithstanding paragraph 2, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

## **Article 108. Consultations**

1. Either Party may request in writing consultations to the other Party concerning any matter on the interpretation or application of this Agreement.

2. The Party to which the request for consultations is made (hereinafter referred to in this Chapter as "the Party complained against") shall reply to such request and enter into consultations with the Party that requested the consultations (hereinafter referred to in this Chapter as "the complaining Party") in good faith within 30 days after the date of receipt of the request, with a view to reaching a prompt and mutually satisfactory resolution of the matter. In cases of urgency, including those which concern perishable goods, the Party complained against shall enter into consultations within 15 days after the date of receipt of the request.

3. The complaining Party shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint.

4. Consultations shall be confidential and without prejudice to the rights of either Party in any further proceedings.

## **Article 109. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

## **Article 110. Establishment of Arbitral Tribunals**

1. The complaining Party may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into the consultations under Article 108 within 30 days, or within 15 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through the consultations under Article 108 within 60 days or within 30 days in cases of urgency, including those which concern perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:

(a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and

(b) the factual basis for the complaint.

3. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

4. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 3. If the Parties fail to agree on the third arbitrator, the Parties shall request the two arbitrators appointed pursuant to paragraph 3 to appoint the third arbitrator. If the arbitrators are not able to reach agreement on the third arbitrator within 30 days after the date of receipt of the request, the Director-General of the World Trade Organization may be requested by either Party to appoint the third arbitrator taking into account the candidates proposed pursuant to paragraph 3.

5. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

6. An arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

## **Article 111. Functions of Arbitral Tribunals**

1. The arbitral tribunal established pursuant to Article 110:

(a) should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with this Agreement;

(b) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually satisfactory resolution;

(c) shall make its award in accordance with this Agreement and applicable rules of international law;

(d) shall set out, in its award, its findings of law and fact, together with the reasons therefor;

(e) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 114; and

(f) cannot, in its award, add to or diminish the rights and obligations of the Parties provided in this Agreement.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on



certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

4. Any information obtained by the arbitral tribunal pursuant to paragraph 3 shall be made available to the Parties.

## **Article 112. Proceedings of Arbitral Tribunals**

1. The arbitral tribunal shall meet in closed session.

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties.

3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

4. Notwithstanding paragraph 3, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to which such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.

5. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

6. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

7. The arbitral tribunal shall, within 90 days, or within 60 days in cases of urgency, including those which concern perishable goods, after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 or 60 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.

8. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

10. The award of the arbitral tribunal shall be final and binding on the Parties.

## **Article 113. Suspension and Termination of Proceedings**

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 7 and 8 of Article 112 and paragraph 9 of Article 114 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time upon the request of either Party. 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 the arbitral tribunal by jointly so notifying the chair of the arbitral tribunal at any time before the issuance of the award to the Parties.

## **Article 114. Implementation of Award**

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 112.

2. The Party complained against shall, within 30 days after the date of issuance of the award, notify the complaining Party of the period which it assesses to be reasonable and necessary in order to implement the award. If the complaining Party

considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory compensation or any alternative arrangement.

4. If no satisfactory compensation or any alternative arrangement has been agreed within 20 days after the date of expiry of that implementation period pursuant to paragraph 3, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

5. If the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, it may refer the matter to an arbitral tribunal.

6. If the arbitral tribunal to which the matter is referred pursuant to paragraph 5 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

7. The suspension of the application of concessions or other obligations under paragraphs 4 and 6 may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

(a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and

(d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

8. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 4, 6 or 7 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

9. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 3, 4 and 5 of Article 110. Unless the Parties agree a different period, the arbitral tribunal established under this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

## **Article 115. Modification of Time Periods**

Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

## **Article 116. Expenses**

Each Party shall bear the costs of the arbitrator appointed by it and its representation in the proceedings of the arbitral tribunal. The other costs of the arbitral tribunal shall be borne by the Parties in equal shares, unless otherwise agreed by the Parties.

# **Chapter 11. Final Provisions**

## **Article 117. Table of Contents and Headings**

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

## **Article 118. Annexes and Notes**

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

## **Article 119. General Review**

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following that calendar year in which this Agreement enters into force, and every five years thereafter, unless otherwise agreed by the Parties.

## **Article 120. Amendment**

1. This Agreement may be amended by agreement between the Parties. 2. Such amendment shall be approved by the Parties in accordance with their respective internal procedures, and shall enter into force on the date to be agreed upon by the Parties.

3. Notwithstanding paragraph 2, amendments relating only to Annex 2 or 3 may be made by diplomatic notes exchanged between the Governments of the Parties.

## **Article 121. Entry Into Force**

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective internal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 122.

## **Article 122. Termination**

1. Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.
2. The other Party may request in writing consultations concerning any matter that would arise from the termination within 45 days after the date of receipt of the notice referred to in paragraph 1.
3. The requested Party shall enter into consultations in good faith with a view to reaching an equitable agreement within 30 days after the date of receipt of the request referred to in paragraph 2.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Tokyo on this eighteenth day of June in the year 2007 in duplicate in the English language.

For Japan:

Shinzo Abe

For Brunei Darussalam:

Haji Hassanali Bolkiah