Comprehensive Economic and Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and India

The Government of the Republic of India ("India") and the Government of the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom"), hereinafter referred to individually as a "Party" or jointly as "the Parties",

REINFORCING the longstanding bonds of friendship, cooperation and people-to-people linkages between them;

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

SEEKING to establish a clear, transparent, and predictable legal framework that supports further expansion of trade, to enhance the competitiveness of their economies, and to eliminate, and avoid the creation of, barriers between them;

ACKNOWLEDGING the important role and contribution of business in expanding trade between the Parties and the need to further promote and facilitate cooperation and utilisation of the greater business opportunities provided by this Agreement;

EMPHASISING the need to support the growth and development of small and medium-sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

RECOGNISING the importance of ensuring certainty and reducing barriers for service suppliers of the Parties by agreeing to commitments which will expand trade in services and facilitate temporary movement of natural persons between the Parties;

RECOGNISING the interaction between trade and innovation, and the contribution of both to economic growth, and seeking to expand and deepen their bilateral cooperation in this area;

NOTING the importance of facilitating new opportunities for businesses and consumers through digital trade;

AIMING to enhance participation in mutual recognition frameworks between the Parties or their authorities;

AFFIRMING the importance of development and inclusive economic growth, including in increasing the ability of forest dwellers in India, local communities and socially and educationally disadvantaged groups to access and fully benefit from the opportunities created by this Agreement, taking into account the context, challenges, and capabilities of each Party;

SEEKING to increase women's access to and ability to fully benefit from the opportunities created by this Agreement, including with respect to women from rural areas, marginalised communities, and economically vulnerable backgrounds;

RESOLVING to promote transparency, good governance, and the rule of law;

RECOGNISING their right to regulate and to preserve the flexibility of the Parties to set legislative and regulatory priorities, in particular, the need to protect national security and legitimate public welfare objectives such as health (including public health), labour rights, safety, food security, environmental protection (including climate change) and conservation of exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement;

BUILDING on their respective rights and obligations under the WTO Agreement and other international agreements relating to matters covered by this Agreement to which both Parties are party;

ACKNOWLEDGING the need for a mutually beneficial trade agreement that encourages trade flows to the economic benefit of both the Parties;

AIMING to improve the efficiency and competitiveness of their economies and to expand trade between the Parties;

HAVE AGREED as follows:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Relation to other International Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under existing international agreements to which both Parties are party, including the WTO Agreement. For greater certainty, an affirmation of rights or obligations under another international agreement, or of commitments to implement another international agreement or a provision thereof, does not in itself lead to incorporation of those rights, obligations or commitments into this Agreement.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another international agreement to which both Parties are party, the Parties shall, on request, consult with a view to reaching a mutually satisfactory solution. (1)

(1) For the purposes of the application of this Agreement, the Parties agree that the fact that a trade agreement provides more favourable treatment of goods, services, or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this paragraph.

3. If any international agreement, or a provision therein, that has been referred to in this Agreement or incorporated into this Agreement is amended after entry into force of this Agreement, the Parties shall, at the request of either Party, consult on whether to amend this Agreement.

4. For as long as the Windsor Framework (2) is in force, (3) nothing in this Agreement shall preclude the United Kingdom from adopting or maintaining measures, or refraining from doing so, further to the Windsor Framework, and amendments thereto and subsequent agreements replacing parts thereof, provided that such measures, or the absence of such measures, are not used as a means of arbitrary or unjustified discrimination against the other Party or as a disguised restriction on trade.

(2) The “Windsor Framework” has the same meaning as set out in Joint Declaration No 1/2023 of the Union and the United Kingdom in the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023.

(3) The Parties note in particular that arrangements for democratic consent specified at Article 18 of the Windsor Framework may result in Articles 5 through 10, and other provisions of the Windsor Framework dependent on the same Articles for their application, ceasing to apply to the United Kingdom in accordance with the arrangements specified at Article 18.

5. On request of either Party, the Parties shall hold consultations, in relation to the effects of a measure described in paragraph (4) the United Kingdom has adopted, or absence thereof,4 on this Agreement and seek a mutually acceptable solution. (5)

(4) For greater certainty, this refers to a measure described in paragraph 4 which is adopted after entry into force of this Agreement or the absence of such measure.

(5) This paragraph is without prejudice to Article 25.5 (Provision of Information - Transparency).

Article 1.3. Laws and Regulations and Their Amendments

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

Article 1.4. General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

“Agreement” means the Comprehensive Economic and Trade Agreement between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland;

“Agreement on Safeguards” means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement;

“Anti-Dumping Agreement” means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

“central level of government” means:

(a) for India, the Government of the Union of India; and

(b) for the United Kingdom, His Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland;

“customs authority” means:

(a) for India, the Central Board of Indirect Taxes and Customs or its successor; and

(b) for the United Kingdom, His Majesty’s Revenue and Customs or its successor and any other authority responsible for customs matters within its territory. For greater certainty, with respect to the provisions of this Agreement which apply to the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, “customs authority” shall also mean:

(i) with respect to the Bailiwick of Jersey, the Jersey Customs & Immigration Service or its successor;

(ii) with respect to the Bailiwick of Guernsey, Guernsey Customs & Excise or its successor; and

(iii) with respect to the Isle of Man, the Customs and Excise Division, Isle of Man Treasury or its successor;

“customs duty” includes any duty or charge of equivalent effect imposed on or in connection with the importation of goods, including any form of cess, surtax or surcharge in connection with such importation, but does not include:

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

(b) a measure applied in accordance with the provisions of Articles VI or XIX of GATT 1994, the Anti-Dumping Agreement, the SCM Agreement or the Agreement on Safeguards, or a measure imposed in accordance with Article 22 of the Dispute Settlement Understanding by the WTO Dispute Settlement Body; or

(c) a fee or other charge in connection with importation commensurate with the cost of services rendered in conformity with Article VIII of GATT 1994;

“Customs Valuation Agreement” means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

“days” means calendar days, including weekends and holidays;

“Dispute Settlement Understanding” means the Understanding on Rules and Procedures Governing the Settlement of Disputes, set out in Annex 2 to the WTO Agreement;

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

“GATS” means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

“GATT 1994” means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement. For greater certainty, references in this Agreement to articles in GATT 1994 include the interpretative notes;

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

“goods of a Party” means domestic products as these are understood under GATT 1994 or such goods as the Parties may decide, and includes originating goods;

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

“Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, and legal notes, as adopted and implemented by the Parties in their respective laws;

“Joint Committee” means the Joint Committee established pursuant to Article 27.1 (Establishment of the Joint Committee – Administrative and Institutional Provisions);

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

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

“national” means:

(a) for India, natural persons having citizenship in India in accordance with its laws and regulations;

(b) for the United Kingdom, a British citizen in accordance with its applicable laws and regulations, or a permanent resident;

“originating” means qualifying as originating under the rules of origin in Chapter 3 (Rules of Origin);

“person” means a natural person or a juridical person;

“person of a Party” means a national or a juridical person of a Party;

“regional level of government” means:

(a) for India, the state and the Union Territories of India;

(b) for the United Kingdom:

(i) England, Northern Ireland, Scotland or Wales; or

(ii) His Majesty’s Government of the United Kingdom of Great Britain and Northern Ireland in respect of England, Northern Ireland, Scotland or Wales but not the United Kingdom as a whole;

“SCM Agreement” means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement;

“SME” means a small or medium-sized enterprise, including a micro-sized enterprise, and may be further defined, where applicable, according to laws, regulations or national policies of each Party;

“SPS Agreement” means the Agreement on the Application of Sanitary and Phytosanitary Measures, set out in Annex 1A to the WTO Agreement;

“Subcommittee on Trade in Goods” or “Goods Subcommittee” means the Subcommittee on Trade in Goods established pursuant to Article 2.17 (Subcommittee on Trade in Goods – Trade in Goods);

“Subcommittee on Trade in Services” means the Subcommittee on Trade in Services established pursuant to Article 8.19 (Subcommittee on Trade in Services – Trade in Services);

“Subcommittee on Sustainability” or “Sustainability Subcommittee” means the Subcommittee on Sustainability established pursuant to Article 27.7 (Subcommittee on Sustainability – Administrative and Institutional Provisions);

“TBT Agreement” means the Agreement on Technical Barriers to Trade, set out in Annex 1A to the WTO Agreement;

“territory” means:

(a) for India, the territory of the Republic of India, including its territorial sea, and the airspace above it; and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction, in accordance with both its laws and regulations in force and international law, including the United Nations Convention on the Law of the Sea, 1982;

(b) for the United Kingdom:

(i) the territory of the United Kingdom, including its territorial sea, and the airspace above it;

(ii) all the areas beyond the territorial sea of the United Kingdom, including the sea-bed and subsoil of those areas, over which the United Kingdom may exercise sovereign rights or jurisdiction in accordance with international law;

(iii) the Bailiwicks of Guernsey and Jersey and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose international relations the United Kingdom is responsible, as regards:

(A) Chapter 2 (Trade in Goods);

(B) Chapter 3 (Rules of Origin);

(C) Chapter 5 (Customs and Trade Facilitation), except for Article 5.9 (Authorised Economic Operator - Customs and Trade Facilitation) in respect of the Bailiwicks of Guernsey and Jersey, and Article 5.13 (Single Window - Customs and Trade Facilitation) in respect of the Isle of Man;

(D) Chapter 6 (Sanitary and Phytosanitary Measures); and

(E) Chapter 7 (Technical Barriers to Trade); and

(iv) any territory for whose international relations the United Kingdom is responsible and to which this Agreement is extended in accordance with Article 30.3 (Territorial Extension – Final Provisions);

“Trade Facilitation Agreement” means the Agreement on Trade Facilitation, set out in Annex 1A to the WTO Agreement;

“TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement, as amended from time to time by an amendment made under Article X of the WTO Agreement that has taken effect for the Parties, and as read together with any decision of the Ministerial Conference of the WTO under paragraph 3 of Article IX of the WTO Agreement (whether made before or after the entry into force of this Agreement);

“WTO” means the World Trade Organization; and

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

Chapter 2. TRADE IN GOODS

Article 2.1. Definitions

For the purposes of this Chapter:

“consular transactions” means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers’ export declaration or any other customs documentation in connection with the importation of the good;

“Import Licensing Agreement” means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;

“import licensing procedure” means an administrative procedure requiring the submission of an application or other documentation (other than that generally required for customs purposes) to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;

“originating good” has the meaning given in Chapter 3 (Rules of Origin); and

“repair” means any processing operation undertaken on a good with the aim of remedying operating defects or material damage and substantially re-establishing the good to its original function or of ensuring compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended, and repair of goods includes restoration and maintenance.

Article 2.2. Objective

The objective of this Chapter is to facilitate trade in goods between the Parties and to progressively liberalise trade in goods in accordance with the provisions of this Agreement and in conformity with Article XXIV of GATT 1994.

Article 2.3. Scope

This Chapter shall apply to trade in goods between the Parties, unless otherwise provided for in this Agreement.

Article 2.4. National Treatment

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

2. Paragraph 1 means, with respect to a regional or state level of government, as the case may be, treatment no less favourable than that accorded by that regional or state level government, as the case may be, to like, directly competitive or substitutable goods of the Party of which it forms part.

Article 2.5. Classification of Goods and Transposition of Schedules

1. For the purposes of this Agreement, the classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System and its legal notes and amendments.

2. Each Party shall ensure that the transposition of its Schedule of Tariff Commitments, undertaken in order to implement Annex 2A (Schedules of Tariff Commitments for Goods) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing or diminishing the tariff commitments set out in its Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

Article 2.6. Treatment of Customs Duties

1. Unless otherwise provided in this Agreement, each Party shall reduce or eliminate customs duties on originating goods of the other Party in accordance with the tariff commitments set out in its Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

2. For each good, the base rate of customs duty to which successive reductions under paragraph 1 are to be applied shall be specified in the Party's Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

3. Where and for so long as a Party's applied most-favoured-nation customs duty is lower than the rate calculated pursuant to paragraph 1 or 2, an importer may claim the lower most-favoured-nation customs duty and the Party shall apply the lower rate to the originating goods of the other Party.

4. A Party may at any time unilaterally accelerate the elimination or reduction of customs duties set out in its Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

5. For greater certainty, a Party may raise a customs duty to the level for a specific year as set out in its Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods) following a unilateral reduction as set out in paragraph 4.

6. On the request of a Party, the Parties may consult to consider accelerating or broadening the scope of the elimination or reduction of customs duties set out in their respective Schedules of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

Article 2.7. Modification of Concessions

1. A Party to this Agreement may request the other Party to enter into discussions for the purpose of modifying or withdrawing a concession contained in its Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods). Any such modification or withdrawal of concession can be effected only with the agreement of both Parties.

2. A mutually agreed outcome shall be reflected in the relevant amended Schedule of Tariff Commitments in Annex 2A (Schedules of Tariff Commitments for Goods).

3. A Party shall not modify or withdraw a concession without the prior agreement of the other Party.

Article 2.8. Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and other charges of whatever character (other than import duties and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and anti-dumping and countervailing duties, safeguards

and measures applied in accordance with Article 22 of the Dispute Settlement Understanding) imposed by that Party on, or in connection with, the importation or exportation of goods of a Party, are limited to the amount of the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a taxation of imports or of exports for fiscal purposes.

2. Each Party shall promptly publish on the internet all fees and charges it imposes in connection with importation or exportation, including any updates or changes to such fees and charges. Fees and charges shall not be applied until information on them, including the responsible authority and when and how payment is to be made, has been published, to the extent possible in the English language.

3. No Party shall require consular transactions, including related fees and other charges, in connection with the importation of any good of the other Party.

Article 2.9. Temporary Admission

1. Each Party shall allow, as provided for in its laws and regulations, goods regardless of their origin, including their means of transport, to be brought into its territory conditionally relieved from payment of import duties and taxes, if such goods:

(a) are intended for re-exportation within a specific period without having undergone any change except normal depreciation and wastage due to the use made of them; and

(b) are brought into its territory for one of the following purposes:

(i) goods intended for display or use at playgrounds, theatres, exhibitions, fairs or other similar events;

(ii) professional equipment, necessary to carry out a trade or profession, which qualifies for temporary entry pursuant to the laws or regulations of the Party;

(iii) goods imported in connection to a commercial operation but whose importation itself does not constitute that commercial operation, including samples, advertising films, recordings, goods used to carry out tests and goods subject to tests;

(iv) containers packing or packaging and pallets all of which are durable, reusable and that are in use or to be used in the shipment of goods in international traffic;

(v) goods imported exclusively for educational or scientific purposes or cultural activities and events;

(vi) goods imported for sports purposes; or

(viii) animals imported for participation in shows, exhibitions, contests, competitions, demonstrations, entertainment, exercise of public functions (such as police dogs, sniffer dogs) or guide dogs.

2. Each Party shall allow, as provided for in its laws and regulations, goods imported in connection with a manufacturing operation or process, including specific tools, models and plans, brought into its custom territory for subsequent re-exportation, conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback.

3. Each Party shall, as provided for in its laws and regulations, on the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission beyond the period initially fixed.

4. A Party may impose a condition for the duty-free temporary admission of goods referred to in paragraph 1, among others, on goods that:

(a) are intended for re-exportation without having undergone any change except normal depreciation including wastage due to the use made of them and be capable of identification when exported;

(b) are used solely by or under the personal supervision of a person established or resident in the other Party in the exercise of the business activity, trade, profession or sport of that person of the other Party;

(c) are not sold or leased while in its territory; except on payment of applicable duties and interests on such release;

(d) are accompanied by a security, if requested by the importing Party, in an amount no greater than the customs duty or charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(e) are exported on or before the departure of the person carrying out the relevant trade or profession referenced in sub-

subparagraph 1(b)(ii), or within such period of time reasonably related to the purpose of the temporary admission as the Party may establish, or within the maximum timeframe set by a Party for temporary admission of a good, unless extended;

(f) are admitted in no greater quantity than is reasonable for their intended use; and

(g) are otherwise admissible into the Party's territory under its laws.

5. If any condition that a Party imposes under paragraph 4 has not been fulfilled, the Party may apply the import duties and taxes and any other charge that would normally be owed on the good in addition to any other charges, penalties or actions provided for under its law.

Article 2.10. Customs Valuation

For the purpose of determining the customs value of goods traded between the Parties, the Parties reaffirm their commitment to Part I of the Customs Valuation Agreement.

Article 2.11. Import and Export Restrictions

Unless otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994. To this end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.

Article 2.12. Import Licensing

1. A Party shall only adopt or maintain import licensing procedures which are consistent with the Import Licensing Agreement and to that end Articles 1 through 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement, mutatis mutandis.

2. A Party shall publish on an official government website any new or modified import licensing procedure, including any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement. To the extent practicable, the Party shall do so at least 21 days before the new procedure or modification takes effect.

3. A Party shall be deemed to be in compliance with paragraph 2 with respect to a new or modified import licensing procedure if it notifies that procedure including the information specified in Article 5(2) of the Import Licensing Agreement to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement.

4. At the request of a Party, the other Party shall provide the information specified in Article 5(2) of the Import Licensing Agreement, with regard to any import licensing procedures that it adopts or maintains, or changes to existing licensing procedures.

Article 2.13. Agricultural Safeguards

Originating agricultural goods from a Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement.

Article 2.14. Goods Re-entered after Repair or Alteration

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, except that a customs duty may be applied to the value-added resulting from the repair or alteration (including cost of material used in repairs, insurance and freight charges both ways) that was performed in the territory of the other Party.

2. Paragraph 1 does not apply to:

(a) a good that has not entered into free circulation in a Party prior to being exported for repair or alteration; (1) or

(1) In "free circulation" means the good has cleared customs, applicable duties have been paid, and the good is available for use in the domestic market of the importing Party.

(b) any materials used in the repair or alteration which were not in free circulation in the Party where the repair or alteration occurred, unless a payment equivalent to the applicable duty for that material to enter into free circulation has subsequently been made.

3. Neither Party shall, as provided for in its laws and regulations, apply customs duties to a good, regardless of its origin, admitted temporarily from the customs territory of the other Party for repair or alteration.

4. For the purposes of this Article, "repair or alteration" does not include an operation or process that:

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

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

(c) substantially changes the technical performance or function of a good.

Article 2.15. Non-Tariff Measures

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

2. Each Party shall ensure the transparency of its non-tariff measures permitted in paragraph 1 of this Article.

Article 2.16. Data Sharing on Preference Utilisation

1. For the purpose of monitoring the functioning of this Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics starting one year after the date of entry into force of this Agreement.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and those that received non-preferential treatment.

Article 2.17. Subcommittee on Trade In Goods

1. The Parties hereby establish a Subcommittee on Trade in Goods ("Goods Subcommittee"), comprising representatives of each Party. The Goods Subcommittee shall act by mutual agreement.

2. The Goods Subcommittee shall meet at the request of either Party to consider any matter arising under this Chapter at such times and venues or by such means as agreed on by the representatives of the Parties. The Goods Subcommittee shall meet at least every two years or more frequently as the Parties agree. The meetings of the Goods Subcommittee shall be chaired jointly by the Parties.

3. The Goods Subcommittee's functions shall include:

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

(b) reviewing and monitoring the implementation of this Chapter and Chapter 3 (Rules of Origin). Working groups under this Chapter shall report to the Goods Subcommittee;

(c) to the extent possible, promptly seeking to address tariff and non-tariff barriers to trade in goods between the Parties;

(d) reviewing the future amendments to and updating of the Harmonized System to ensure that the obligations of the Parties are not altered;

(e) addressing issues relating to the administration and operation of tariff rate quotas;

(f) where appropriate, referring matters considered by the Goods Subcommittee to the Joint Committee; and

(g) undertaking any other work that the Joint Committee assigns to it.

Chapter 3. RULES OF ORIGIN

Article 3.1. Definitions

For the purposes of this Chapter:

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

“carrier” means any vehicle for air, sea or land transport. However, the carriage of product can be made through multimodal transport;

“competent authority” means:

for India, in the case of exports from India, the Department of Commerce or agencies notified to issue the certificate of origin; and in the case of imports into India, the Central Board of Indirect Taxes and Customs (“CBIC”) or any of its successors; and

for the United Kingdom, its customs authority as defined in Article 1.4 (General Definitions - Initial Provisions and General Definitions);

“exporter” means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports a good;

“fungible goods” or “fungible materials” means goods or materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

“generally accepted accounting principles” means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures;

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

fuel, energy, catalysts and solvents;

equipment, devices and supplies used to test or inspect the good;

gloves, glasses, footwear, clothing, safety equipment and supplies;

tools, dies and moulds;

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

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

any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

“issuing authority” means the authorities in India designated for issuance of certificates of origin;

“material” means any good (including ingredients, raw inputs, components or parts) used in the production of another good and physically incorporated into it;

“net weight” means the weight of the material or good excluding the weight of any packaging;

“non-originating good” or “non-originating material” means a good or material that does not qualify as originating, including those of unprovable origin, in accordance with this Chapter;

“originating good” or “originating material” means a good or material that qualifies as originating in accordance with this Chapter;

“producer” means a person who engages in the production of a good;

“production” means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting,

capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, working, processing, or assembling a good other than simple assembly (1);

(1) “simple assembly” is defined as an activity which neither requires special skills nor machines, apparatus or equipment especially produced or installed to carry out the activity.

“tariff classification” means the classification of a good according to the Harmonized System;

“territorial sea” means waters extending up to 12 nautical miles from the baseline as defined by the Parties in line with the United Nations Convention on the Law of the Sea, 1982; and

“Working Group on Rules of Origin” means the Working Group on Rules of Origin established pursuant to paragraph 1 of the Article 3.28 (Working Group on Rules of Origin).

Article 3.2. Origin Criteria

1. Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or both of the Parties as established in Article 3.3 (Wholly Obtained);

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

(c) produced entirely in the territory of one or both of the Parties using non- originating materials, provided the good satisfies all applicable requirements of Annex 3A (Product-Specific Rules of Origin),

in each case, provided the good satisfies all other applicable requirements of this Chapter (2).

(2) For greater clarity, final production of a good must have occurred in the exporting Party, except those activities as defined in subparagraph 2(b) of Article 3.14 (Non-Alteration).

Article 3.3. Wholly Obtained

1. Each Party shall provide that for the purposes of subparagraph 1(a) of Article 3.2 (Origin Criteria) the following goods shall be considered as wholly obtained or produced entirely in one or both of the Parties if they are:

(a) minerals, mineral goods and other non-living natural resources extracted or taken from there;

(b) plant and plant goods, including fruits, flowers, vegetables, trees, seaweed, and live plants, or fungi, or algae, grown, harvested, cultivated, picked or gathered there;

(c) live animals born and raised there;

(d) goods obtained from live animals raised (3) there;

(3) For greater clarity, this includes heifers imported into a Party and then raised there.

(e) goods obtained by hunting, trapping, fishing or aquaculture conducted there, but not beyond the outer limits of a Party’s territorial sea;

(f) fish, shellfish and other marine life taken from the sea, seabed or subsoil outside the territorial sea of each Party and outside the territorial sea of non-Parties in accordance with international law, by vessels that are registered with a Party and entitled to fly the flag of that Party;

(g) a good produced from the goods referred to in subparagraph (f) on a factory ship that is registered with a Party and entitled to fly the flag of that Party;

(h) minerals, mineral goods and other non-living natural resources, taken or extracted from the seabed or subsoil, outside the territories of the Parties, and beyond areas over which non-parties exercise jurisdiction; provided that that Party or person of the Party has rights to exploit such seabed or subsoil;

(i) a good, excluding precious metals, that is:

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

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

(j) goods and their derivatives produced there exclusively from goods referred to in subparagraphs (a) through (i).

Article 3.4. Value of the Good

1. For the purposes of this Chapter, each Party shall provide that the value of the good may be ex-works price or free-on-board (FOB) value.

2. The ex-works price is either:

(a) the price paid or payable for the good to the producer at the place where the last production was carried out, and shall include the value of all materials; or

(b) the price actually paid or payable for the good when sold for export.

3. If there is no price paid or payable or if it does not include the value of all materials, the ex-works price:

(a) shall include the value of all materials and the cost of production employed in producing the good, calculated in accordance with generally accepted accounting principles; and

(b) may include amounts for general expenses and profit to the producer that can be reasonably allocated to the good.

4. For the purposes of calculating the value of the good in accordance with paragraphs 2 or 3, the ex-works price shall:

(a) not take into account any internal taxes which are, or may be, repaid when the good obtained is exported; and

(b) exclude any costs incurred subsequent to the good leaving the place where the last production was carried out, such as transportation, loading, unloading, handling or insurance.

5. The FOB value shall be the price actually paid or payable to the exporter for a good when loaded onto the carrier at the named port of exportation, including the cost of the product, and all costs necessary to bring the good onto the carrier, not taking into account any internal taxes which are, or may be, repaid when the good obtained is exported.

Article 3.5. Qualifying Value Content

1. Where Annex 3A (Product Specific Rules of Origin) specifies a qualifying value content test to determine whether a good is originating, each Party shall provide that the qualifying value content shall be calculated using one of the following methods:

(a) Build-Down Method: based on the value of non-originating materials

QVC = value of the good-value of non-originating materials/value of the good ×100

(b) Build-Up Method: based on the value of originating materials

QVC= value of originating materials/value of the good ×100

where, QVC is the qualifying value content of a good, expressed as a percentage.

2. Each Party shall provide that the value of a material shall be:

(a) for a material imported by the producer of the good, the price actually paid or payable for the material at the time of importation, or other value determined in accordance with the Customs Valuation Agreement, including the costs incurred in transporting the material to the port or place of importation, such as transportation, loading, unloading, handling or insurance;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced, all the costs incurred in the production of the material, which includes general expenses.

3. For an originating material, the following expenses may be added to the value of the material, if not included under paragraph 2:

(a) the costs of freight, insurance, packing, and all other costs incurred to transport the material to the location of the producer of the good;

(b) duties, taxes, and customs brokerage fees on the material, paid in the territory of a Party, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

4. For a non-originating material or material of undetermined origin, the following expenses, where included under paragraph 2, may be deducted from the value of the material:

(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer of the good;

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

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by- product.

5. If the cost or expense listed in paragraphs 3 or 4 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost or expense.

Article 3.6. Materials Used In Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content in determining whether the resulting good meets a qualifying value content requirement:

(a) the value of processing of the non-originating material undertaken in the territory of the exporting Party; and

(b) the value of any originating material used in the production of the non- originating material undertaken in the territory of one or both of the Parties.

Article 3.7. Non-Qualifying Operations

1. Each Party shall provide that, notwithstanding any provisions in this Chapter, a good shall not be considered to be originating merely by undergoing any of the following operations in the territory of that Party:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing or thawing, keeping in brine, removal of damaged parts) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

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

(d) for textiles: attaching accessory articles such as straps, bands, beads, cords, rings and eyelets; ironing or pressing of textiles;

(e) simple painting and polishing;

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

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

(h) peeling and removal of stones and shells from fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) simple operations such as removal of dust, sifting, screening, sorting, classifying, grading, or matching;

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

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

(m) simple mixing of goods, whether or not of different kinds; mixing of sugar or any other sweetening matter to any good;

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

(o) slaughter of animals;

(p) simple testing, calibration, inspection or certification;

(q) dilution with water or another substance that does not materially alter the characteristics of the good;

(r) a production or pricing practice in respect of which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent the provisions of this Chapter; or

(s) any combination of two or more operations in subparagraphs (a) through (r)

2. For the purposes of paragraph 1, “simple” describes an activity which needs neither special skills nor machines, apparatus or equipment especially produced or installed to carry out the activity.

Article 3.8. Consultation

Each Party shall provide that an originating good or material in the territory of one Party, under the terms of Article 3.2 (Origin Criteria) and all the other applicable requirements of this Chapter, that is incorporated in the production of a good in the territory of the other Party is considered to originate in the territory of the other Party.

Article 3.9. Tolerance

1. Each Party shall provide that a good containing non-originating materials that does not satisfy the applicable change in tariff classification requirement or wholly obtained requirement specified in Annex 3A (Product Specific Rules of Origin) for the good is nonetheless originating if:

(a) in the case of a good in Chapters 1 through 3, 5, 6, 10 and 14 of the Harmonized System:

(i) the value of those non-originating materials does not exceed 7.5 percent of the value of the good; or

(ii) the net weight of those non-originating materials does not exceed 7.5 percent of the net weight of the good;

and the good satisfies all other applicable requirements of this Chapter;

(b) in the case of a good in Chapters 4, 7 through 9, 11 through 13 and 15 through 24 of the Harmonized System:

(i) the value of those non-originating materials does not exceed 12.5 percent of the value of the good; or

(ii) the net weight of those non-originating materials does not exceed 12.5 percent of the net weight of the good;

and the good satisfies all other applicable requirements of this Chapter; or

(c) in the case of a good in Chapters 25 through 98 of the Harmonized System, the value of those non-originating materials does not exceed 12.5 percent of the value of the good and the good satisfies all other applicable requirements of this Chapter.

2. If a good is also subject to a qualifying value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for any applicable qualifying value content requirement.

Article 3.10. Fungible Goods and Materials

1. Each Party shall provide that a fungible good or material is treated as originating based on the:

(a) physical segregation of each fungible good or material; or

(b) use of any inventory management method recognised in the generally accepted accounting principles of the Party where the production is performed, if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

2. The inventory management method chosen must:

(a) allow a clear distinction to be made between originating and non- originating materials including materials of undetermined origin acquired or kept in stock; and

(b) ensure that, over the relevant accounting period of 12 months, no more goods or materials receive originating status than would have been the case if the fungible goods or materials had been physically segregated.

3. For greater certainty and in accordance with subparagraph 1(b) of Article 3.24 (Record Keeping Requirements), a producer using an inventory management system shall keep records of the operation of the system that are necessary for the authority of the Party concerned to verify compliance with the provisions of this Chapter.

Article 3.11. Accessories, Spare Parts or Tools

1. Each Party shall provide that the origin of the accessories, spare parts, tools or instructional or other information materials presented with a good:

(a) shall be disregarded in determining whether a good satisfies a process or change in tariff classification or wholly obtained requirement for the good; and

(b) shall be taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good, if the good is subject to a qualifying value content requirement

2. Paragraph 1 shall only apply where:

(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the good; and

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

Article 3.12. Packaging and Packing Materials

1. Each Party shall provide that for the purpose of determining whether a good is originating, packaging and packing materials and containers in which a good is packaged for retail sale shall, if classified with the good, be:

(a) disregarded in determining whether a good satisfies a process or change in tariff classification or wholly obtained requirement for the good; and

(b) taken into account as originating or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

2. Each Party shall provide that packaging and packing materials and containers, used for the shipment of a good shall be disregarded in determining whether a good is originating.

Article 3.13. Indirect Materials

Indirect materials shall neither be considered originating nor non-originating for the purposes of calculating qualifying value content pursuant to Article 3.5 (Qualifying Value Content).

Article 3.14. Non-Alteration

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that an originating good transported through or stored in a non-Party shall retain its originating status provided it:

(a) remains under customs control, such as in a warehouse, and is not released to free circulation or trade (4) in the territory of any non-Party; and

(4) For greater clarity, free circulation includes trade or consumption.

(b) does not undergo further production or any other operation outside the territories of the Parties, other than unloading, reloading, splitting up of loads, separation from bulk, storing, labelling, marking, bottling, (5) or any operation necessary to preserve it in good condition.

(5) For greater certainty, bottling applies only to filling into bottles from bulk of goods of heading 2208 of the Harmonized System and where appropriate mere dilution with water that does not alter the origin of the bottled good.

3. An importer shall provide to the customs authority of the importing Party upon request:

(a) information, including documentation, demonstrating that the conditions set out in paragraph 2 have been fulfilled; and

(b) where bottling has taken place in a non-Party, transportation documents and commercial documents indicating the entire transport route of the good from the exporting party to the importing party, and information including documentation demonstrating that the good remained under customs control, such as a non-manipulation certificate issued by a customs authority in the non-party.

Article 3.15. Proof of Origin

1. Each Party shall provide that a claim for preferential tariff treatment is based on an applicable proof of origin:

(a) for importers in the United Kingdom, an applicable proof of origin shall be:

(i) an origin declaration completed by the exporter or producer;

(ii) a certificate of origin issued by an issuing authority; or

(iii) the importer's knowledge that the good is originating; and

(b) for importers in India, an applicable proof of origin shall be an origin declaration completed by the exporter or producer.

2. Each Party shall provide that an origin declaration or a certificate of origin:

(a) is valid for 12 months from the date of completion in the case of an origin declaration, or date of issue in the case of a certificate of origin, or for such longer period specified by the laws and regulations of the importing Party;

(b) is submitted to the customs authority of the importing Party in accordance with the laws and regulations of the importing Party;

(c) shall follow the appropriate prescribed structure as set out in Annex 3B (Origin Declaration Template) or Annex 3C (Certificate of Origin Template);

(d) must be in writing, including electronic format;

(e) must be accompanied by an invoice or any other commercial document that describes the goods concerned in sufficient detail to enable them to be identified;

(f) may apply to importations of a single shipment of one or more goods; and

(g) shall be in the English language.

3. For the United Kingdom, an origin declaration or a certificate of origin may apply to importations of multiple shipments of identical goods within any period specified in the origin declaration or the certificate of origin, where such period does not

exceed 12 months.

4. In exceptional circumstances, the customs authority of the importing Party may accept a proof of origin for the purpose of granting preferential tariff treatment even after the expiry of its validity provided the failure to observe the time limit results from force majeure or other valid reasons beyond the control of the exporter and the goods have been imported before the expiry of the validity period.

5. An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice or other commercial document referred to in subparagraph 2(e) was issued in a non-Party or not issued by the exporter or producer of a good, provided that it meets the requirements in this Chapter.

6. Subject to paragraph 7, each Party shall provide that a proof of origin shall be issued or completed prior to or at the time of importation.

7. Notwithstanding paragraph 6, a proof of origin may be completed after importation, provided that the good was originating at the time of importation in order to qualify for a late claim as set out in Article 3.20 (Refunds and Claims for Preferential Tariff Treatment after Importation). A proof of origin completed after importation shall bear the words "completed retrospectively" and shall include an explanation as to why the proof of origin is completed retrospectively.

8. A late claim made in accordance with Article 3.20 (Refunds and Claims for Preferential Tariff Treatment after Importation) shall not be rejected based on the explanation referenced in paragraph 7, if the good was originating at the time of importation.

9. If unassembled or disassembled goods within the meaning of General Rule 2(a) of the Harmonized System are imported by more than one shipment, a single origin declaration for such goods may be used on request of the importer and in accordance with the requirement laid down by the customs authority of the importing Party. (6)

(6) For India, this includes a requirement to use a single import declaration for such goods.

Article 3.16. Basis of a Claim for Preferential Tariff Treatment

1. The United Kingdom shall provide that if the importer of a good makes a claim for preferential tariff treatment based on the importer's knowledge that the good is originating, the claim is made subject to the importer having documentation demonstrating that the good is originating. Such documentation may have been provided to the importer by the exporter, producer or any other person.

2. Each Party shall provide that if a producer declares the origin of a good, the origin declaration is completed on the basis of the producer having information that the good is originating.

3. Each Party shall provide that, if the exporter is not the producer of the good and the exporter declares the origin of a good, the origin declaration is completed on the basis of the exporter having information to demonstrate that the good is originating, which may include a reliance on the producer's information.

4. India shall provide that if the issuing authority issues a certificate of origin, the certificate of origin is issued on the basis of the issuing authority receiving information that the good is originating from the exporter or the producer.

5. For greater certainty, nothing in this Article shall be construed to allow the importing Party to require an importer to request the exporter or producer to provide confidential information to the importer.

6. For the purpose of enabling India to establish the authenticity of an origin declaration prior to an Indian importer making a claim for preferential tariff treatment, subject to paragraph 8 and Annex 3E (Data Protection and Processing of Personal Information), there shall be an authentication process that is provided for in accordance with paragraph 7.

7. The Parties shall, on entry into force of this Agreement, agree and provide for the modalities of the authentication process referred to in paragraph 6 which shall include ensuring that the necessary systems for enabling the electronic exchange of information are in place, following the framework set out in Annex 3D (Framework for the Authentication Process of Origin Declarations).

8. Annex 3E (Data Protection and Processing of Personal Information) shall apply to information processed by the Parties or shared between the Parties pursuant to the authentication process referred to in paragraph 7 and Annex 3D (Framework for the Authentication Process of Origin Declarations). The Parties shall, if appropriate, mutually agree to modify Annex 3E (Data Protection and Processing of Personal Information).

Article 3.17. Certificate of Origin

1. A certificate of origin shall be issued by an issuing authority.

2. India shall exchange names of the issuing authorities and their specimen seals with His Majesty's Revenue and Customs.

3. India shall promptly inform His Majesty's Revenue and Customs of any change in names of the issuing authorities and their specimen seals.

Article 3.18. Exemptions from Proof of Origin Requirements

1. For the United Kingdom, by way of derogation from Articles 3.15 (Proof of Origin) and 3.16 (Basis of a Claim for Preferential Tariff Treatment), provided that a good has been declared to customs as meeting the requirements of this Chapter and the customs authority of the United Kingdom has no reasonable doubts as to the veracity of that customs declaration, the United Kingdom shall grant preferential tariff treatment to that good if:

(a) the customs value of the importation does not exceed 1,000 pounds sterling or any higher amount as the United Kingdom may specify; or

(b) it is a good for which the United Kingdom has waived the requirements set out in Articles 3.15 (Proof of Origin) and 3.16 (Basis of a Claim for Preferential Tariff Treatment).

2. At the first meeting of the Working Group on Rules of Origin, the Parties may commence a review of this Article. The review shall consider the introduction of an exception to Articles 3.15 (Proof of Origin) and 3.16 (Basis of a Claim for Preferential Tariff Treatment) for all low value goods.

3. Paragraph 1 does not apply if the importation forms part of a series of importations which the customs authority of the United Kingdom reasonably considers to have been carried out or planned for the purpose of evading compliance with its laws and regulations governing claims for preferential tariff treatment made under this Agreement.

4. A Party shall provide that the importer shall be responsible for the correctness of the declaration referred to in paragraph 1 of this Article and for compliance with the requirements of this Chapter.

Article 3.19. Determinations of Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good that, on or after the date of entry into force of this Agreement, arrives in that Party or is released from customs control in that Party.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify as originating within the terms of this Chapter or does not satisfy the requirements of this Chapter;

(b) pursuant to a verification under Article 3.25 (Verification of Origin), it has not received sufficient information, including any information that may have been received or provided by the competent authority of the exporting Party, to determine:

(i) that the good qualifies as originating, or

(ii) that the importer, exporter, or producer has complied with the requirements of this Chapter;

(c) the exporter, producer, or importer fails to respond to a written request for information in accordance with Article 3.25 (Verification of Origin); or

(d) the importer, exporter, or producer fails to comply with the relevant requirements for obtaining preferential tariff treatment.

3. If the importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination. The customs authority of the importing Party may also share the determination and reasons for the determination with the customs authority of the exporting Party.

Article 3.20. Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that:

(a) an importer may make a late claim for preferential tariff treatment; and

(b) subject to paragraph 2, it shall refund any excess duties paid for a good, if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment at the time of importation.

2. As a condition for a refund of excess duties under subparagraph 1(b), the importing Party shall require that the importer:

(a) makes a claim for preferential tariff treatment in accordance with Article 3.15 (Proof of Origin); and

(b) provides such documentation relating to the importation of the good as the importing Party may require. This may include a copy of the origin declaration where a claim is based on an origin declaration.

3. Each Party shall provide that a late claim for preferential tariff treatment may be made no later than one year after the date of importation or a longer period if specified in the importing Party's laws and regulations.

Article 3.21. Incorrect Claims for Preferential Tariff Treatment

1. Each Party shall provide that, if the importer has reason to believe that the claim for preferential tariff treatment is based on incorrect information that could affect the accuracy or validity of the claim, the importer shall immediately correct the documentation relating to importation, notify the customs authority of the importing Party and pay any customs duty and, if applicable, penalties owed.

2. Each Party shall encourage its customs authority, when considering imposing a penalty in relation to a claim for preferential tariff treatment, to consider as a significant mitigating factor a notification given prior to the discovery of that error by the Party and, provided that in accordance with paragraph 1, the importer corrects the error and pays any duties owing.

Article 3.22. Errors and Discrepancies

1. A Party shall not reject a proof of origin due to minor errors or discrepancies, omissions of information or typing errors or formatting errors, provided these minor errors or discrepancies do not create doubt as to the originating status of a good.

2. Each Party shall provide that, if its customs authority determines that a proof of origin in respect of a good imported into that Party is illegible or defective on its face, the importer shall be granted a period of 30 days from the date of communication from the customs authority of the importing Party to provide a copy of the corrected proof of origin.

Article 3.23. Penalties

Each Party shall adopt or maintain measures imposing, where appropriate, criminal, civil, or administrative penalties for violations of its laws and regulations relating to this Chapter.

Article 3.24. Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment is required to keep and provide to the customs authority of the importing Party upon request:

(a) the documentation related to the importation, including any origin declaration or certificate of origin that served as the basis for the claim; and

(b) any records necessary to demonstrate the good satisfies the requirements for obtaining originating status for a period of at least four years from the date of importation of the good, or such longer period as required by the laws and regulations of the importing Party.

2. Each Party shall provide that a producer or exporter is required to keep for a period of five years from the date of issuance of the certificate of origin or completion of the origin declaration, or such longer period as the exporting Party specifies, documentation related to the importation, including any origin declaration or certificate of origin and, where applicable, information from the supplier and all records thereof to prove origin. (7)

(7) For India, this paragraph shall also apply to the issuing authority.

3. Each Party shall provide that an importer, exporter or producer in that Party may choose to maintain the records in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic, or written form in accordance with that Party's laws and regulations. (8)

4. For greater certainty, these obligations shall apply to the inventory management system of the producer.

(8) For India, this paragraph shall also apply to the issuing authority.

Article 3.25. Verification of Origin

1. For greater certainty, the verification of origin process set out below is subsequent to the checking of authenticity of the proof of origin in accordance with Article 3.16 (Basis of a Claim for Preferential Tariff Treatment). The mechanism based on Annex 3D (Framework for the Authentication Process of Origin Declarations) may be amended by mutual agreement by the Subcommittee on Trade in Goods further to consideration by the Working Group on Rules of Origin.

2. Where a claim for preferential tariff treatment is based on the importer's knowledge pursuant to paragraph 1 of Article 3.15 (Proof of Origin), for the purpose of determining whether a good imported into the United Kingdom is originating, the customs authority of the United Kingdom may conduct a verification by a written request for information from the importer of the good. (9)

(9) For greater certainty, if a claim for preferential tariff treatment is based on the importer's knowledge that the good is originating, the customs authority of the United Kingdom shall not request information from the competent authority of India to complete a verification under this Chapter.

3. Where a claim for preferential tariff treatment is based on an origin declaration or a certificate of origin, for the purpose of determining whether a good imported into the importing Party is originating, the customs authority of the importing Party may conduct a verification of the claim by requesting, in writing, information from the importer of the good in accordance with the laws and regulations of the importing Party.

4. Where the customs authority of the importing Party considers the information obtained under paragraph 3 is not sufficient to make a determination of origin, the customs authority of the importing Party shall make a written request for information from the competent authority of the exporting Party. The customs authority of the importing Party shall seek information necessary to verify the origin of the good and pertaining to the fulfilment of the requirements of this Chapter. The request shall be made no later than two years after the date on which the claim for preferential tariff treatment was made.

5. A request for assistance relating to the verification of origin in respect of a claim for preferential tariff treatment under this Agreement may be made after the two-year time period set out in paragraph 4 in accordance with the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on Cooperation and Mutual Administrative Assistance in Customs Matters signed in London on 31 May 2021.(10) Such requests may include a request for the information referred to in paragraph 6. For greater certainty, Article 3.19 (Determinations of Claims for Preferential Tariff Treatment) remains applicable pursuant to such a request. In the case of suspected fraud, collusion, wilful misstatement, and suppression of facts where such a request is made within a period of five years from the date on which the claim for preferential tariff treatment was made, the requested Party shall ensure that it responds to the request within 12 months. In exceptional cases, the Parties may by mutual agreement agree to extend this period for a further six months.

(10) Requests for information from the United Kingdom shall be made to the Department of Commerce in India.

6. A request made pursuant to paragraph 4 may also include a request for the competent authority of the exporting Party to verify specific information held by the exporter, producer or supplier necessary to determine the origin of the good, such as:

where the origin criterion is wholly obtained pursuant to subparagraph

(a) of Article 3.2 (Origin Criteria), the applicable category (such as harvesting, mining, fishing), and the place of production;

(a) where the origin criterion is based on the good having been produced entirely pursuant to subparagraph (b) of Article 3.2 (Origin Criteria), the information on the origin of the materials used, including information referred to in subparagraphs (d),

(e) and (f), and the place of production;

(b) where the origin criterion is based on the good satisfying all applicable requirements of Annex 3A (Product Specific Rules of Origin) in accordance with subparagraph (c) of Article 3.2 (Origin Criteria), the information on the origin of the materials, including information referred to in subparagraphs (d), (e) and (f), and the place of production;

(c) where the origin criterion is based on a change in tariff classification, a list of all the non-originating materials used in the production of the good in a Party, including their tariff classification (in two, four, or six- digit format, depending on the relevant product-specific rule of origin);

(d) where the origin criterion is based on a value method, the value of the final good and the value of all the non-originating materials used in the production of that good if the build down method is used or the value

(e) of all originating materials used in the production if the build-up method is used as well as other relevant elements, including expenses, in accordance with Article 3.5 (Qualifying Value Content).

(f) where the origin criterion is based on a specific production process, a description of that specific process;

(g) where the good has acquired originating status pursuant to paragraph 1 of Article 3.6 (Materials Used in Production) or Article 3.8 (Cumulation), information on the origin of the materials used and the final good, including information referred to in subparagraphs (d), (e) and (f), and the place of production;

(h) information on any tolerances relied on under Article 3.9 (Tolerance);

(i) information relating to compliance with the non-alteration provisions under Article 3.14 (Non-Alteration);

(j) any other information including specific documentation or production process; or

(k) supporting documentation, where appropriate.

7. The competent authority of the exporting Party shall provide the customs authority of the importing Party with a written acknowledgement of receipt of the request made pursuant to paragraph 4 or 6 within a period of 30 days after the date of the request.

8. Following a request under paragraph 4, the competent authority of the exporting Party may conduct a verification by one or more of the following activities:

(a) requesting, in writing, specific information and documentation from the exporter, producer or supplier referred to in paragraph 6;

(b) requesting, in writing (including by way of questionnaire), such information from the exporter, a producer, or a supplier to ascertain the veracity of the information that formed the basis of the proof of origin; and

(c) visiting the premises of the exporter, producer, or supplier to review the records referred to in paragraph 2 of Article 3.24 (Record Keeping Requirements), or to observe the facilities, processes, equipment or tools used in the production of the good, or to gather further evidence to verify the originating status of the goods.

9. As soon as possible, and in any event within seven months of receiving a request under paragraph 4 the competent authority of the exporting Party shall provide the customs authority of the importing Party with a verification report. In exceptional cases, the Parties may agree, by mutual agreement, to extend this period by a further three months. The verification report shall include the following:

(a) subject to paragraph 10, any available information, including specific documentation, which the customs authority of the importing Party requested the competent authority of the exporting Party to verify, pursuant to paragraph 6;

(b) a description of the good that is subject to examination, including its tariff classification in 2, 4 or 6-digit format, depending on the origin criterion;

(c) a description of the production process;

(d) information on the manner in which the verification of the good pursuant to paragraph 8 was conducted including the subject and scope of the verification; and

(e) supporting documentation, where appropriate.

10. Notwithstanding paragraph 9, the competent authority of the exporting Party shall not provide information to the

customs authority of the importing Party if that information is deemed confidential by the exporter, producer or supplier. In such circumstances, the competent authority of the exporting Party shall confirm if it has reviewed the information the importing Party requested it to verify pursuant to paragraphs 4 and 6 and shall list the sources of information reviewed, stating whether the information supports the claim for preferential tariff treatment.

11. If, upon receiving the verification report under paragraph 9, the customs authority of the importing Party is unable to make a determination, it may request that the competent authority of the exporting Party verifies specific additional information, as set out in the request, relating to the origin of the good, which may include the information referred to in paragraph 6, by way of a written request to the exporter, producer or supplier.

12. In exceptional circumstances, if, following a request under paragraph 11, the customs authority of the importing Party is unable to make a determination, it may request that the competent authority of the exporting Party conducts a visit to the exporter, producer or supplier. The customs authority of the importing Party shall only make a request where it reasonably considers the visit necessary to make a determination. The request for such a verification visit shall be made no later than 30 days of the receipt of the response from the competent authority of the exporting Party to a request made under paragraph 11. The competent authority of the exporting Party shall respond to the request for a visit within 45 days.

13. Upon acceptance of a request for a visit under paragraph 12, the competent authority of the exporting Party shall give a notice of at least 21 days to the competent authority of the importing Party so as to enable arrangements for the visit.

14. Subject to any reasonable conditions set out by the competent authority of the exporting Party, such as health and safety requirements, the customs authority of the importing Party may designate up to two observers to be present during the verification visit conducted by the customs authority of the exporting Party under paragraph 12, provided that:

(a) any person designated as an observer is a government official of the importing Party; and

(b) any observer acts through the competent authority of the exporting Party and does not, on its own initiative, look for documents, conduct any searches, or question the exporter, producer or supplier directly.

15. The competent authority of the exporting Party shall share the information on the visit including the manner in which the visit was conducted as well as the subject and scope of the verification within 45 days of the conclusion of the visit.

16. A verification under this Article may be conducted at any time after the claim for preferential tariff treatment is made.

17. A request for verification under this Article shall be conducted on the basis of risk assessment methods, which may include random selection, or on the basis of intelligence.

18. During verification, the importing Party may allow the release of the good, subject to payment of any duties or provision of any security as provided for in its laws and regulations. In accordance with the laws and regulations of the importing Party, if as a result of the verification the importing Party determines that the good meets all the requirements of this Chapter, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations.

19. The customs authority of the importing Party shall reserve the right to issue the final determination of origin in accordance with Article 3.19 (Determinations of Claims for Preferential Tariff Treatment), provided that the determination takes into account the information provided to it by the competent authority of the exporting Party as well as any independent findings or investigation.

20. The customs authority of the importing Party shall:

(a) make a determination following a verification as expeditiously as possible and no later than one year from the date it receives information which, in its opinion, is sufficient to enable it to make such a determination. If permitted by its laws and regulations, a Party may extend this period in exceptional cases, such as where the information concerned is complex. This time period will not apply to verifications pertaining to cases of suspected fraud, collusion, wilful misstatement, and suppression of facts referred to in paragraph 5;

(b) provide the importer with a written determination of whether the good is originating that includes the reasons for the determination; and

(c) provide the competent authority of the exporting Party with a written determination of whether the good is originating including the reasons for that determination.

21. The competent authorities of the Parties shall cooperate in the overall operation and administration of the verification process including establishing priorities, by mutual agreement, if there are a significant number of requests.

22. The customs authorities of the Parties shall bear their own costs in carrying out the activities referred to in this Article.

Article 3.26. Temporary Suspension of Preferential Tariff Treatment (11)

(11) For greater certainty, a good subject to verification which has been released subject to the payment of any duties or provision of any security in accordance with paragraph 18 of Article 3.25 (Verification of Origin) shall not constitute temporary suspension of preferential tariff treatment under this Article.

1. Subject to the possibility of exemption under paragraph 11, the importing Party may, in accordance with the procedure laid down in paragraph 3, temporarily suspend preferential tariff treatment in respect of a good for which an exporter or producer has completed a proof of origin, if:

(a) a good has been subject to verification in accordance with Article 3.25 (Verification of Origin) on at least two separate occasions and the second occasion is in respect of a proof of origin dated at least one month after the competent authority of the importing Party provides the determination to the competent authority of the exporting Party in respect of the first occasion; and

(b) each verification results in the denial of preferential tariff treatment in accordance with Article 3.19 (Determinations of Claims for Preferential Tariff Treatment).

2. Suspension of preferential tariff treatment under paragraph 1 shall only apply to a good imported after the suspension is initiated, if that good is:

(a) classified under the same classification code as specified in the import declaration of the good that was subject to verification under paragraph 1; and

(b) exported or produced by the exporter or producer who completed the proof of origin of the good that was subject to verification under paragraph 1.

3. If the importing Party intends to temporarily suspend preferential tariff treatment in accordance with paragraph 1, it shall notify the competent authority of the exporting Party at least 15 days prior to the commencement of any suspension. This notification shall include the following:

(a) the name of the exporter or producer and their reference number;

(b) detailed reasons for the intention to suspend preferential tariff treatment;

(c) a detailed description of the good subject to suspension, including the corresponding commodity code as specified in the import declaration, and the description of the good as set out in the proof of origin;

(d) the time period for which the temporary suspension is to be in effect;

(e) information on the measures necessary for the restoration of preferential tariff treatment; and

(f) any other relevant information.

4. Temporary suspension pursuant to paragraph 1 shall apply only for the period necessary to counteract breaches or circumventions of this Chapter and to protect the financial interests of the importing Party. The competent authority of the importing Party shall restore preferential tariff treatment suspended in accordance with paragraph 1 if the competent authority of the exporting Party provides evidence and the Parties agree that the conditions that gave rise to the suspension no longer persist. If the importing Party is not satisfied that the evidence provided by the competent authority of the exporting Party demonstrates that the conditions that gave rise to the suspension no longer persist, they shall provide their reasoning. Where the conditions that gave rise to the suspension persist at the expiry of the period of the temporary suspension, the importing Party may decide to renew the suspension. Any renewal of suspension shall be notified to the competent authority of the exporting Party.

5. Subject to the possibility of exemption under paragraph 11, the importing Party may temporarily suspend the relevant preferential tariff treatment for future imports of the same good classified under an identified classification code as specified in the import declaration in accordance with the procedure laid down in paragraphs 7 to 9 if:

(a) the importing Party suspects, based on verifiable information that deliberate breaches of this Chapter have been committed in respect of that good;

(b) the good has been subject to verification in accordance with Article 3.25 (Verification of Origin) for at least two different exporters or producers, each being subject to verification on at least two separate occasions, and the second occasion is in respect of a proof of origin dated at least one month after the competent authority of the importing Party provides the determination to the competent authority of the exporting Party in respect of the first occasion; and

(c) each verification results in the denial of preferential tariff treatment in accordance with Article 3.19 (Determinations of Claims for Preferential Tariff Treatment).

6. For the purposes of paragraph 5, the exporters or producers subject to verification shall collectively account for the majority of the total exports of those goods from the exporting Party to the importing Party in the 12 months preceding the date of the first request for verification referred to in subparagraph 5(b).

7. If the importing Party intends to temporarily suspend preferential tariff treatment in accordance with paragraph 5, it shall notify the Working Group on Rules of Origin and, on the exporting Party's request, shall enter into consultations with the exporting Party. The importing Party shall provide that the notification to the Working Group on Rules of Origin includes evidence that the requirements in paragraphs 5 and 6 have been met. Consultations shall aim to clarify the grounds for intention to suspend, be used to discuss any mitigating factors, and explore possible solutions to avoid suspension. No suspension shall take place until the consultation process has concluded, unless the Parties agree otherwise.

8. If the Parties fail to agree on a mutually acceptable solution or no consultations have been entered into within one month after the date of notification made in accordance with paragraph 7, or such other period as the Parties may mutually agree, the importing Party may temporarily suspend the relevant preferential tariff treatment. In that case, the importing Party shall notify the temporary suspension, including the period during which it intends the temporary suspension to apply, to the Working Group on Rules of Origin without delay.

9. Temporary suspension pursuant to paragraph 5 shall apply only for the period necessary to counteract breaches or circumventions of this Chapter and to protect the financial interests of the importing Party. The Parties shall keep any suspension under review through the Working Group on Rules of Origin and, where it is agreed by the Parties that the suspension is no longer necessary, the importing Party shall bring it to an end. Where the conditions that gave rise to the suspension pursuant to paragraph 5 persist at the expiry of the initial period of the temporary suspension, the importing Party may decide to renew the suspension. Any renewal of suspension shall be notified to the exporting Party.

10. Each Party shall publish, in accordance with its internal procedures, notices to importers about any decision concerning temporary suspension referred to in paragraph 5.

11. Notwithstanding paragraphs 1 and 5, if an exporter or producer is able to satisfy the exporting Party that such goods are fully compliant with the requirements of this Chapter and the importing Party agrees, the importing Party shall exempt those goods from the suspension.

Article 3.27. Confidentiality

1. This Chapter shall not require a Party to furnish or allow access to information where the use or disclosure of that information would impede law enforcement or would be contrary to that Party's law.

2. Each Party shall maintain, in conformity with its law, the confidentiality of any information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person to whom the information relates.

3. Each Party shall ensure that confidential information collected pursuant to this Chapter shall not be used or disclosed for purposes other than the administration and enforcement of determination of origin or of customs matters, except with the permission of the person or Party who provided the confidential information.

4. Notwithstanding paragraph 2 and 3, if the Party receiving or obtaining the information is required by its law to disclose the information for purposes other than the administration and enforcement of determination of origin or of customs matters, that Party shall, where possible, notify the person or Party who provided the information of such use. That notification shall, where possible, be given in advance of such use.

5. Notwithstanding paragraph 3, a Party may allow information collected pursuant to this Chapter to be used in any administrative, judicial, or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall, where possible, notify the person or Party who provided the information of such use. That notification shall, where possible, be given in advance of such use.

6. The Parties shall, if one of them so requests, exchange information on their respective law for the purpose of facilitating

the operation and application of this Article.

Article 3.28. Working Group on Rules of Origin

1. The Parties hereby establish a Working Group on Rules of Origin composed of government representatives of each Party responsible for rules of origin matters to consider any matters arising under this Chapter.

2. The functions of the Working Group on Rules of Origin shall include:

(a) cooperating in the administration and interpretation of this Chapter;

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

(c) communicating and updating the necessary contact details of the Working Group members for the purposes of this Chapter;

(d) considering any matter referred to it by the Subcommittee on Trade in Goods or the Joint Committee; and

(e) any other matter as the Working Group mutually agrees.

3. The Working Group on Rules of Origin shall meet within 12 months of the date of entry into force of this Agreement and thereafter at least once annually.

4. The Working Group on Rules of Origin shall report to the Subcommittee on Trade in Goods.

Chapter 4. TRADE REMEDIES

Section A. General Provisions

Article 4.1. Definitions

For the purposes of this Chapter:

“bilateral safeguard measure” means a measure referred to in paragraph 2 of Article 4.7 (Application of a Bilateral Safeguard Measure);

“elimination or reduction of a customs duty” means any elimination or reduction of customs duty in accordance with paragraph 1 of Article 2.6 (Treatment of Customs Duties – Trade in Goods);

in determining injury or threat thereof, a “domestic industry” means the producers as a whole of the like or directly competitive goods operating within the territory of 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;

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

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

“transition period” means, in relation to a particular originating good, the period beginning on the date of entry into force of this Agreement and ending 14 years after the date of completion of the elimination or reduction of a customs duty on that particular originating good in accordance with Annex 2A (Schedules of Tariff Commitments for Goods).

Article 4.2. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under Section B or Section C.

Section B. Anti-Dumping and Countervailing Measures

Article 4.3. General Provisions

The Parties affirm their rights and obligations under Article VI of GATT 1994, the Anti-Dumping Agreement, and the SCM Agreement.

Article 4.4. Investigations

1. After receipt by a Party's investigating authority of a properly documented application for an anti-dumping or a countervailing investigation with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application.

2. Before initiating a countervailing investigation, a Party shall afford the other Party a meeting to consult with its investigating authority regarding the application.

3. The Parties reaffirm their rights and obligations under Articles 6.2 and 6.3 of the Anti-Dumping Agreement and Article 12.2 of the SCM Agreement, including with respect to the rights of interested parties to present information orally and to defend their interests in the conduct of an anti-dumping investigation or a countervailing duty investigation.

4. Notwithstanding paragraphs 2 and 3, nothing shall prevent the investigating authority from proceeding to initiate and conduct the investigation expeditiously.

5. A Party shall ensure, before a final determination is made, disclosure of the essential facts under consideration which form the basis for the decision whether to apply final measures. This is without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

Article 4.5. Lesser Duty Rule and Public Interest Test

1. Should a Party decide to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, or countervailing duty pursuant to Article 19.2 of the SCM Agreement, it shall apply a duty less than the margin of dumping or subsidy margin, if such a lesser duty would be adequate to remove the injury to the domestic industry, in accordance with the Party's laws and regulations.

2. To the extent provided for under each Party's laws, regulations and procedures, an anti-dumping duty or a countervailing duty shall not be applied by a Party on the goods of the other Party if it is concluded that it is not in the public interest to apply the duty.

Section C. Global Safeguard Measures

Article 4.6. General Provisions and Transparency

1. The Parties affirm their rights and obligations concerning global safeguard measures under Article XIX of GATT 1994 and the Agreement on Safeguards.

2. A Party that initiates a safeguard investigatory process shall provide to the other Party an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the Agreement on Safeguards.

3. A Party adopting global safeguard measures shall endeavour to impose them in a manner least affecting bilateral trade.

Section D. Bilateral Safeguard Measures

Article 4.7. Application of a Bilateral Safeguard Measure

1. If, as a result of the elimination or reduction of a customs duty under this Agreement, an originating good from a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry, the other Party may adopt either of the bilateral measures provided for in paragraph 2.

2. If the conditions in paragraph 1 are met, the importing Party may apply one of the following bilateral safeguard measures:

(a) suspension of the further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or

(b) increase in the rate of customs duty on the good concerned to a level which does not exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty on the good in effect at the time the bilateral safeguard measure is applied; or

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

Article 4.8. Duration and Scope

1. A Party shall apply a bilateral safeguard measure to the extent and only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry.

2. The period of time referred to in paragraph 1 shall not exceed two years, except where the period may be extended for an additional period of no more than two years, provided that the investigating authority of the Party that applies the bilateral safeguard measure determines, in conformity with the procedures set out in Article 4.9 (Investigation Procedures) that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment, and provided that the total duration of the bilateral safeguard measure, including such extensions, does not exceed four years.

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

4. No bilateral safeguard measure shall be applied again to the import of an originating good that has previously 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 since the expiry or termination of the previous bilateral safeguard measure, whichever is longer.

5. Notwithstanding paragraph 4, a bilateral safeguard measure with a duration of 180 days or less may be applied again to the import of an originating good if:

(a) at least one year has elapsed since the date of introduction of a bilateral safeguard measure on the import of that good; and

(b) a bilateral safeguard measure has not been applied on the same good more than twice in the five-year period immediately preceding the date of the first imposition of the bilateral safeguard measure.

6. When a Party ceases to apply a bilateral safeguard measure, the rate of customs duty shall be the rate that would have been in effect in accordance with the Party's Schedule to Annex 2A (Schedules of Tariff Commitments for Goods) but for the bilateral safeguard measure.

7. Neither Party shall apply or maintain a bilateral safeguard measure beyond the expiration of the transition period.

Article 4.9. Investigation Procedures

1. A Party may apply a bilateral safeguard measure (other than on a provisional basis) only following an investigation by its investigating authority pursuant to the procedures set out in this Article. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the representations of other interested parties and to submit their views, among other things, as to whether or not the application of a bilateral safeguard measure would be in the public interest. The investigating authority shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law, including a detailed analysis of the case under investigation, as well as a demonstration of the relevance of factors examined in accordance with paragraph 2.

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

3. The determination referred to in paragraph 2 shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the good concerned and serious injury or threat thereof. Where factors other than increased imports are at the same time causing serious injury or threat thereof, such injury shall not be attributed to increased imports.

4. Any information which is by its nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the investigating authority. Such information shall not be disclosed without permission of the

party submitting it. A party providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarised, the reasons why a summary cannot be provided. However, if the investigating authority finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the investigating authority may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

5. An investigation shall not exceed one year from the date of initiation, but a Party may, in exceptional circumstances, extend the investigation for no more than a further three months. A Party extending an investigation shall notify the other Party in writing of its intention to extend the investigation as soon as possible and, in any event, within one year of the date of initiation of the investigation.

Article 4.10. Notification and Consultation

1. A Party shall immediately provide written notice to the other Party upon:

(a) initiating an investigation referred to in Article 4.9 (Investigation Procedures) relating to serious injury, or threat thereof, and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of the other Party as a result of the elimination or reduction of a customs duty in accordance with Article 4.7 (Application of a Bilateral Safeguard Measure);

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

(d) taking a decision to modify the bilateral safeguard measure for progressive liberalisation.

2. The Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information which shall include:

(a) in the written notice referred to in subparagraph 1(a), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation including its subheading of the Harmonized System (for indicative purposes only), the period subject to the investigation, and the date of initiation of the investigation; and

(b) in the written notice referred to in subparagraphs 1(b) through (d), evidence of serious injury or threat thereof caused by the increased imports, precise description of the good subject to the proposed bilateral safeguard measure including its subheading of the Harmonized System (for indicative purposes only), and where applicable, the proposed date of introduction, the extension or modification of the bilateral safeguard measure, its expected duration, and the timetable for the progressive liberalisation of the bilateral safeguard measure provided for in paragraph 3 of Article 4.8 (Duration and Scope).

3. A Party initiating an investigation shall, after notifying the other Party in accordance with paragraph 1, consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the bilateral safeguard measure.

Article 4.11. Provisional Bilateral Safeguard Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis without complying with the procedural requirements of Article 4.10 (Notification and Consultation), pursuant to a preliminary determination that there is clear evidence that imports of a good originating in the other Party have increased as the result of the elimination or reduction of a customs duty under this Agreement, and that such imports cause or threaten to cause serious injury to the domestic industry. The duration of any provisional bilateral safeguard measure shall not exceed 200 days, during which time the Party shall comply with the relevant procedural rules laid down in Article 4.9 (Investigation Procedures) such that its investigating authority carries out an investigation.

2. A Party shall make a notification to the other Party before taking a provisional bilateral safeguard measure referred to in paragraph 1.

3. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is applied.

4. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent

investigation referred to in Article 4.9 (Investigation Procedures) does not determine that the requirements of paragraph 1 of Article 4.7 (Application of a Bilateral Safeguard Measure) are met.

5. The duration of any provisional bilateral safeguard measure shall be counted as part of the period described in paragraph 2 of Article 4.8 (Duration and Scope).

Article 4.12. Compensation

1. A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effect or equivalent to the value of the additional duties expected to result from the application of the bilateral safeguard measure. The Party applying the bilateral safeguard measure shall provide an opportunity for these consultations no later than 30 days after the application of the bilateral safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, the Party whose goods are subject to the bilateral safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the bilateral safeguard measure. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

3. The right to take action referred to in paragraph 2 shall not be exercised for the first two years that the bilateral safeguard measure is in effect.

4. The Party against whose good the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before suspending concessions in accordance with paragraph 2.

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

Article 4.13. Non-Application of Multiple Safeguard Measures

Neither Party shall apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure in accordance with Section D (Bilateral Safeguard Measures); and

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

Chapter 5. CUSTOMS AND TRADE FACILITATION

Article 5.1. Customs and Trade Facilitation

1. Each Party shall ensure that its customs laws, regulations, and procedures are applied in a manner that is consistent, transparent, and non-discriminatory.

2. The Parties affirm their rights and obligations under the Trade Facilitation Agreement.

3. Each Party shall endeavour to ensure that its import, export or transit formalities and procedures conform to international standards and recommended practices established by the World Customs Organization (the “WCO”) and under other relevant international agreements to which the Parties are party.

4. Each Party shall adopt or maintain simplified customs procedures, as set out in Article 5.4 (Simplified Customs Procedures), and work towards further simplification of its customs procedures, including by conducting periodic reviews, in order to facilitate trade.

5. The Parties shall seek to reinforce their cooperation to promote trade facilitation while ensuring effective customs control.

Article 5.2. Transparency and Publication

1. Each Party shall promptly publish online, in a non-discriminatory and easily accessible manner, and to the extent possible and practicable in the English language, its customs laws, regulations, and procedures, including:

(a) hours of operation, and general operating procedures related to importation, exportation and transit, for customs offices at ports and border crossing points;

(b) details of its enquiry points including points of contact and modes for making information enquiries;

(c) its laws, regulations, and procedures for becoming a customs broker, for issuing customs broker licenses and regarding the use of customs brokers; and

(d) provisions to correct or disclose an error in a customs transaction, including the information required and, if applicable, the circumstances when penalties will not be imposed.

2. Each Party shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

3. Each Party shall, in a manner consistent with its law and legal system, ensure that new or amended customs laws and regulations are published online, or information on them made otherwise publicly available, as early as possible before their entry into force to enable traders and other interested parties to become acquainted with them.

4. Paragraph 3 shall not apply to:

(a) changes to the rates of customs duties;

(b) measures that have a relieving effect;

(c) measures the effectiveness of which would be undermined as a result of compliance with paragraph 3;

(d) measures applied in urgent circumstances; or

(e) minor changes to a Party's law and legal system.

5. Each Party shall establish or maintain one or, if within its available resources, more enquiry points to address reasonable enquiries of interested parties or persons concerning customs matters.

6. Each Party shall endeavour not to require the payment of a fee for answering enquiries or providing required forms. If payment of a fee is required, the Party shall limit the amount of its fees and charges to the approximate cost of services rendered.

7. Each Party shall ensure that enquiry points answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

Article 5.3. Data, Documentation and Automation

1. Each Party shall ensure, while maintaining appropriate customs controls, that data and documentation requirements are adopted or applied:

(a) with the intention to facilitate a rapid release of goods; and

(b) in a manner that aims to reduce the time and cost of compliance for traders and operators.

2. Each Party shall:

(a) make electronic systems accessible to customs users, where appropriate and practicable, in an accessible format;

(b) allow a customs declaration to be submitted in electronic format;

(c) employ an electronic or automated risk management system;

(d) permit the electronic payment of duties, taxes, fees and charges collected by its customs authority and incurred upon importation and exportation;

(e) endeavour to implement common standards and elements for import and export data in accordance with the WCO Data Model;

(f) take into account, as appropriate, standards, recommendations, models and methods developed by various international organisations, including the WCO, the United Nations Centre for Trade Facilitation and Electronic Business ("UNCEFACT") and the WTO; and

(g) work towards recognising each other's data elements that may be drawn from the WCO Data Model and related WCO recommendations as well as for facilitating government-to-government electronic sharing of customs data.

3. The Parties shall endeavour to cooperate on the development of interoperable electronic customs systems in order to facilitate trade and data exchange between the Parties.

Article 5.4. Simplified Customs Procedures

1. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its customs laws and regulations to benefit from further simplification of customs procedures.

2. The simplified customs procedures referred to in paragraph 1 shall include:

(a) deferred payment of customs duties until after the release of those imported goods;

(b) enabling the payment of customs duties and taxes that may cover multiple imports at periodic intervals, including fortnightly or monthly; and

(c) use of a guarantee with a reduced amount or a waiver from the use of a guarantee.

3. The Parties shall endeavour to implement simplified customs procedures, as follows:

(a) customs declarations containing a reduced set of data or supporting documents including for the movement of low-value consignments; and

(b) aggregated customs declarations for the payment of customs duties and taxes that may cover multiple imports.

4. The Parties shall cooperate on and consider, as appropriate, further measures to reduce the administrative burden for economic operators in relation to imports and exports.

Article 5.5. Release of Goods

1. Each Party shall:

(a) provide for goods to be released as rapidly as possible, endeavouring to release goods within 48 hours of arrival at the point of presentation to customs provided that:

(i) the Party has received all information and documentation required to release all the goods in the shipment on or prior to presentation to customs;

(ii) the goods, or any other goods in the same shipment, are not subject to physical inspection or examination; and

(iii) all regulatory checks required for release have been completed;

(b) provide for advance electronic submission and processing of customs documentation, including import declarations and manifests, prior to the arrival at the point of presentation to customs of goods to enable their release as rapidly as possible if no risk has been identified or if no other checks are to be performed;

(c) allow goods to be released without temporary transfer to warehouses or other facilities, where practicable; and

(d) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or as soon as possible after presentation to, customs and provided that all other regulatory requirements have been met. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument.

2. Nothing in this Article shall require a Party to release a good if regulatory requirements for release have not been met.

3. If a Party allows for the release of goods conditional on a security, it shall adopt or maintain procedures that:

(a) ensure the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure the security shall be discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using a form other than cash, where appropriate.

Article 5.6. Perishable Goods

1. For the purposes of this Article, “perishable goods” means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

2. With a view to preventing avoidable loss or deterioration of perishable goods, each Party shall:

(a) provide, in normal circumstances, for perishable goods to be released in the shortest possible time provided that: (1)

(1) Each Party shall set internal targets for the expeditious release of perishable goods.

(i) the Party has received all information and documentation required to release all the goods in the shipment on or prior to presentation to customs;

(ii) the goods, or any other goods in the same shipment, are not subject to physical inspection or examination; and

(iii) all regulatory checks required for release have been completed; and

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

3. Each Party shall give appropriate priority to perishable goods when scheduling and conducting any inspections or examinations that may be required.

4. Each Party shall either arrange, or allow an importer to arrange, for the appropriate storage of perishable goods pending their release. Each Party may require that its customs authority approve or designate any storage facilities arranged by the importer. Each Party shall, where possible and if appropriate upon the request of the importer, release the perishable goods directly from those storage facilities, in accordance with domestic legislation.

5. Nothing in this Article requires a Party to release a good if regulatory requirements for release have not been met.

Article 5.7. Risk Management

1. Each Party shall adopt or maintain a risk management system using electronic data-processing and, where necessary, other techniques for customs control that enables its customs authority to focus its customs and other relevant border controls including its examination and inspection activities on high-risk consignments and expedite the release of low-risk consignments.

2. Notwithstanding paragraph 1, the adoption or maintenance of a risk management framework shall not prevent a party from using other techniques where necessary.

3. Each Party shall design and apply risk management so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include the HS Code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5. Each Party may also select, on a random basis, consignments for its customs and other relevant border controls including its examination and inspection activities referred to in paragraph 1 as part of its risk management.

6. In order to facilitate trade, each Party shall periodically review and update, if considered appropriate, the risk management system specified in paragraph 1.

Article 5.8. Advance Rulings

1. Each Party shall issue through its customs authority an advance ruling to an applicant that has submitted a written request with respect to:

(a) tariff classification;

(b) whether a good is originating in accordance with Chapter 3 (Rules of Origin);

(c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts in accordance with the Customs Valuation Agreement; and

(d) such other matters as the Parties may mutually agree, subject to domestic customs legislation.

2. Each Party shall allow an exporter, importer, producer, or any other person with a justifiable cause, or a representative thereof, to request a written advance ruling. If any fee is charged it shall be reasonable and aimed at deterring non- serious applications. (2)

(2) The United Kingdom does not require a fee.

3. On receipt of an application and all necessary information, each Party shall issue an advance ruling referred to in subparagraph 1(a) or 1(b) as soon as practicable and in any event within three months or in such shorter time as prescribed in the Party's customs law.

4. A Party may request that the applicant provide additional information necessary to evaluate the request at any time during the course of an evaluation of an application for an advance ruling, which may include a sample of the good.

5. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review, or in circumstances set out in the Parties' customs laws, regulations and procedural requirements. A Party that declines to issue an advance ruling, shall promptly notify the applicant, in writing, setting out the relevant facts and the basis for its decision and also provide the applicant an opportunity of being heard.

6. A Party may, in accordance with its domestic law, modify, revoke or invalidate an advance ruling, as appropriate, if:

(a) the ruling was made in error or based on an error of fact;

(b) the information provided is false or inaccurate;

(c) there is a change in the material facts or circumstances on which the ruling was based; or

(d) a change is required to conform with a judicial decision or a change in its laws and regulations.

7. A Party may revoke or invalidate an advance ruling with retroactive effect, if the ruling was based on incomplete, incorrect, inaccurate, false or misleading information provided by the applicant.

8. When a Party revokes, modifies, or invalidates the advance ruling, it shall adhere to the principles of independence of decision making, procedural fairness and providing written communication to the applicant setting out the relevant facts and the basis for its decision.

9. Each Party shall publish online, at least:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

10. Each Party shall endeavour to make publicly available any advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

Article 5.9. Authorised Economic Operator

1. Each Party shall establish or maintain a trade facilitation partnership programme for operators who meet specified criteria, hereinafter referred to as the Authorised Economic Operator ("AEO") programme, in accordance with the SAFE Framework of Standards to Secure and Facilitate Global Trade adopted at the June 2005 World Customs Organization Session in Brussels and as updated from time to time (the "SAFE Framework").

2. Each Party shall publish its specified criteria to qualify as an AEO. The specified criteria shall relate to compliance, or the risk of non-compliance, in accordance with requirements specified in the Party's customs laws, regulations and procedural requirements. The Parties may use the criteria set out in paragraph 7.2(a) of Article 7 of the Trade Facilitation Agreement.

3. The specified criteria to qualify as an AEO shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail. The specified criteria shall be designed or applied so as to allow the participation of SMEs.

4. The AEO programme shall include specific benefits for operators that meet the specified criteria, taking into account the

commitments of each Party under paragraph 7.3 of Article 7 of the Trade Facilitation Agreement.

Article 5.10. Review and Appeal

1. Each Party shall ensure that its procedures for appeal and review are carried out in a non-discriminatory and timely manner.

2. Each Party shall ensure that any person to whom it issues a decision on a customs matter has access to:

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

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

3. Notwithstanding paragraph 2, a Party may not provide an administrative appeal for a decision on an advance ruling under Article 5.8 (Advance Rulings).

4. Each Party shall provide that any person who has applied to a customs authority for a decision and has not obtained a decision on that application within the relevant time-limits where provided in its laws or regulations and in all other cases without undue delay shall be entitled to exercise right to either appeal to or review by the administrative authority or the judicial authority or any other recourse to the judicial authority.

5. Each Party shall provide a person to whom it issues a decision with the reasons for the decision.

Article 5.11. Penalties

1. Each Party shall ensure that any penalties imposed for breaches of its customs laws, regulations or procedural requirements shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

2. Each Party is encouraged to require its customs authority, when imposing a penalty for a breach of its customs laws, regulations or procedural requirements, to consider as a potential mitigating factor the voluntary disclosure of the breach prior to its discovery by the customs authority.

3. Each Party shall ensure that, if a penalty is imposed for a breach of its customs laws, regulations or procedural requirements, an explanation in writing is provided to the person upon whom the penalty is imposed, specifying the nature of the breach and the applicable customs laws, regulations or procedural requirements under which the amount or range of penalty for the breach has been prescribed.

4. Each Party shall, where appropriate, provide in its laws, regulations or procedures, or otherwise give effect to, fixed and finite periods within which its customs authority may initiate proceedings to impose a penalty relating to a breach of customs laws, regulations or procedural requirements.

Article 5.12. Customs Cooperation and Mutual Administrative Assistance

1. Without prejudice to other forms of cooperation provided for in this Agreement, the customs authorities of the Parties shall cooperate, including by exchanging information, and provide mutual administrative assistance in the matters referred to in this Chapter in accordance with the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on Customs Cooperation and Mutual Administrative Assistance in Customs Matters signed in London on 31 May 2021.

2. The customs authorities shall, while ensuring compliance with their respective customs laws, regulations and procedural requirements and, subject to the availability of resources, enhance cooperation on the matters referred to in this Chapter with a view to further developing trade facilitation in the following areas:

(a) simplifying and harmonising customs procedures and documentation requirements for customs purposes;

(b) developing and implementing customs best practice and risk management techniques;

(c) application of the Customs Valuation Agreement;

(d) cooperation between customs authorities in order to expedite the release of goods; and

(e) other matters as the Parties may mutually decide.

Article 5.13. Single Window (3)

(3) For the purposes of Article 5.13, for the United Kingdom, the Bailiwicks of Guernsey and Jersey may introduce or maintain their own respective single window system.

1. Each Party shall introduce or maintain single window system enabling traders to submit documentation and any prescribed data requirements for the exportation and importation of goods through a single-entry point to the participating authorities or agencies.

2. Each Party shall, as required, continuously review the operations of its single window system with a view to expanding or improving its functionality to cover all its import and export transactions and shall endeavour to include documentation and any data requirements for the transit of goods within the single window system.

3. If a Party receives documentation or data for a good or shipment of goods through its single window system, that Party shall not request the same documentation or data for that good or shipment of goods, except in urgent circumstances or pursuant to other limited exceptions set out in its law or procedural requirements. Each Party shall minimise, to the extent possible, the requirement for paper documents if electronic copies are provided and use information technology to support the single window system.

4. Each Party shall endeavour to include in its single window system's functionality the ability to inform a person using its single window system of the results of the examination of the documentation and any data by the participating authorities or agencies and status of the release of goods in a timely manner.

5. In building and maintaining its single window system, each Party shall:

(a) incorporate, as considered appropriate, the WCO Data Model for data elements;

(b) take into account, as appropriate, standards, recommendations, models and methods developed by various international organisations such as the WCO, UNCEFACT and the WTO; and

(c) have regard to the standards and data elements for import, export, and transit developed by international organisations of which the Parties are a member.

6. The Parties shall cooperate on the development of their respective single window systems through discussing best practices, possible interactions and sharing of implementation experience.

Article 5.14. Transit and Transhipment

1. Each Party shall:

(a) ensure the facilitation, with effective control, of transhipment operations and transit movements through their respective territories;

(b) endeavour to promote and implement regional transit arrangements with a view to facilitating trade;

(c) ensure the cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit, in accordance with its laws and regulations; and

(d) allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article 5.15. Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall:

(a) adopt or maintain post-clearance audit to ensure compliance with its customs laws and procedures;

(b) conduct post-clearance audits in a risk-based manner, which may include appropriate selectivity criteria;

(c) conduct post-clearance audits in a transparent manner. Where an audit is conducted and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the reasons for the results

and the audited person's rights and obligations; and

(d) wherever practicable, use the result of post-clearance audit in applying risk management.

2. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

Article 5.16. Customs Brokers

1. The Parties agree not to require the mandatory use of customs brokers.

2. Each Party shall:

(a) publish measures on the use of customs brokers; and

(b) apply transparent and objective rules if and when licensing customs brokers.

Article 5.17. Confidentiality

1. Each Party shall maintain, in conformity with its law, the confidentiality of all information collected as part of its customs processes and shall protect that information from use or disclosure that could prejudice the competitive position of the trader to whom the confidential information relates.

2. Each Party shall ensure that the information collected as part of its customs processes shall be used or disclosed solely for the administration and enforcement of customs matters, including in any proceedings before courts or tribunals for failure to comply with customs laws, or as otherwise authorised or required under the Party's law.

3. The Parties shall communicate to each other information on their applicable laws and regulations.

Article 5.18. Customs and Trade Facilitation Working Group

1. The Parties hereby establish a Working Group on Customs and Trade Facilitation ("CTF Working Group") composed of government representatives of each Party responsible for customs and trade facilitation matters to consider any matters arising under this Chapter.

2. The functions of the CTF Working Group shall include:

(a) cooperating in the administration and uniform interpretation of this Chapter;

(b) monitoring the effective operation and implementation of this Chapter, including the transparent and consistent application of customs procedures of the Parties and the procedures listed at subparagraph 1(a) of Article 5.5 (Release of Goods) and subparagraph 2(a) of Article 5.6 (Perishable Goods);

(c) cooperating in an endeavour to further simplify and implement the customs procedures set out in Article 5.4 (Simplified Customs Procedures);

(d) exchanging information on matters related to this Chapter;

(e) communicating the necessary contact details of the CTF Working Group members for the purposes of this Chapter;

(f) considering any matters referred to it by the Joint Committee or Subcommittee on Trade in Goods; and

(g) any other matter as the CTF Working Group mutually agrees.

3. The CTF Working Group shall meet within six months of the date of entry into force of this Agreement and thereafter annually.

4. The CTF Working Group shall share its progress with the Joint Committee.

Chapter 6. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Definition

1. For the purposes of this Chapter:

“competent authorities” means those authorities within each Party recognised by the national government as responsible for developing, implementing and administering the sanitary and phytosanitary measures within that Party;

“emergency measure” means a sanitary or phytosanitary measure that is applied by the importing Party to the exporting Party to address an urgent problem of human, animal or plant life or health protection that arises or threatens to arise in the Party applying the measure;

“relevant international organisations” means organisations referred to in paragraph 3 of Annex A to the SPS Agreement; and

“SPS Subcommittee” means the Subcommittee on Sanitary and Phytosanitary Measures established under paragraph 1 of Article 6.16 (SPS Subcommittee).

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

(a) the definitions in Annex A to the SPS Agreement;

(b) the definitions adopted under the auspices of the Codex Alimentarius Commission (the “Codex”);

(c) the definitions adopted under the auspices of the World Organisation for Animal Health (the “WOAH”); and

(d) the definitions adopted under the auspices of the International Plant Protection Convention (the “IPPC”).

3. Further to paragraph 2, in the event of an inconsistency between the definitions set out in the SPS Agreement and the definitions adopted under the auspices of the Codex, the WOAH and the IPPC, the definitions set out in the SPS Agreement shall prevail.

Article 6.2. Objectives

1. The objectives of this Chapter are to:

1. (a) protect human, animal and plant life and health in the territory of the Parties while facilitating trade between them;

2. (b) ensure that the Parties’ sanitary and phytosanitary measures do not create unjustified barriers to trade;

3. (c) reinforce and support the implementation of the SPS Agreement, and promote the implementation of the relevant international standards, guidelines, and recommendations;

4. (d) ensure greater transparency and understanding on the application of each Party’s sanitary and phytosanitary measures;

5. (e) strengthen communication and cooperation on relevant sanitary and phytosanitary issues;

6. (f) promote resolution of sanitary and phytosanitary issues that may affect trade between the Parties;

7. (g) enhance cooperation in the relevant international organisations to develop international standards, guidelines, and recommendations on animal health, food safety and plant health; and

8. (h) enhance cooperation between the Parties in areas of mutual interest in the field of animal welfare and antimicrobial resistance.

Article 6.3. Scope

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

2. This Chapter also includes separate provisions regarding animal welfare and antimicrobial resistance.

Article 6.4. Rights and Obligations

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

2. Nothing in this Agreement shall affect the rights and obligations of each Party under the SPS Agreement.

Article 6.5. Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties acknowledge that adaptation of sanitary and phytosanitary measures to recognise regional conditions, including through the application of concepts such as pest-free or disease-free areas, areas of low pest or low disease prevalence, zoning, compartmentalisation, pest-free places of production, and pest-free production sites, is an important means of facilitating trade. Each Party shall ensure that its sanitary and phytosanitary measures are adapted to regional conditions in accordance with the SPS Agreement.

2. Each Party shall take into account relevant international standards, guidelines and recommendations, and relevant guidance of the WTO SPS Committee, when making determinations related to regional conditions.

3. The Parties shall cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for the recognition of regional conditions. In doing so, the Parties shall promote information sharing in this area and on related matters.

4. On request of the exporting Party, the importing Party shall, without undue delay, explain its process and plan for making the determination of regional conditions.

5. When making an assessment of the regional conditions established by the exporting Party, the importing Party shall base its own determination of the animal and plant health status of the exporting Party or parts thereof, on the information provided by the exporting Party in accordance with the SPS Agreement and relevant international standards, guidelines, and recommendations.

6. With regard to animals and animal products, when establishing or maintaining sanitary measures upon request of the exporting Party, the importing Party shall take into consideration the disease-free areas, areas of low disease prevalence, zones and compartments established by the exporting Party in making a determination to allow or maintain the import. The importing Party shall also consider any relevant official disease status recognised by the WOAH when making its determination. If requested by the importing Party, the exporting Party shall provide an explanation and supporting data for the basis of these regional conditions, based on the WOAH standards, or in other ways as deemed appropriate by the Parties, based on the knowledge acquired through experience of the exporting Party's relevant authorities.

7. With regard to plants, plant products and other related objects, when establishing or maintaining phytosanitary import conditions upon request of the exporting Party, the importing Party shall take into consideration regional conditions in the exporting Party, including pest-free areas, pest-free places of production, pest-free production sites, and areas of low pest prevalence established by the exporting Party in making a determination to allow or maintain the import, and where this information is provided to the importing Party. If requested by the importing Party, the exporting Party shall provide an explanation and supporting data for the basis of these regional conditions, based on the relevant IPPC standards or in other ways as agreed by the Parties, based on the knowledge acquired through experience of the exporting Party's relevant authorities.

8. If the importing Party determines that the information provided by the exporting Party in its request is sufficient, it shall initiate an assessment and make a decision as to whether it can accept the exporting Party's determination of regional conditions, within a reasonable period of time.

9. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.

10. If the importing Party has accepted the exporting Party's determination of regional conditions, the exporting Party shall notify the importing Party of any modification to those regional conditions. Following any such notification, the importing Party shall continue to accept the exporting Party's determination of regional conditions and allow trade to continue, provided that the importing Party is satisfied that its appropriate level of protection will be maintained.

11. If the importing Party adopts a measure that recognises specific regional conditions of the exporting Party, the importing Party shall implement the measure as soon as possible, and inform the exporting Party of the outcome and when trade can commence without undue delay.

12. If the importing Party decides not to recognise the regional conditions of the exporting Party, it shall provide the exporting Party with the rationale for its determination and, to the extent practicable, indicate the required conditions for which the process referred to in paragraphs 4 through 10 may be reinitiated. Upon request, the importing Party shall hold consultations with the exporting Party, within a reasonable period of time.

13. If there are circumstances that result in the importing Party modifying or revoking a decision recognising the regional conditions of the exporting Party, the Parties shall cooperate to assess whether the determination can be reinstated.

Article 6.6.. Equivalence

1. The Parties acknowledge that recognition of equivalence of sanitary and phytosanitary measures is an important means of facilitating trade. In determining equivalence of an individual measure, group of measures, or measures on a systems-wide basis, each Party shall consider the relevant guidance of the WTO SPS Committee and relevant international standards, guidelines, and recommendations.

2. The importing Party shall recognise the equivalence of sanitary or phytosanitary measures, even if the measures differ from its own, if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measures achieve the importing Party's appropriate level of protection.

3. In determining equivalence, the importing Party shall take into account available relevant knowledge, information, and experience as well as the regulatory competence of the exporting Party.

4. A Party shall, upon request from the other Party, enter into bilateral consultations with the aim of achieving recognition of equivalence of an individual measure, group of measures, or measures on a systems-wide basis. For this purpose, reasonable access shall be given, upon request, to the importing Party for inspection, testing and other relevant procedures.

5. As a part of such consultations on request by the exporting Party, the importing Party shall explain and provide within a reasonable period of time:

(a) the rationale and objective of its measures; and

(b) the specific risks its measures are intended to address.

6. The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the importing Party determines that the information provided by the exporting Party is sufficient, it shall commence the assessment within a reasonable period of time. The importing Party shall, upon request, explain the process and plan for making an equivalence determination, without undue delay.

7. The consideration by a Party of a request from the other Party for recognition of equivalence of its measures for a specific product, or group of products, shall not be in and of itself a reason to disrupt or suspend ongoing imports from the Party of the product or products in question, provided that the importing Party's appropriate level of protection continues to be met.

8. When the importing Party has concluded its assessment, it shall notify the equivalence determination to the exporting Party, within a reasonable period of time and in writing. If an equivalence determination results in recognition by the importing Party, the importing Party shall implement a measure recognising equivalence within a reasonable period of time. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

9. If a Party proposes to modify, amend, repeal, or remove a sanitary or phytosanitary measure which is the subject of an equivalence arrangement between the Parties, it shall notify the other Party and indicate its likely effect on recognition of equivalence. Following such notification, the importing Party shall continue to apply its determination of equivalence unless its appropriate level of protection is not met. The Parties may use the SPS Subcommittee as a forum for further engagement on processes for possible withdrawal and reinstatement of recognition of equivalence measures.

10. Compliance of a product with sanitary or phytosanitary measures that have been accepted as equivalent to sanitary or phytosanitary measures of the other Party, shall not remove the need for that product to comply with any other relevant mandatory requirements.

11. The final determination of equivalence, and any subsequent withdrawal or suspension of equivalence, rests with the importing Party, acting in accordance with its administrative and legislative framework, taking into account international standards, guidelines, and recommendations.

Article 6.7. Import Conditions

1. Without prejudice to the rights and obligations of each Party under the SPS Agreement and this Chapter, the import conditions of the importing Party shall apply to the entire territory of the exporting Party in a consistent manner.

2. (With regard to import conditions for animals, animal products, plants, plant products, and other related objects, each Party, in accordance with Article 3 of the SPS Agreement, shall set out its import conditions for animals, animal products, plants, plant products and other related objects, based upon the principles set out in the relevant standards, guidelines, and recommendations developed under the relevant international organisations. The Parties shall also take into account the decisions and recommendations of the WTO SPS Committee, when setting out those import conditions.

3. The importing Party shall make publicly available its general sanitary and phytosanitary import conditions related to goods.

4. The importing Party shall endeavour, within 30 days of receipt of a reasonable request from the exporting Party, to make available to the exporting Party all sanitary or phytosanitary import conditions relating to the import of specific goods.

5. Paragraph 4 shall not apply if the information requested by the exporting Party is publicly available.

6. For the purposes of establishing the specific sanitary or phytosanitary import conditions, the exporting Party shall, on request of the importing Party:

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

(b) give reasonable access to the importing Party to conduct audits of the relevant procedures undertaken by the exporting Party, in accordance with Article 6.8 (Audit).

7. Each Party shall ensure that all sanitary and phytosanitary control, inspection, assessment and approval procedures, including if needed audits, are undertaken and completed without undue delay to authorise a good for import. Each Party shall avoid unnecessary or unduly burdensome information requests and take into account information already available to the importing Party, such as information related to the legislative framework and audit reports of the exporting Party.

8. Subject to its laws and regulations, if a risk assessment is required in the process of determining import conditions, a Party shall, upon request, provide the other Party with the outcomes of that risk assessment, within a reasonable period of time of the risk assessment being finalised.

9. Without prejudice to Article 6.8 (Audit), Article 6.10 (Import Checks), and Article 6.11 (Emergency Measures), and in accordance with its laws and regulations or as otherwise agreed between the Parties, upon request of the exporting Party, the importing Party shall approve an establishment or facility situated in the territory of the exporting Party without prior inspection if the importing Party has:

(a) received all relevant information, including, if necessary, appropriate assurances from the competent authorities of the exporting Party; and

(b) determined that the establishment or facility meets its relevant sanitary and phytosanitary requirements.

The competent authority of the importing Party may suspend or withdraw the approval of the establishment or facility if it no longer meets its relevant sanitary and phytosanitary requirements.

10. On approval of an establishment or facility of the exporting Party under paragraph 9, the importing Party shall take necessary measures to allow imports from such establishments or facilities without undue delay.

11. If an approval is suspended or withdrawn by the competent authorities of the importing Party, both the Parties shall consult with an aim to once again reinstate the approval of the relevant establishment or facility of the exporting Party.

12. Without prejudice to Article 6.11 (Emergency Measures), the importing Party shall not refuse or prevent the importation of a good of the exporting Party solely for the reason that it is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the exporting Party when the review was initiated.

Article 6.8. Audit

1. For the purposes of attaining and maintaining confidence in the exporting Party's regulatory control programme, and to comply with the sanitary and phytosanitary import conditions and related control measures of the importing Party, the importing Party shall have the right to carry out an audit of all or part of the regulatory control programme of the exporting Party's competent authority. (1)

(1) For greater certainty, for the purposes of this Chapter, an audit may include desk assessment and virtual, remote, or physical audits.

2. Each Party shall assist the other to carry out audit procedures.

3. Prior to the commencement of an audit, the competent authorities of the Parties shall discuss the rationale for the audit and shall endeavour to agree on the objectives and scope of the audit, the criteria or requirements against which the exporting Party will be assessed, and any other relevant matters.

4. The Parties shall carry out those audits in accordance with the provisions of the SPS Agreement, taking into account the relevant guidance of the WTO SPS Committee and the relevant international standards, guidelines, and recommendations.

5. Each Party shall endeavour to limit the frequency and number of audit visits. Only in justified circumstances shall the importing Party carry out a subsequent audit related to the same product, and in those circumstances, the importing Party shall provide the exporting Party with an explanation as to the reason for the audit.

6. The importing Party may appoint a governmental body, in accordance with the relevant international standards, guidelines, and recommendations, to carry out all or part of an audit on its behalf.

7. The importing Party shall provide the exporting Party with the opportunity to comment in writing on the findings of an audit. The importing Party shall take these comments into account before reaching its conclusions and taking any action thereon. The importing Party shall, within a reasonable period of time, provide the exporting Party with a written report setting out its conclusions.

8. Measures taken by the importing Party as a consequence of its audit shall be proportionate to the risk identified and supported by objective evidence, taking into account the importing Party's knowledge of, relevant experience with, and confidence in the exporting Party, and shall not be more trade restrictive than necessary to achieve the importing Party's appropriate level of protection. Nothing in this paragraph prevents a Party from taking an emergency measure consistent with Article 6.11 (Emergency Measures).

9. The costs for an audit shall be borne by the importing Party unless the Parties agree otherwise.

10. The Parties shall:

(a) each ensure, in accordance with its respective laws and regulations, that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process; and

(b) jointly determine how and to whom a report is made available.

Article 6.9. Certification

1. Where the importing Party requires official certificates, they shall be set in line with the principles as laid down in the relevant international standards, guidelines, and recommendations.

2. The Parties may agree to specify or implement further guidance, procedures, and requirements in relation to export certification.

3. The Parties shall encourage the implementation of electronic certification and other technologies to facilitate trade, as appropriate.

4. If a Party requires import certification, it shall ensure the sanitary or phytosanitary requirement for certification is applied only to the extent necessary to meet its appropriate level of protection.

5. Without prejudice to each Party's right to check and ensure the fulfilment of its import conditions, the importing Party shall accept certificates issued by the exporting Party in compliance with the regulatory requirements of the importing Party.

Article 6.10. Import Checks

1. The importing Party shall have the right to carry out import checks based on the sanitary and phytosanitary risks associated with imports. These checks shall be carried out without undue delay and with minimising trade disrupting effects. Each Party shall ensure that its control, inspection and approval procedures are in accordance with Annex C to the SPS Agreement.

2. If import checks reveal non-compliance with the relevant import conditions, the action taken by the importing Party shall be based on an assessment of the risk involved, and not be more trade-restrictive than required to achieve the Party's appropriate level of protection. The import checks shall be based on the following:

(a) in carrying out physical sanitary and phytosanitary import checks, where sampling takes place, the importing Party shall ensure that plants and plant products, animal products and other goods and their packaging are sampled in a representative manner; and

(b) unless there is an identified risk, the importing Party shall, in accordance with its domestic administrative and legislative framework, provide the opportunity for the exporter or its authorised representative to take back the consignment, where

reasonably practicable.

3. The importing Party shall notify the importer or its representative, of a non-compliant consignment and of the reason for non-compliance and shall endeavour, subject to its domestic laws and regulations, to provide them with an opportunity for a review of the decision. If a review is undertaken, the importing Party shall consider any relevant information submitted to assist it in the review, and it shall carry out the review within a reasonable period of time.

4. The Parties reaffirm Article V of GATT 1994 and agree that there shall be freedom of transit for goods in transit.

Article 6.11. Emergency Measures

1. If a Party adopts an emergency measure necessary for the protection of human, animal or plant life or health, that Party shall notify the other Party of the measure through its contact point as soon as possible.

2. On request of the other Party, a Party adopting an emergency measure shall engage in technical consultations under Article 6.14 (Technical Consultations). The Parties shall endeavour to hold technical consultations within 14 days of the receipt of the request, and in any case, the Parties shall hold the consultations as soon as possible following receipt of the request. The Party that adopts the emergency measure shall take into consideration any information provided by the other Party in response to the notification and during technical consultations. These technical consultations shall be carried out in order to avoid unnecessary disruptions to trade and the Parties may consider options for the facilitation of the implementation of the measures.

3. If a consignment is being transported between the Parties at the time of the adoption of the emergency measure, the importing Party shall, when it makes its decision for that consignment, consider any information that has been promptly provided by the exporting Party. The importing Party shall consider the most suitable and proportionate solution to avoid unnecessary disruptions to trade.

4. The importing Party shall ensure that any emergency measure taken on the grounds referred to in paragraph 1 is in accordance with the SPS Agreement.

5. If a Party adopts an emergency measure, it shall commence a science-based review of the measure within a reasonable period of time. The Party shall then review the need for the emergency measure as required, and if it remains in place provide, on request, the justification for maintaining the emergency measure. If the exporting Party considers, on the basis of scientific evidence, that an emergency measure is being maintained by the importing Party without justification, it may provide that evidence to the other Party and request the other Party to review the measure or engage in technical consultations under Article 6.14 (Technical Consultations).

Article 6.12. Animal Welfare

1. The Parties recognise the connection between the improved health of farmed animals and the welfare of farmed animals.

2. The Parties recognise that the protection and improvement of animal welfare may, in accordance with their WTO commitments, be an interest in the context of a Party's trade objectives.

3. The Parties affirm the right of each Party to set its policies and priorities for the protection of animal welfare. Each Party shall take into account its relevant international commitments on animal welfare, when the Party adopts or modifies its law and policies.

4. The Parties shall exchange information, expertise, and experiences in the field of animal welfare with a view to improving mutual understanding of their respective laws and regulations.

5. The Parties shall cooperate in the field of animal welfare and on the WOAH animal welfare standards.

Article 6.13. Antimicrobial Resistance

1. The Parties recognise that antimicrobial resistance is a problem and a global threat to human and animal health.

2. The Parties acknowledge that the nature of the threat requires a One Health approach, in line with the Global Action Plan on Antimicrobial Resistance, which the Parties support.

3. Each Party acknowledges that the threat of antimicrobial resistance requires developing and implementing a National Action Plan in line with the Global Action Plan on Antimicrobial Resistance.

4. The Parties shall endeavour to cooperate on areas of mutual interest in antimicrobial resistance and exchange their experiences, relevant information, expertise and data with each other.

5. The Parties affirm the right of each Party to set its policies, needs, and priorities on antimicrobial resistance specific to their own sensitivities and to adopt or modify its laws, regulations, and policies in this area, informed by the global effect of antimicrobial resistance.

Article 6.14. Technical Consultations

1. If a Party has specific concerns regarding sanitary or phytosanitary measures proposed or implemented by the other Party, or any other measure within the scope of this Chapter, it may request technical consultations through the appropriate contact point or focal point, as identified in accordance with Article 6.18 (Competent Authorities and Contact Points).

2. Unless the Parties determine otherwise, the technical consultations shall be held as soon as possible, and in any case, within 30 days of the request. Consultations may be conducted by electronic or other means, as determined by the Parties.

3. The purpose of technical consultations is to share information and increase understanding, with a view to resolving any concerns about the specific measure that is the subject of the consultations, within a reasonable period of time.

4. If the Parties have already resorted to other mechanisms than those referred to in this Article to address the concerns, they shall continue to make use of them to avoid unnecessary duplication. A Party may request technical consultations to address these concerns, in accordance with paragraph 1, if such other mechanisms do not result in a mutually satisfactory resolution, including if it is not practicable to make use of those mechanisms within a reasonable period of time.

Article 6.15. Notification and Information Exchange

1. Each Party shall promptly notify the other Party of a:

(a) significant change to disease status, such as the presence and evolution of a disease listed in the WOAH list of terrestrial and aquatic animal diseases;

(b) finding of epidemiological importance for an animal disease which is not listed in the WOAH list of terrestrial and aquatic animal diseases, or which is a new disease;

(c) occurrence, outbreak, or spread of plant pests in their territory in accordance with the relevant IPPC standards; or

(d) significant food safety issue related to a product traded between the Parties.

2. The Parties shall endeavour to exchange information on other relevant issues including:

(a) changes to a Party's sanitary and phytosanitary measures and approval procedures that may affect trade between the Parties;

(b) on reasonable request, information on matters related to the development and application of sanitary and phytosanitary measures, that affect or may affect trade between the Parties, with a view to minimising their negative effects; and

(c) information that may enhance mutual understanding of the Parties' sanitary and phytosanitary measures and their application.

3. Unless the SPS Subcommittee decides otherwise, when the information referred to in paragraphs 1 or 2 has been made available via notification to the WTO, or to the relevant international organisations in accordance with its relevant rules, or on publicly available websites of the Parties, the requirement in those paragraphs is deemed to be fulfilled.

Article 6.16. SPS Subcommittee

1. The Parties hereby establish a Subcommittee on Sanitary and Phytosanitary Measures, composed of government representatives of each Party responsible for sanitary and phytosanitary matters.

2. The functions of the SPS Subcommittee shall include:

(a) monitoring implementation and considering any matter related to this Chapter;

(b) providing an opportunity for the identification, prioritisation, discussion, and resolution of sanitary and phytosanitary issues;

(c) facilitating the elimination of unnecessary sanitary and phytosanitary barriers to trade between the Parties;

(d) recommending any agreed proposals to this Chapter to the Joint Committee;

(e) agreeing a written record of the discussions between the Parties on their work and decisions made by the SPS Subcommittee, within a reasonable period of time;

(f) providing a forum to exchange information on each Party's sanitary and phytosanitary regulatory system;

(g) exchanging views, information and experiences related to the cooperation activities on protecting animal welfare and the threat of antimicrobial resistance under Article 6.12 (Animal Welfare) and Article 6.13 (Antimicrobial Resistance); and

(h) any other function as agreed by the Parties.

3. The SPS Subcommittee may:

(a) identify opportunities for greater cooperation activities relevant to this Chapter;

(b) provide opportunities to identify initiatives to strengthen bilateral technical cooperation relevant to this Chapter;

(c) discuss, on reasonable request, a new sanitary or phytosanitary measure being considered;

(d) facilitate improved understanding between the Parties on the implementation of the SPS Agreement and promote cooperation between the Parties on sanitary and phytosanitary issues in multilateral fora, including the WTO SPS Committee, and relevant international organisations, as appropriate; and

(e) perform any other actions as agreed by the Parties.

4. The SPS Subcommittee may establish technical working groups comprising of expert-level representatives of the competent authorities of the Parties to address specific sanitary or phytosanitary issues, or any other issue arising from this Chapter.

5. A Party may refer any sanitary or phytosanitary issue, or any other issue arising under this Chapter, to the SPS Subcommittee and the SPS Subcommittee shall consider the issue as expeditiously as possible. The SPS Subcommittee shall report to the Joint Committee if it resolves the said issue. If the SPS Subcommittee is unable to resolve an issue it shall, on request of a Party, report promptly to the Joint Committee.

6. The SPS Subcommittee shall meet within one year of the date of entry into force of this Agreement, and thereafter on an annual basis, unless the Parties agree otherwise. The SPS Subcommittee may decide to meet by electronic means, and it may also address issues out of session by correspondence. Additional meetings may be held upon request of a Party or the Joint Committee.

7. On entry into force of this Agreement, each Party shall designate and inform the other Party, in writing, of a contact point or focal point, as applicable, to coordinate the SPS Subcommittee meetings in accordance with Article 6.18 (Competent Authorities and Contact Points).

8. The SPS Subcommittee shall establish its rules of procedure within one year of the date of entry into force of this Agreement, unless the Parties decide otherwise. The SPS Subcommittee shall modify its own rules of procedure if the SPS Subcommittee deems it appropriate.

9. The SPS Subcommittee shall take decisions and make recommendations by mutual agreement.

10. The SPS Subcommittee shall report as needed on its activities to the Joint Committee.

Article 6.17. Technical Working Groups

1. A technical working group, established by the SPS Subcommittee, shall meet as agreed by the Parties and shall function on an ad hoc basis.

2. Technical working groups shall be co-chaired by expert-level representatives of the competent authorities of the Parties, and shall identify, address and attempt to resolve issues arising from this Chapter. If these issues are not able to be resolved at the level of the established technical working group, they shall be reported to the SPS Subcommittee in order to reach a mutually acceptable resolution with the least disruption to trade.

3. A technical working group, when addressing an issue agreed by the SPS Subcommittee in accordance with paragraph 2,

may:

(a) engage, at an early stage, in technical exchange and cooperation regarding sanitary and phytosanitary matters and other matters arising from this Chapter;

(b) consider any sanitary or phytosanitary measure or set of measures identified that is likely to affect bilateral trade, directly or indirectly, and provide technical advice with a view to facilitating the resolution of specific trade concerns relating to that measure or set of measures;

(c) serve as a forum to facilitate discussion and consideration of specific risk assessments; and

(d) report to the SPS Subcommittee on progress of work.

4. The technical working group shall report its recommendation on a sanitary or phytosanitary issue to the SPS Subcommittee. The technical working group shall also inform the SPS Subcommittee of its recommendation that it be continued, suspended or dissolved.

Article 6.18. Competent Authorities and Contact Points

1. Each Party shall notify to the other Party a list of its competent authorities on entry into force of this Agreement. The notification shall include the respective role, responsibilities, and contact information of these authorities.

2. Upon entry into force of this Agreement, each Party shall also designate and notify a single contact point that serves as the focal point to respond to enquiries by the other Party about the appropriate contact point for any matter arising from this Chapter, to facilitate any communication between the Parties relating to this Chapter, and any other appropriate contact points for matters arising from this Chapter.

3. Each Party shall promptly notify the other Party of any change of its competent authorities, the contact information of its competent authorities, or its contact point.

Article 6.19. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 7. TECHNICAL BARRIERS TO TRADE

Article 7.1. Definitions

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

Article 7.2. Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, facilitating information exchange, and promoting cooperation.

Article 7.3. Scope

1. Unless this Chapter provides otherwise, this Chapter shall apply to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of central level of government bodies which may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with this Chapter by regional level of government bodies within its territory, which are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.

3. All references in this Chapter to technical regulations, standards, and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards, and procedures except amendments and additions of an insignificant nature.

4. This Chapter shall not apply to:

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

(b) sanitary or phytosanitary measures.

5. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement and the TBT Agreement.

Article 7.4. Affirmation of the TBT Agreement

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

Article 7.5. Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater harmonisation of technical regulations, conformity assessment procedures, and national standards and in reducing unnecessary barriers to trade.

2. To determine whether there is an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall apply the relevant definitions as they are set out and referred to in Annex 1 to the TBT Agreement and shall take into account the Decision of the TBT Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement.

3. When developing technical regulations or conformity assessment procedures each Party shall:

(a) use relevant international standards, guides, or recommendations, or relevant parts of them, to the extent provided for in paragraph 4 of Article 2 and in paragraph 4 of Article 5 of the TBT Agreement, as the basis for its technical regulations and conformity assessment procedures; and

(b) avoid deviation from the relevant international standards, guides or recommendations, or the introduction of additional requirements when compared to those standards, guides, or recommendations,

except where it considers that such international standards, guides, or recommendations would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued, as referred to in Article 2.2 and in Article 5.4 of the TBT Agreement.

4. Where a Party does not use relevant international standards, guides or recommendations, or the relevant parts of them, as referred to in paragraph 3, that Party shall, on request from the other Party:

(a) explain the reasons; and

(b) provide the available information on which this assessment is based.

5. To facilitate an appropriate explanation under paragraph 4, the requesting Party shall ensure that its request for an explanation:

(a) identifies a relevant international standard, guide, or recommendation that the Party has not used as a basis for its technical regulation or conformity assessment procedures; and

(b) describes how the technical regulation or conformity assessment procedures that is not based on the international standard, guide, or recommendation is a restriction, or has the potential to restrict, trade between the Parties.

6. With a view to encouraging the development of international standards, guides, and recommendations that do not create unnecessary obstacles to trade, each Party shall encourage national standards bodies within its territory to cooperate with the national standards bodies in the territory of the other Party.

7. The Parties shall exchange available information on:

(a) each Party's use of standards in technical regulations;

(b) the standard setting processes; and

(c) cooperation agreements or arrangements on standardisation with third parties or international organisations subject to any confidentiality obligations under those agreements or arrangements.

8. Each Party shall encourage national standards bodies within its territory to make standards and the standards development process gender responsive in line with the United Nations Economic Commission for Europe (UNECE) Declaration for Gender Responsive Standards and Standards Development approved at the 28th Annual Session of the UNECE Working Party on Regulatory Cooperation and Standardization Policies on 15 November 2018.

Article 7.6. Technical Regulations

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

2. In addition to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, (1) provide the reasons why it has not or cannot accept a technical regulation of that Party as equivalent to its own. The Party to which the reques is made should provide its response to the other Party within a reasonable period of time.

(1) The Party's request should identify with precision the respective technical regulation it considers to be equivalent and any data or evidence that supports its position.

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

Article 7.7. Conformity Assessment (2)

(2) Nothing in this Article requires a party to accept the results of a conformity assessment body which has not been accredited by an accreditation body of that Party.

1. Where a Party requires that conformity assessment procedures in relation to specific products are performed by specified government authorities of the Party, the Party conducting the conformity assessment procedures shall:

(a) ensure the conformity assessment fee takes into account the cost of the services rendered; and

(b) make information on the conformity assessment fees publicly available.

2. Where a Party requires a conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

(a) select conformity assessment procedures that take into account the risks of nonconformity;

(b) consider, as appropriate, as proof of compliance with technical regulations, the use of a supplier's declaration of conformity; and

(c) where requested by the other Party, consider, if feasible, providing information on the criteria used to select the conformity assessment procedures for specific products.

3. The Parties recognise the advantages of enabling conformity assessment procedures to be carried out online where applicable and reasonably practicable. Where a Party does not allow a conformity assessment procedure to be carried out online, it shall, on request of the other Party, share its reasons.

4. In cases where a positive assurance is required that a product conforms with technical regulations or standards, and relevant international standards, guides or recommendations issued by international standardising bodies exist or their completion is imminent, each Party shall ensure that central level of government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request by the other Party, such international standards, guides or recommendations, or relevant parts are inappropriate for the Party concerned, for, amongst other things, reasons such as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; or fundamental technological or infrastructural problems.

5. Procedures for assessment of conformity by central level of government bodies of each Party shall be in accordance with Article 5 of the TBT Agreement.

6. Further to Articles 6.1 and 6.3 of the TBT Agreement, a Party shall ensure, whenever possible, that results of the conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.(3) A Party shall, upon request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.

(3) For greater certainty, it is recognised that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding.

7. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

(a) a Party may agree with the other Party to accept the results of conformity assessment procedures that conformity assessment bodies located in the other Party's territory conduct for specific technical regulations;

(b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;

(c) a Party may recognise the results of conformity assessment procedures conducted in the other Party's territory;

(d) conformity assessment bodies located in the territory of either Party may enter into voluntary arrangements to accept the results of each other's assessment procedures; and

(e) the importing Party may rely on a supplier's declaration of conformity.

8. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

9. A Party shall, if it considers appropriate and in accordance with its laws and regulations, permit participation of conformity assessment bodies which are located in the territory of the other Party, in its conformity assessment procedures for the sectors set out in Annex 7A (Product Sectors), under conditions no less favourable than those accorded to conformity assessment bodies located in the territory of the permitting Party.

10. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies of the other Party in its conformity assessment procedures as referred to in paragraph 9, it shall, upon reasonable written request of the other Party, explain the reason for its refusal in writing.

11. The Parties recognise the important role that relevant regional or international organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.

12. The Parties shall encourage cooperation between their relevant conformity assessment bodies in working closer on matters such as the acceptance of conformity assessment results between Parties.

13. The Parties shall exchange information on accreditation policy and promote the use of accreditation to facilitate acceptance of conformity assessment results and consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement or the International Accreditation Forum Multilateral Arrangement. Each Party shall use accreditation with authority derived from its government or performed by its government, as appropriate, as a means to demonstrate the technical competence of a conformity assessment body.

Article 7.8. Marking and Labelling

1. Each Party shall ensure that its technical regulations concerning product marking and labelling:

(a) accord treatment no less favourable than that accorded to like goods of national origin; and

(b) do not create unnecessary obstacles to trade between the Parties.

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

(a) the Party shall accept that labelling and corrections to labelling may take place in custom warehouses or other designated areas in the country of import, subject to its relevant laws, regulations, and customs procedures, as an

alternative to labelling and corrections to labelling in the country of origin, unless such labelling and corrections to labelling are required to be carried out by approved persons for reasons of public health or safety;

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

(c) provided that it is not misleading, contradictory, inconsistent or confusing, or that the Party's legitimate objectives are not compromised, the importing Party shall permit the following in relation to the information it requires:

(i) information in other languages in addition to the language required in the Party;

(ii) internationally accepted nomenclatures, pictograms, symbols, or graphics in addition to those required in the Party; and

(iii) additional information to that required in the Party.

3. A Party shall, where feasible, not require any prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objectives.

Article 7.9. Transparency

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account the relevant Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

2. Upon request, a Party shall provide, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in English. If unavailable, the Party shall provide a summary stating the requirements of the notified technical regulations and conformity assessment procedures to the requesting Party in English within a reasonable period of time agreed between the Parties and, if possible, no later than 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the responding Party.

3. Unless otherwise provided for in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the other Party in English, in print or electronically, within a reasonable period of time mutually agreed by the Parties and, if possible, within 60 days of the request.

4. Each Party shall allow persons of the other Party to participate in the consultation procedures which are available to the general public for the development of technical regulations, national standards and conformity assessment procedures, subject to its laws and regulations or administrative arrangements on terms no less favourable than those accorded to its own persons.

5. A Party making a notification in accordance with Article 2.9.2 or Article 5.6.2 of the TBT Agreement shall include in the notification a statement describing the objective of the proposal and the rationale for the approach the Party is proposing.

6. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with Articles 2.9 and 5.6 of the TBT Agreement for the other Party to make comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request from the other Party to extend the comment period.

7. Each Party shall take the comments of the other Party into account and shall endeavour to provide a response to these comments upon request of the other Party.

8. Upon request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

9. Each Party shall consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

10. Each Party shall publish, preferably by electronic means, in at least one official journal or website, all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical

regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central level of government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade. (4) These publications shall be made available in English.

(4) For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO's official website.

11. Each Party shall take such reasonable measures as may be available to it to ensure that, all proposals for new technical regulations and conformity assessment procedures, and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures, and final amendments to existing technical regulations and conformity assessment procedures, of its regional level of governments are published, and are accessible through an official website or journal.

12. For the purposes of applying Article 2.12 and Article 5.9 of the TBT Agreement, the term "reasonable interval" shall mean normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.

13. When a Party detains at the point of entry an imported consignment, due to noncompliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.

Article 7.10. Cooperation and Trade Facilitation

1. The Parties shall strengthen their cooperation in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating trade between the Parties.

2. A Party shall, upon request of the other Party, give consideration to sector specific proposals, for cooperation under this Chapter on matters of mutual benefit.

3. The Parties shall explore opportunities to promote cooperation between themselves, and between bodies in each Party's territory to develop technical regulations, standards, and conformity assessment procedures.

Article 7.11. Technical Discussions

1. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter.

2. Unless the Parties agree otherwise, the Parties shall hold technical discussions within 60 days of the request for technical discussions, and by any agreed method. The Parties shall endeavour to reach a mutually satisfactory solution to the matter as expeditiously as possible and if the requesting Party considers that the matter is urgent, it may request that any discussions commence within a shorter timeframe. In that case, the responding Party shall give positive consideration to this request.

3. For greater certainty, a Party may request technical discussions with the other Party regarding technical regulations or conformity assessment procedures of its regional level of government that may have a significant effect on trade.

4. Information provided in the course of technical discussions is provided in confidence and the other Party shall maintain the confidentiality of the information subject to its laws and regulations.

5. Unless the Parties agree otherwise, technical discussions shall be without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement, or any other agreement to which both Parties are party.

6. Any request for information or technical discussions and communications shall be conveyed through the respective contact points designated pursuant to Article 7.12 (Contact Points).

Article 7.12. Contact Points

1. Each Party shall designate and notify contact points for matters arising under this Chapter, in accordance with Article 27.5 (Contact Points – Administrative and Institutional Provisions).

2. A Party shall promptly notify the other Party of any change of its contact points or the details of the relevant officials.

3. The responsibilities of each contact point shall include communicating with the other Party's contact points, including facilitating discussions, requests, responses to requests from relevant government agencies, and the timely exchange of information on matters arising under this Chapter.

Article 7.13. Subcommittee on Standards, Technical Regulations, and Conformity Assessment Procedures

1. The Parties hereby establish a Subcommittee on Standards, Technical Regulations, and Conformity Assessment Procedures, consisting of representatives of the Parties.

2. The Subcommittee shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The functions of the Subcommittee may include:

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

(b) coordinating cooperation pursuant to Article 7.10 (Cooperation and Trade Facilitation);

(c) facilitating technical discussions;

(d) reporting, where appropriate, its findings to the Committee on Trade in Goods; and

(e) carrying out other functions as may be delegated by the Committee on Trade in Goods.

Chapter 8. TRADE IN SERVICES

Article 8.1. Definitions

For the purposes of this Chapter:

"aircraft repair and maintenance services" means those activities when undertaken on an aircraft or a part thereof while the aircraft or part is withdrawn from service and does not include line maintenance;

"airport operation services" means any service for operation or management of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems, for any kind of remuneration. Airport operation services do not include air navigation services, security services and ground handling services;

"commercial presence" means any type of business or professional establishment,

including through:

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

(b) the creation or maintenance of a branch or a representative office,

within the territory of a Party for the purpose of supplying a service;

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

"ground handling services" means the supply of the following services, on a fee or contract basis: ramp handling, aircraft servicing, aircraft cleaning, loading or unloading, cargo and mail handling services, baggage handling, administrative support services, representational services, passenger handling, flight operations and surface transport. Ground handling services do not include: fixed intra-airport transport systems, security functions and self-handling;

"juridical person of a Party" means a juridical person which is either:

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

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

(i) natural persons of that Party; or

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

a juridical person is:

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

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

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

“line maintenance services” means any maintenance services that are carried out before flight to ensure that the aircraft is fit for the intended flight. It includes minor repairs and modifications which do not require extensive disassembly and can be accomplished by simple means;

“measures by a Party affecting trade in services” includes measures in respect of:

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

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

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

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

“natural person of a Party” means a national of a Party as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);

“sector” of a service means:

(a) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in the respective Schedules of the Parties in Annex 8B (Schedules of Specific Commitments);

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

“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;

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

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

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

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

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

“service supplier” means a person that supplies a service; (1)

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

“services” includes any service in any sector except services supplied in the exercise

of governmental authority;

“supply of a service” includes the production, distribution, marketing, sale and

delivery of a service;

“trade in services” means the supply of a service:

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

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

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

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

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

Article 8.2. Scope

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

2. For the purposes of this Chapter, “measures by a Party” means measures taken by:

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

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

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

3. This Chapter shall not apply to measures relating to:

(a) financial services as defined in Article 9.1 (Definitions – Financial Services);

(b) government procurement;

(c) subsidies or grants provided by a Party, including government- supported loans, guarantees and insurance;

(d) audio-visual services; and

(e) cabotage (2) in maritime transport services. (3)

(2) For India, maritime cabotage is the transportation of passengers or goods between any port or place located in India and any other port or place located in India and transportation of passengers or goods originating or terminating in the same port or place located in India, including transportation of passengers or goods between a port or a place located in India and another port, place, installation or structure situated in the Exclusive Economic Zone (EEZ) of India or on the continental shelf of India. Maritime cabotage shall further include services such as floating storage, offloading, towing, anchor- handling, dredging, off-shore drilling/production, diving support, maintenance support, various types of surveys, cable laying, sea-bed mining operations, pipe-laying, lighterage, salvage, marine construction, hook-up, port and terminal related support services, provided those services are supplied in the above areas by the vessels. For the United Kingdom, maritime cabotage covers the transportation of passengers or goods between a port or point located in the United Kingdom and another port or point located in the United Kingdom, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done in Montego Bay, Jamaica, on 10 December 1982, and traffic originating and terminating in the same port or point located in the United Kingdom.

(3) This exclusion shall not affect the additional commitments undertaken by a Party for International Maritime Transport Services in its Schedule in Annex 8A (Schedules of Specific Commitments).

4. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment. For greater certainty, this Chapter does not apply to measures regarding citizenship, nationality or residence on a permanent basis.

5. In respect of air transport services, this Chapter shall not apply to measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(a) aircraft repair and maintenance services;

(b) line maintenance services;

(c) selling and marketing of air transport services;

(d) computer reservation system services;

(e) airport operation services; and

(f) ground handling services.

6. For greater certainty, Annex 8A (Professional Services) is an integral part of this Chapter.

7. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.

8. Notwithstanding Article 29.5 (Choice of Forum – Dispute Settlement), if the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

Article 8.3. Market Access

1. With respect to market access through the modes of supply identified in the definition of “trade in services” in Article 8.1 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 8B (Schedules of Specific Commitments). (4)

(4) If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) of the definition “trade in services” in Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph of the definition “trade in services” in Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 8B (Schedules of Specific Commitments), are defined as:

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

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

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

(5) 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.

3. If a Party undertakes a market-access commitment in relation to the supply of a service through a mode of supply referred to in subparagraph (a), (b), or (d) of the definition of "trade in services" in Article 8.1 (Definitions), that Party shall not require a service supplier of the other Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident in its territory as a condition for the supply of that service through the relevant mode of supply, unless otherwise specified in its Schedule in Annex 8B (Schedules of Specific Commitments).

Article 8.4. National Treatment

1. Each Party shall, in the sectors inscribed in its Schedule in Annex 8B (Schedule of Specific Commitments) and subject to any conditions and qualifications set out therein, 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. (6)

(6) Specific commitments assumed under this Article shall not be construed to require any 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 under paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

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

Article 8.5. Additional Commitments

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standard or licensing matters, not subject to scheduling, under Article 8.4 (National Treatment) or Article 8.3 (Market Access).

2. A Party making additional commitments under paragraph 1 shall inscribe such commitments in its Schedule in Annex 8B (Schedules of Specific Commitments).

Article 8.6. Schedules of Specific Commitments

1. Each Party shall set out in its Schedule in Annex 8B (Schedules of Specific Commitments), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.3 (Market Access), and Article 8.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex 8B (Schedules of Specific Commitments) shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

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

2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.3 (Market Access) shall be inscribed in the column relating to Article 8.3 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.

3. For greater certainty, Schedules of Specific Commitments shall be annexed to this Chapter as Annex 8B (Schedules of Specific Commitments) and shall form an integral part thereof.

Article 8.7. Most-Favoured-Nation Treatment (7)

(7) For greater certainty, this Article does not cover treatment accorded by a Party to services and service suppliers of territories for whose international relations that Party is responsible.

1. Each Party shall, in respect of the sectors and subsectors set out in its Schedule in Annex 8C (Most-Favoured-Nation Treatment Sectoral Coverage) and subject to any terms, limitations, conditions and qualifications set out therein, accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of a non-Party.

2. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.

3. If, after the date of entry into force of this Agreement, a Party enters into any agreement with a non-Party in which it undertakes to provide treatment to services or service suppliers of that non-Party in a sector or subsector not set out in that Party's Schedule in Annex 8C (Most-Favoured-Nation Treatment Sectoral Coverage), more favourable than that it accords under this Agreement to like services or service suppliers of the other Party, the other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided for in the agreement with the non-Party to services and service suppliers of the other Party. In such circumstances, the Parties shall enter into consultations bearing in mind the overall balance of benefits.

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

Article 8.8. Domestic Regulation

1. For the purposes of this Article:

"authorisation" means permission to supply a service, resulting from a procedure to which a person of a Party must adhere in order to demonstrate compliance with licensing requirements or qualification requirements; and

"competent authority" means a central, regional, or local government or authority or non-governmental body in the exercise of powers delegated by a central, regional, or local government or authority, which is entitled to take a decision concerning authorisation for the supply of a service.

2. This Article shall:

(a) apply to sectors where specific commitments are undertaken in a Party's Schedule in Annex 8B (Schedule of Specific Commitments); and

(b) not apply to any terms, limitations, conditions, or qualifications set out in a Party's Schedule pursuant to Articles 8.3 (Market Access) or 8.4 (National Treatment).

3. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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

5. Nothing in paragraph 4 shall be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

6. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, the Parties shall jointly review the result of the WTO negotiation on disciplines on such measures, pursuant to Article VI.4 of GATS and shall amend this article, as appropriate, after consultation among the Parties to bring the results of those negotiations into effect under this Chapter. Such disciplines shall aim to ensure that such requirements, inter alia:

(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 and qualifications procedures, are not in themselves a restriction on the supply of the service.

7. (a) In sectors in which a Party has undertaken commitments, pending the entry into force of disciplines in these sectors pursuant to paragraph 6, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 6(a), (b), or (c); and

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

(b) In determining whether a Party is in conformity with its obligations under subparagraph 7(a), international standards of relevant international organisations (8) applied by that Party shall be taken into account.

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

8. If a Party requires authorisation for the supply of a service, the Party shall:

(a) promptly publish (9) information necessary for obtaining an authorisation. Where it exists, the information may include:

(9) For the purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.

(i) the licensing and qualification requirements and procedures;

(ii) contact information of relevant competent authorities;

(iii) fees;

(iv) procedures for appeal or review of decisions concerning applications;

(v) indicative or fixed timeframes for processing applications; and

(vi) the length of authorisations, and where relevant, dates for renewal;

(b) endeavour to ensure that the information referred to in subparagraph (a) is easily accessible through electronic means, and to the extent practicable, is consolidated into a single online portal; and

(c) encourage its competent authorities to respond, to the extent practicable, to any reasonable request for information or assistance.

9. Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation for the supply of a service. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

10. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) to the extent practicable, permit the submission of an application at any time throughout the year.(10) If a specific time period for applying exists, the Party shall ensure that its competent authorities allow a reasonable period of time for the submission of an application;

(10) Competent authorities are not required to start considering applications outside of their official working hours and working days.

(b) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions; and endeavour to allow for the completion of any relevant authorisation procedures without the physical presence of the applicant in the territory of that Party;

(c) where they deem appropriate, accept copies of documents that are authenticated in accordance with its laws and regulations, in place of original documents;

(d) to the extent practicable, establish a fixed or indicative timeframe for the processing of an application;

(e) to the extent practicable, confirm in writing (11) that an application has been received;

(11) References to “in writing" in subparagraphs (e) and (g) include in electronic format.

(f) upon request of the applicant, provide without undue delay information concerning the status of the application;

(g) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, ensure that the processing of the application is completed and the applicant is informed of the decision concerning the application, to the extent possible in writing; (12)

(12) Competent authorities may meet this requirement by informing an applicant in advance, in writing, including through a published measure, that the lack of a response after a specified period of time from the date of submission of an application indicates either acceptance or rejection of the application.

(h) if they consider an application incomplete for processing under the Party’s laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) upon request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity (13) to correct deficiencies in the application; and

(13) The opportunity does not require a competent authority to provide extensions of deadlines.

(i) if an application is rejected:

(i) inform the applicant of the decision within a reasonable period of time; and

(ii) to the extent practicable, either upon their own initiative or upon request of the applicant, provide the applicant with the reasons for rejection and with specific guidance to address the issues identified in order to obtain an authorisation The applicant will have the possibility of resubmitting, at its discretion, a new application.

11. Each Party shall ensure, in accordance with its laws and regulations, that authorisation for the supply of a service, once granted, enters into effect without undue delay. (14)

(14) Competent authorities are not responsible for delays due to reasons outside their competence.

12. Each Party shall ensure that the authorisation fees (15) charged by its competent authorities are reasonable, transparent and do not in themselves restrict the supply of a service. Each Party shall endeavour to accept the payment of those authorisation fees by electronic means.

(15) For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions or mandated contributions to universal services provision.

13. Each Party shall provide adequate procedures to verify the competence of professionals of the other Party.

14. If a Party requires an examination for authorisation for the supply of a service, it shall, to the extent practicable:

(a) provide a reasonable period of time prior to the examination to enable interested persons to submit an application;

(b) ensure that the examination is scheduled at reasonably frequent intervals;

(c) accept a request in electronic format to take the examination; and

(d) consider the use of electronic means for conducting the examination and other aspects of the examination process.

15. Each Party may encourage its competent authorities to establish fast-track procedures for service suppliers seeking to renew or extend their current authorisations.

16. If a Party adopts or maintains measures relating to authorisation for the supply of a service, it shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of a service for which authorisation is required. (16)

(16) For greater certainty, this paragraph does not mandate a particular administrative structure. It refers to the decision-making process and administering of decisions.

Article 8.9. Recognition

1. 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, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-Party, nothing in Article 8.7 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, upon request, to negotiate its accession to that agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, that Party shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.

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

5. As set out in Annex 8A (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory that have expressed mutual interest for negotiating mutual recognition agreements or similar arrangements for recognition of professional qualifications to enter into those negotiations in accordance with that Annex.

Article 8.10. Denial of Benefits

1. A Party may deny the benefits of this Chapter:

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

(b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party; or

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

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

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

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party, if the service supplier is a juridical person owned or controlled by person of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of 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.

Article 8.11. Transparency

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency

in trade in services.

2. Notwithstanding Article 25.7 (Non-Application of Dispute Settlement – Transparency), as far as measures of general application affecting trade in services are concerned, the provisions of Article 25.2 (Publication – Transparency) shall be applicable for central, regional, and local governments and authorities of a Party and shall be subject to Chapter 29 (Dispute Settlement).

3. Each Party shall publish promptly and, except in emergency situations, no later than the time of their entry into force, all international agreements pertaining to or affecting trade in services to which a Party is a signatory.

4. Each Party shall respond promptly to any request by the other Party for specific information on any of its measures of general application, including any new, or any changes to existing, laws, regulations or administrative guidelines, or its international agreements, that the requesting Party considers may pertain to or affect trade in services.

Article 8.12. Disclosure of Confidential Information

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Party confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

Article 8.13. Monopolies and Exclusive Service Suppliers

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

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

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

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

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

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

Article 8.14. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.13 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

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

Article 8.15. Payments and Transfers

1. Except under the circumstances envisaged in Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.

2. Each Party shall permit international transfers or payments for current transactions relating to its specific commitments to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer.

3. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund ("IMF") under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in

conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions) or on request of the IMF.

Article 8.16. Safeguard Measures

1. The Parties note that Article X of GATS provides for multilateral negotiations on the question of emergency safeguard measures based on the principle of non- discrimination. The Parties shall review the issue of emergency safeguard measures related to trade in services in light of any provisions agreed under Article X of GATS with a view to their incorporation into this Chapter.

2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Party to address those difficulties.

Article 8.17. Subsidies

1. Notwithstanding subparagraph 3(c) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in services may request consultations with the other Party on such matters. On receipt of such a request, the requested Party shall enter into consultations with the requesting Party, with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has adversely affected trade in services between the Parties. During the consultations, the Party granting the subsidy may consider a request of the other Party for information relating to the subsidy.

3. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any request made or consultations held under this Article or any other dispute arising under this Article.

Article 8.18. Cooperation

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

Article 8.19. Subcommittee on Trade In Services

1. The Parties hereby establish a Subcommittee on Trade in Services (“Subcommittee”) composed of relevant government representatives of each Party. (17)

(17) Representatives of the authorities responsible for financial services are specified in paragraph 2 of Article 9.17 (Institutional Arrangements – Financial Services).

2. The Subcommittee shall:

(a) review and monitor the implementation and operation of this Chapter, Chapter 9 (Financial Services), Chapter 10 (Temporary Movement of Natural Persons), Chapter 11 (Telecommunications), and Chapter 12 (Digital Trade) (“the relevant Chapters”);

(b) consider ways to further enhance trade between the Parties in the areas covered by the relevant Chapters;

(c) consider any other matters related to this Chapter identified by either Party; and

(d) facilitate the exchange of information between the Parties in relation to the relevant Chapters.

3. The Subcommittee may:

(a) make recommendations, or refer matters, to the Joint Committee; and

(b) refer matters to any ad hoc or standing working group or any other subsidiary body related to the relevant Chapters.

4. The Subcommittee shall meet one year after the date of entry into force of this Agreement, and thereafter as agreed by both Parties.

5. The Subcommittee shall report to the Joint Committee as required.

Chapter 9. FINANCIAL SERVICES

Article 9.1. Definitions

For the purposes of this Chapter:

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

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

(b) the creation or maintenance of a branch or representative office, within the territory of a Party for the purpose of supplying a financial service; (1)

(1) For greater certainty, commercial presence may be established for the purpose of supplying services other than financial services, provided that at least one financial service is supplied through such commercial presence.

“electronic payments” means an acceptable transfer of monetary value from a payer to a payee through electronic means;

“financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance related services, all banking and other financial services (excluding insurance). Financial services include the following activities:

(a) insurance and insurance-related services:

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

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

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

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

(b) banking and other financial services (excluding insurance):

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

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

(iii) financial leasing;

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

(v) guarantees and commitments;

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

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

(B) foreign exchange;

(C) derivative products including futures and options;

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

(E) transferable securities; or

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

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

(viii) money broking;

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

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

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

(xii) advisory, intermediation and other auxiliary financial services on all the activities listed at subparagraphs (i) through (xi), including credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy;

“financial service supplier” means any person of a Party seeking to supply or

supplying financial services, but does not include a public entity; (2)

(2) Where the financial 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 financial service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for financial service suppliers under this Chapter. Such treatment shall be extended to the presence through which the financial service is supplied and need not be extended to any other parts of the financial service supplier located outside the territory where the financial service is supplied.

“juridical person of a Party” means a juridical person which is either:

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

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

(i) natural persons of that Party; or

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

a juridical person is:

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

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

“natural person of a Party” means a national as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions);

“new financial service” means a financial service that is not supplied in the territory of a Party but which is supplied and regulated in the territory of the other Party. This may include services related to existing and new financial products, or the manner in which the financial product is delivered;

“public entity” means:

(a) a government, a central bank or a monetary authority of a Party or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity performing functions normally performed by a central bank or monetary authority when exercising those functions;

“self-regulatory organisation” means a non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association, that exercises its own or delegated regulatory or supervisory authority over financial service suppliers which it receives through legislation or delegation from central, regional or governments or authorities; (3)

(3) For greater certainty, a Party may require a self-regulatory organisation to be recognised under that Party’s law.

“subsector” of financial services means with reference to a specific commitment, one or more, or all, subsectors of financial services, as specified in the respective Schedules of the Parties in Annex 9A (Schedules of Specific Commitments on Financial Services); and

“trade in financial services” means the supply of a financial service:

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

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

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

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

Article 9.2. Scope

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

2. This Chapter shall not apply to measures relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted by a public entity for the account or with the guarantee or using the financial resources of the Party.

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier.

3. This Chapter shall not apply to measures relating to:

(a) government procurement of financial services; or

(b) subsidies or grants provided by a Party with respect to the supply of financial services, including government-supported loans, guarantees and insurance.

4. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that natural person of the other Party with respect to that access or employment. For greater certainty, this Chapter does not apply to measures regarding citizenship, nationality or residence on a permanent basis.

Article 9.3. Specific Exceptions

1. Nothing in this Chapter, Chapter 8 (Trade in Services), Chapter 11 (Telecommunications) or Chapter 12 (Digital Trade) shall apply to measures taken or activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary policies and related credit policies, or exchange rate policies.

2. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers, financial service suppliers or any confidential or proprietary information in the possession of public entities.

Article 9.4. Prudential Exception

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from adopting or maintaining

measures for prudential reasons, (4) including for:

(a) the protection of investors, depositors, policyholders, or persons to whom a financial service supplier owes a fiduciary duty;

(b) the maintenance of the safety, soundness, integrity, or financial responsibility of a financial service supplier; or

(c) ensuring the integrity and stability of a Party's financial system.

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

(4) The Parties understand that this includes the maintenance of the safety and financial and operational integrity, of payment, settlement and clearing systems.

Article 9.5. National Treatment

1. Each Party shall, in the subsectors of financial services inscribed in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services) and subject to any conditions and qualifications set out therein, accord to financial services and financial service suppliers of the other Party, (5) in respect of all measures affecting the supply of financial services, treatment no less favourable than that it accords to its own like financial services and financial service suppliers.(6) (7)

(5) Financial service suppliers of the other Party that supply or seek to supply a financial service through one of the modes of supply identified in subparagraphs (a), (b) or (d) of the definition of "trade in financial services" in Article 9.1 (Definitions) must also be engaged in the business of supplying a financial service in the territory of that other Party in order to be accorded the treatment provided for under this Article.

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

(7) And for greater certainty, commitments may relate to the whole or part of a subsector, as specified by a Party in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services).

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

Article 9.6. Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in financial services" in Article 9.1 (Definitions), each Party shall accord financial services and financial service suppliers of the other Party (8) treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services). (9)

(8) Financial service suppliers of the other Party that supply or seek to supply a financial service through one of the modes of supply identified in subparagraphs (a), (b) or (d) of the definition of "trade in financial services" in Article 9.1 (Definitions) must also be engaged in the business of supplying a financial service in the territory of that other Party in order to be accorded the treatment provided for under this Article.

(9) If a Party undertakes a market-access commitment in relation to the supply of a financial service through the mode of supply referred to in subparagraph (a) of the definition of "trade in financial services" in Article 9.1 (Definitions) and if the cross-border movement of capital is an essential part of the financial 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 financial service through the mode of supply referred to in subparagraph (c) of the definition of "trade in financial services" in Article 9.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

2. In the subsectors of financial services where market-access commitments are undertaken, (10) the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services), are defined as:

(10) For greater certainty, commitments may relate to the whole or part of a subsector, as specified by a Party in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services).

(a) limitations on the number of financial 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 financial 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 financial service operations or on the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (11)

(11) This subparagraph does not cover measures of a Party which limit inputs for the supply of financial services.

(d) limitations on the total number of natural persons that may be employed in a particular financial service sub-sector or that a financial service supplier may employ and who are necessary for, and directly related to, the supply of a specific financial 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 financial service supplier may supply a financial service; and

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

3. If a Party undertakes a market-access commitment in relation to the supply of a financial service through a mode of supply referred to in subparagraphs (a), (b) or (d) of the definition of "trade in financial services" in Article 9.1 (Definitions), it shall not require a financial service supplier of the other Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident in its territory as a condition for the supply of that financial service through the relevant mode of supply, unless otherwise specified in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services).

4. For greater certainty, this Article does not prevent a Party from requiring a financial services supplier of the other Party to be authorised, regulated or supervised by the first Party, provided that this does not circumvent the Party's obligation under paragraph 1 and is consistent with other provisions of this Chapter.

Article 9.7. Additional Commitments

1. The Parties may negotiate commitments with respect to measures affecting trade in financial services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under Article 9.5 (National Treatment) or Article 9.6 (Market Access).

2. A Party making additional commitments under paragraph 1 shall inscribe such commitments in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services).

Article 9.8. Schedules of Specific Commitments

1. Each Party shall set out in its Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services), the specific commitments it undertakes under Article 9.5 (National Treatment), Article 9.6 (Market Access), and Article 9.7 (Additional Commitments). With respect to subsectors of financial services where such commitments are undertaken, each Schedule in Annex 9A (Schedules of Specific Commitments on Financial Services) shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

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

2. Measures inconsistent with both Article 9.5 (National Treatment) and Article 9.6 (Market Access) shall be inscribed in the column relating to Article 9.6 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 9.5 (National Treatment) as well.

3. For greater certainty, Schedules of Specific Commitments shall be annexed to this Chapter as Annex 9A and shall form an integral part thereof.

Article 9.9. Denial of Benefits

1. A Party may deny the benefits of this Chapter:

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

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

2. A Party may deny the benefits of this Chapter to a financial service supplier of the other Party, if the financial service supplier is a juridical person owned or controlled by person of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of 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.

Article 9.10. Transparency

1. Chapter 24 (Good Regulatory Practice) and Chapter 25 (Transparency) do not apply to a measure covered by this Chapter.

2. The Parties recognise that transparent measures of general application governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

3. Each Party shall:

(a) ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective, and impartial manner;

(b) ensure that all measures of general application to which this Chapter applies are promptly published or made available in such a manner as to enable an interested person and the other Party to become acquainted with them;

(c) to the extent possible, ensure advance publication of any measures of general application, to which this Chapter applies, that it proposes to adopt and provide an interested person and the other Party a reasonable opportunity to comment on these proposed measures;

(d) maintain or establish enquiry points and appropriate mechanisms to respond, within a reasonable period of time, to an inquiry or a request for information from an interested person regarding measures of general application to which this Chapter applies;

(e) allow, to the extent possible, a reasonable period of time between the final publication of a measure of general application, to which this Chapter applies, and the date when it enters into effect; and

(f) ensure that measures of general application adopted or maintained by a self-regulatory organisation of the Party, to which this Chapter applies, are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

4. If a Party adopts or maintains measures relating to authorisation for the supply of a financial service, the Party shall ensure that:

(a) such measures are based on objective and transparent criteria; (12) and

(12) Such criteria may include competence and the ability to supply a financial service, including to do so in a manner consistent with a Party's regulatory requirements. Financial regulatory authorities may assess the weight to be given to each criterion.

(b) the procedures are impartial, not more burdensome than necessary to ensure the quality of the financial service and do not in themselves constitute a restriction on the supply of the financial service.

5. If a Party requires authorisation for the supply of a financial service, the financial regulatory authorities of the Party shall:

(a) promptly publish (13) the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation;

(13) For the purposes of these disciplines, "publish" means to include in an official publication or on an official website.

(b) to the extent practicable, not require an applicant to approach more than one financial regulatory authority for each application for authorisation. If a financial service is within the jurisdiction of multiple financial regulatory authorities, multiple applications for authorisation may be required;

(c) allow a reasonable period for the submission of an application;

(d) to the extent possible, accept applications in electronic format;

(e) accept copies of documents, that are authenticated in accordance with that Party's law, in place of original documents, unless the financial regulatory authorities require original documents to protect the integrity of the authorisation process;

(f) ensure that any authorisation fees (14) charged by financial regulatory authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant financial service. Each Party shall endeavour to accept the payment of those authorisation fees by electronic means;

(14) For the purposes of this paragraph, authorisation fees do not include payment for auction, fees for tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision.

(g) confirm in writing (15) that an application has been received and, at the request of the applicant, provide without undue delay information concerning the status of the application;

(15) References to "in writing" include in an electronic format.

(h) in the case of an application considered complete for processing under the Party's law, make a decision on the application within 180 days and notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for a decision to be made within 180 days, the financial regulatory authorities shall notify the applicant of this without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter;

(i) in the case of an application considered incomplete under the Party's law, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant, provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity (16) to provide the additional information that is required to complete the application, and ensure that any deadlines for the additional information required are made clear to the applicant;

(16) Such opportunity does not require a financial regulatory authority to provide extensions of deadlines.

however, if none of the actions in subparagraphs (i) through (iii) is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(j) if an application is rejected then, either upon the request of an unsuccessful applicant in writing, or upon their own

initiative, to the extent practicable, inform the applicant of the reasons for denial of the application;

(k) an applicant should not be prevented from submitting another revised application solely on the basis that an application had been previously rejected; and

(l) ensure that authorisation, once granted, may enter into effect without undue delay, subject to the applicable terms and conditions. (17)

(17) Financial regulatory authorities are not responsible for delays due to reasons outside their competence.

Article 9.11. Payments and Clearing

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party that supply or seek to supply a financial service through commercial presence in the Party's territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. (18) This Article is not intended to confer access to the Party's lender of last resort facilities (19).

(18) For greater certainty, this Article does not prevent a Party from requiring a financial services supplier to be authorised, regulated or supervised, provided that this does not circumvent the Party's obligation under this Article.

(19) For greater certainty, a Party need not grant access under this Article to financial service suppliers of the other Party that supply or seek to supply a financial service through commercial presence in the Party's territory if such access or treatment is not granted to its own or like financial service suppliers.

Article 9.12. Performance of Back-Office Functions

1. Each Party recognises that the back-office functions of a financial service supplier that supplies or seeks to supply a financial service through commercial presence in its territory, which are performed by the head office or an affiliate of that financial service supplier in the territory of either Party, may be important to the effective management and efficient operation of that financial service supplier.

2. A Party may require a financial service supplier that supplies or seeks to supply a financial service through commercial presence in its territory to ensure compliance with any domestic requirements, including in relation to its core and critical functions, but recognises the importance of avoiding the imposition of arbitrary requirements on the performance of back-office functions.

3. To the extent practicable, and subject to paragraph 2, each Party shall permit the performance of such back-office functions as are referred to in paragraph 1 by such a head office or affiliate as is referred to in paragraph 1. For greater certainty, nothing in this Article prevents a Party from requiring a financial service supplier that supplies or seeks to supply a financial service through commercial presence in its territory to retain certain functions, including core and critical functions.

Article 9.13. Self-Regulatory Organisations

If a Party requires a financial service supplier (20) of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to supply a financial service in or into the territory of that Party, or grants a privilege or advantage when supplying a financial service through a self-regulatory organisation, then the requiring Party shall ensure that the self-regulatory organisation observes the obligations in Article 9.5 (National Treatment).

(20) For greater certainty, this article does not prevent a Party from requiring a financial services supplier to be authorised, regulated or supervised, provided that this does not circumvent the Party's obligation under this Article.

Article 9.14. Financial Services New to the Territory of a Party (21)

(21) The Parties understand that nothing in this Article prevents a financial service supplier of a Party from applying to the other Party to

request that it authorises the supply of a financial service that is not supplied in the territory of either Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

1. Each Party shall permit a financial service supplier of the other Party established and supplying a new financial service in the territory of the other Party to supply such new financial service through commercial presence in the territory of the first Party that the first Party would permit its own financial service suppliers to supply, in like situations, without adopting a law or modifying an existing law. (22) Each Party may:

(22) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

(a) notwithstanding subparagraph 2(e) of Article 9.6 (Market Access), determine the institutional and juridical form through which the new financial service may be supplied;

(b) require authorisation, regulation or supervision for the supply of the service from the relevant regulator; and

(c) require the financial service supplier of the other Party to become authorised to do business and to be regulated or supervised by the relevant regulator under the law of the Party.

2. Where a Party requires authorisation to supply the new financial service, a decision by the relevant regulator as to whether to grant authorisation shall be made within a reasonable time.

3. To support innovation in financial services, the Parties shall endeavour to collaborate, and share knowledge, experiences and developments in financial services, to advance financial integrity, consumer protection, financial inclusion, competition and financial stability.

Article 9.15. Recognition

1. A Party may recognise prudential measures of the other Party or a non-Party, which may be based on relevant standards of any international standard setting body, in determining how the Party's measures affecting trade in financial services shall be applied. Such recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with the other Party or the non-Party.

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

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

Article 9.16. Payments and Transfers

1. Except under the circumstances envisaged in Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments referred to in paragraph 3.

2. Each Party shall permit international transfers or payments for current transactions relating to its specific commitments referred to in paragraph 3 to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer.

3. This Article shall apply to the extent that trade in financial services as defined in sub-paragraphs (a), (b) and (d) of the definition of "trade in financial services" in Article 9.1 (Definitions) is subject to commitments pursuant to Article 9.5 (National Treatment) and Article 9.6 (Market Access).

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the International Monetary Fund

("IMF") under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 28.3 (Measures to Safeguard the Balance of Payments – General Provisions and Exceptions) or on request of the IMF.

Article 9.17. Institutional Arrangements

1. The Subcommittee on Trade in Services shall be responsible for the effective implementation and operation of this Chapter.

2. The authorities responsible for financial services for each Party are:

(a) for India, the Department of Commerce; and

(b) for the United Kingdom, His Majesty's Treasury or its successor.

3. A Party shall promptly notify the other Party of any change of its contact point.

Article 9.18. Consultation

1. A Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider the request.

2. Consultations under this Article shall include the relevant representatives of the responsible authorities specified in Article 9.17 (Institutional Arrangements).

3. The consulting Parties shall report the results of their consultations to the Subcommittee on Trade in Services.

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulatory authorities, or the requirements of an agreement or arrangement between financial regulatory authorities of the Parties, or to require a financial regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 9.19. Financial Services Dispute Settlement

1. Chapter 29 (Dispute Settlement) applies, as modified by this Article, to the settlement of disputes arising under this Chapter.

2. The Parties shall ensure for disputes arising under this Chapter that in addition to the requirements set out in Article 29.10 (Qualifications of Panellists - Dispute Settlement):

(a) a majority of panellists shall have the necessary expertise relevant to the financial services under dispute, and such expertise may include the regulation of financial service suppliers; and

(b) the appointed panellist acting as chair shall, where possible, have prior experience as counsel or arbitrator in dispute settlement proceedings.

3. Further to paragraph 5 of Article 29.15 (Compensation and Suspension of Concessions or other Obligations – Dispute Settlement), in considering what concessions or other obligations to suspend for the purposes of that Article, the complaining Party shall apply the following principles. In cases where the panel has found an inconsistency with the Agreement which affects: (23)

(23) For the avoidance of doubt, in cases where the Panel has found an inconsistency with the Agreement which affects only the financial services sector, the principles in paragraphs 5 and 6 of Article 29.15 (Compensation and Suspension of Concessions or other Obligations – Dispute Settlement) shall apply.

(a) the financial services sector and any other sector, the complaining Party may suspend obligations in the financial services sector that have an effect that does not exceed a level equivalent to the level of nullification or impairment in the complaining Party's financial services sector; or

(b) notwithstanding paragraph 5(b) of Article 29.15 (Compensation and Suspension of Concessions or other Obligations –

Dispute Settlement), only a sector other than the financial services sector, the complaining Party shall not suspend obligations in the financial services sector.

Article 9.20. Cooperation and Exchange of Views on Financial Services

1. The Parties shall strengthen cooperation efforts in the financial services sector. As part of these efforts, the Parties shall exchange views through appropriate forums on issues relating to financial services at intervals as agreed by the Parties. The forums may include existing forums, or such forums as may be agreed by the Parties, and shall be composed of relevant entities to be decided by the Parties, which shall include, where appropriate, the regulatory and supervisory authorities of the Parties.

2. The Parties recognise that these efforts support objectives which include the following:

(a) enhancing trade in financial services between the Parties;

(b) strengthening financial systems and promoting financial stability;

(c) improving market integrity, mitigating unnecessary market fragmentation and promoting fair and competitive markets;

(d) promoting robust and efficient financial service suppliers, markets, and infrastructure;

(e) protecting consumers, investors, depositors, policy holders and persons to whom a fiduciary or statutory duty is owed by a financial service supplier; and

(f) providing a transparent and conducive environment for financial service suppliers.

3. In addition to paragraph 3 of Article 9.14 (Financial Services New to the Territory of a Party), the Parties shall endeavour to collaborate, share knowledge and experiences and to support development in financial services and technology, in areas such as, but not limited to, FinTech and RegTech (24) and other areas of new and emerging technology. In doing so the Parties shall advance financial integrity, consumer protection, financial inclusion, financial stability, operational resilience, sustainability and facilitate cross-border development of new financial services.

(24) For the purpose of this paragraph, the Parties shall treat FinTech and RegTech as referring to activities which involve the improved use of technology across financial services.

4. The Parties shall endeavour to share best practices to promote diversity (25) in financial services and recognise the importance of building a diverse, financial services industry, and the positive impact that diversity has on balanced decision-making, consumers, workplace culture, investment, and competitive markets.

(25) Diversity includes, but is not limited to, gender, ethnicity, and professional, educational and socio- economic background.

5. The Parties recognise the importance of international cooperation to facilitate the inclusion of environmental, social, and governance considerations in decision-making by financial services suppliers.

Article 9.21. Credit Rating of Financial Services Suppliers

1. In relation to the provision of a financial service in the territory of a Party:

(a) by a financial service supplier of the other Party, which is already authorised by the Party to supply financial services through commercial presence in its territory, and

(b) where the provision of financial services is wholly or partially contingent on an assessment by the Party of the credit rating of that financial service supplier or the sovereign credit rating of the other Party, the host Party shall, to the extent practicable, undertake its assessment in a reasonable manner. (26)

(26) For greater certainty, this paragraph does not apply in relation to credit rating assessments undertaken by financial service suppliers.

Article 9.22. Electronic Payments

1. Recognising the rapid growth of electronic payments, including those provided by non-banks and FinTech entities, the Parties shall, while maintaining resilience, endeavour to work together to support the development of an efficient, safe and secure environment for cross-border electronic payments, including through:

(a) encouraging mutual cooperation and sharing information about each other's experience, technical expertise and innovations in the area of digital payment infrastructure and products;

(b) encouraging the adoption and use of internationally accepted standards;

(c) promoting interoperability and interlinkages of electronic payment infrastructures including payment systems; and

(d) encouraging innovation and competition in electronic payments services.

2. To this end, each Party shall, while maintaining resilience, endeavour to:

(a) for the electronic payment systems solely operated by a Party, publicly disclose objective and risk-based system rules and criteria for operation and participation which permit fair and open access;

(b) encourage payment service providers to safely and securely make available new technologies and standards for their financial products and services, and where possible, to facilitate greater interoperability, innovation and competition in electronic payments; and

(c) facilitate innovation and competition and the introduction of new electronic payment products and services, such as through adopting regulatory and industry sandboxes and cooperation at international fora.

3. In view of paragraph 1, the Parties recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through laws and regulatory measures, and that the adoption and enforcement of laws, regulatory measures and policies should take into account the risks undertaken by the payment service providers.

Article 9.23. Subsidies

1. Notwithstanding subparagraph 3(b) of Article 9.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in financial services in light of any disciplines relevant to financial services agreed under Article XV of GATS with a view to their incorporation into this Chapter.

2. A Party which considers that it is adversely affected by a subsidy of the other Party related to trade in financial services may request consultations with the other Party on such matters. On receipt of such a request, the requested Party shall enter into consultations with the requesting Party, with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has adversely affected trade in financial services between the Parties. During the consultations, the Party granting the subsidy may consider a request of the other Party for information relating to the subsidy.

3. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

Chapter 10. TEMPORARY MOVEMENT OF NATURAL PERSONS

Article 10.1. Definitions

For the purposes of this Chapter:

"immigration formality" means a visa, permit, pass or other document or electronic authority granting temporary entry;

"natural person of a Party" means a national of a Party as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions); and

"temporary entry" means entry into and temporary stay in the territory of a Party by a natural person of the other Party covered by this Chapter without the intent to establish permanent residence.

Article 10.2. Objectives

1. The objectives of this Chapter are to:

(a) provide for rights and obligations in relation to the temporary movement of natural persons between the Parties;

(b) facilitate the temporary entry of natural persons covered by this Chapter who are engaged in the supply of services; and

(c) ensure streamlined and transparent processes for obtaining immigration formalities for the temporary entry of natural persons covered by this Chapter.

Article 10.3. Scope

1. This Chapter shall apply to measures by a Party affecting the temporary entry into the territory of that Party by natural persons of the other Party who fall under any of the categories defined in the former Party's Schedule in Annex 10A (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

2. For greater certainty, Annex 10A (Schedules of Specific Commitments on Temporary Movement of Natural Persons) is an integral part of this Chapter.

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

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

5. The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Chapter.

6. For greater certainty, all requirements provided for in the law of each Party regarding employment and social security shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements, provided that those requirements are consistent with the obligations in this Chapter and in any agreement between the Parties regarding employment or social security measures.

Article 10.4. Grant of Temporary Entry

1. Each Party shall set out in its Schedule in Annex 10A (Schedules of Specific Commitments on Temporary Movement of Natural Persons) the commitments it makes for the temporary entry of natural persons of the other Party, which shall specify the conditions and limitations for temporary entry, including length of stay, for the categories of natural persons of that other Party included in that Schedule.

2. Each Party shall grant temporary entry or extension of temporary stay to natural persons of the other Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those natural persons:

(a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and

(b) meet all relevant eligibility requirements for temporary entry into, or extension of temporary stay in, the granting Party.

3. In respect of the specific commitments on temporary entry of natural persons in this Chapter, unless otherwise specified in Annex 10A (Schedules of Specific Commitments on Temporary Movement of Natural Persons), neither Party shall adopt or maintain limitations on the total number of natural persons of the other Party to be granted temporary entry, in the form of numerical quotas or the requirement of an economic needs test.

4. A Party may refuse to issue an immigration formality to a natural person of the other Party covered by this Chapter if the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any natural person who is involved in such dispute.

5. The sole fact that a Party grants temporary entry to a natural person of the other Party pursuant to this Chapter shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

Article 10.5. Processing of Applications

1. On receipt of a complete application for an immigration formality, or an extension or renewal thereof, each Party shall, as expeditiously as possible, process the application, make a decision on it and notify the applicant of the decision. Such notification shall include:

(a) for approved applications, the period of temporary stay and, if practicable, any other relevant conditions; and

(b) for refused or denied applications, information on any available review or appeal procedures and, to the extent required by the law of a Party, the reasons for refusal or denial.

2. On request of an applicant, each Party in receipt of a complete application for an immigration formality, or an extension or renewal thereof, shall endeavour to promptly provide information concerning the status of the application.

3. If a Party requires additional information from the applicant in order to process the application, that Party shall endeavour to notify in line with domestic processes, without undue delay, the applicant of the required additional information and set a reasonable deadline for providing it.

4. Each Party shall endeavour to accept applications in electronic format. If an applicant has a choice to submit the application in either paper or electronic format, the Party shall treat electronic applications as equivalent to paper applications.

5. Where appropriate and to the extent its law permits, each Party shall accept copies of documents authenticated, in accordance with its law, in place of original documents.

6. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality by a natural person covered by this Chapter are reasonable, in that they do not unduly impair or delay trade in services under this Agreement.

Article 10.6. Transparency

1. Further to Article 25.2 (Publication – Transparency), each Party shall make publicly available information relating to current requirements for the temporary entry of natural persons of the other Party covered by this Chapter.

2. The information referred to in paragraph 1 shall include, where applicable, the following:

(a) categories of immigration formality;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file, such as consular offices or online;

(d) application fees and an indicative timeframe for the processing of an application;

(e) the maximum length of stay under each category of immigration formality;

(f) conditions for any available extension or renewal;

(g) rules regarding accompanying dependants; and

(h) available review or appeal procedures.

3. Further to Article 25.5 (Provision of Information – Transparency), if a Party adopts a new immigration measure or modifies an existing immigration measure that affects temporary entry of natural persons of the other Party covered by this Chapter, that Party shall:

(a) update information made publicly available pursuant to paragraphs 1 and 2 as soon as possible; and

(b) endeavour to promptly inform the other Party of the measure adopted or modified.

4. To the extent possible, when introducing or changing requirements for the temporary entry of natural persons of the other Party covered by this Chapter, each Party, in accordance with its law, shall provide a reasonable period of time between the date when the relevant measure is made publicly available, including through publication on the internet where feasible, and the date it enters into force.

5. Within 90 days of the date of entry into force of this Agreement, the Parties shall exchange publicly available information on current procedures relating to the processing of applications for temporary entry.

Article 10.7. Cooperation on Return and Readmissions

The Parties shall cooperate on the return and readmission of natural persons of a Party covered by this Chapter staying in the territory of the other Party if that natural person is in contravention of that other Party's measures relating to temporary entry.

Article 10.8. Working Group on the Temporary Movement of Natural Persons

1. The Parties hereby establish a Working Group on the Temporary Movement of Natural Persons ("Working Group") composed of representatives of each Party. The Working Group shall be a subsidiary body of the Subcommittee on Trade in Services.

2. The Working Group shall meet within one year of the date of entry into force of this Agreement, and thereafter as agreed by the Parties.

3. The Working Group's functions shall be to:

(a) review and monitor the implementation of this Chapter;

(b) consider opportunities to facilitate temporary entry of natural persons covered by this Chapter; and

(c) facilitate the exchange of information about each Party's immigration measures relating to the categories of natural persons as defined in each Party's Schedule in Annex 10A (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

4. The Working Group shall report to the Subcommittee on Trade in Services as required.

Article 10.9. Dispute Settlement

1. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

(a) the matter involves a pattern of practice; and

(b) the natural persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the natural persons concerned.

Chapter 11. TELECOMMUNICATIONS

Article 11.1. Definitions

For the purposes of this Chapter:

"cost-oriented" means based on cost, and may include a reasonable profit, and may

involve different cost methodologies for different facilities or services;

"end-user" means a final consumer of or subscriber to a public telecommunications service, including a supplier other than a supplier of public telecommunications services;

"essential facilities" means facilities of a public telecommunications network or

service that:

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

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

"interconnection" means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier of a public telecommunications network or service to communicate with users of another supplier

of a public telecommunications network or service, and to access services provided by another supplier of public telecommunications networks or services;

“international mobile roaming service” means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables an end-user whose mobile handset or other device normally accesses public telecommunication services in the territory of one Party to use their mobile handset or other device for voice, data or messaging services in the territory of the other Party;

“intra-corporate communications” means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to the laws and regulations of a Party, affiliates. For these purposes, the terms “subsidiaries”, “branches” and, where applicable, “affiliates” shall be as defined by each Party. In this Chapter, “intra-corporate communications” excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers;

“leased circuits” means telecommunications facilities between two or more designated

points that are set aside for the dedicated use of, or availability to, a user;

“licence” means any formal authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a public telecommunications network or service, including licences, concessions, permits, or registrations;

“major supplier” means a supplier of public telecommunications networks or public telecommunications services which has the ability to materially affect the terms of participation, having regard to price and supply, in a relevant market for public telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

“Mobile number portability” means the ability of end-users of public telecommunications services who so request to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

“non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services under like circumstances;

“public telecommunications network” means any telecommunications infrastructure used for the provision of public telecommunications services between and among defined network termination points, as provided for in the laws and regulations of each Party;

“public telecommunications service” (1) means any telecommunications service that is offered to the public generally;

(1) For greater certainty, in India those services shall be provided by a public telecommunications service supplier licensed in India.

“reference interconnection offer” means interconnection offer by a major supplier that is made publicly available, so that any supplier of public telecommunications services that is willing to accept it may obtain interconnection with the major supplier on that basis;

“telecommunications” means the transmission and reception of signals by any

electromagnetic means;

“telecommunications dispute resolution authority” means any authority, including, where applicable, the telecommunications regulatory authority pursuant to the Party’s laws and regulations, responsible for the resolution of disputes concerning telecommunications;

“telecommunications network” means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

“telecommunications regulatory authority” means the body or bodies responsible for

the regulation of telecommunications networks and services covered by this Chapter;

“telecommunications service” means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, and

“user” means a service consumer or a service supplier using a public telecommunications network or service.

Article 11.2. Scope

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

2. For greater certainty, those measures by a Party affecting trade in telecommunications services are subject to the rights and obligations contained in Chapter 8 (Trade in Services), including the Party’s schedules of specific commitments.

3. This Chapter shall apply subject to rules, regulations and licence conditions, as applicable within the territory of each Party, provided that they are not inconsistent with this Agreement.

4. This Chapter shall not apply to:

(a) a measure affecting services providing, or exercising editorial control over, content transmitted using telecommunications networks or services;

(b) a measure relating to broadcast or cable distribution of radio or television programming, except a measure to ensure that a cable or broadcast service supplier has continued access to and use of public telecommunications networks and services; or

(c) a measure relating to the supply of new services. (2)

(2) For the purposes of this Chapter, “new services” for a Party shall not include a telecommunicationsservice that meets any of the following conditions:(a) is covered under the Provisional Central Product Classification, published by theUnited Nations in 1991;(b) is specified under that Party’s Schedule in Annex 8B (Schedules of SpecificCommitments);(c) is a service which:(i) for the United Kingdom, already exists at the date of entry into force of thisAgreement, including if the character of that existing service is subsequentlychanged;(ii) for India, is authorised by it at the date of entry into force of this Agreement.

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

Article 11.3. Access and Use

1. Each Party shall ensure that a service supplier of the other Party is accorded access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders on a timely basis and on reasonable, transparent and non-discriminatory terms and conditions. This obligation shall be applied, among other things, through paragraphs 2 through 6.

2. Each Party shall ensure that a service supplier of the other Party is permitted to:

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

(b) provide services to individual or multiple end-users over circuits leased or owned by another service supplier to the extent that the scope and type of those services are consistent with the laws and regulations of the Party;

(c) interconnect leased or owned circuits with public telecommunications networks or services or with circuits leased or owned by another service supplier; and

(d) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications networks and services to the public generally.

3. Each Party shall ensure that a service supplier of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders, including for intra-corporate communications of that service supplier, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of a Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications and protect the privacy of personal data of users, subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

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

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

(c) ensure that such access to and use of public telecommunications networks and services shall not constitute a security and safety hazard and is not in contravention of any statute, rule or regulation (including those related to public policy of the Party) which are publicly available and applied without discrimination on the suppliers and users of services of similar categories.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks or services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with those networks and services;

(b) restrictions on shared use of those networks and services;

(c) a requirement, if necessary, for the interoperability of those networks and services;

(d) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and

(e) notification, registration, and licensing.

Article 11.4. Access to Essential Facilities

1. Subject to paragraph 2, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications networks or services of the other Party access to essential facilities for the purpose of providing public telecommunications networks or services, on a timely basis, on terms and conditions, and at rates, which are reasonable, non-discriminatory and transparent.

2. Each Party shall provide its telecommunications regulatory authority with the power to determine the essential facilities to which a major supplier must provide access.

3. Each Party shall endeavour to ensure that its telecommunications regulatory authority bases any determination under paragraph 2 on matters including achieving effective competition and the long-term interests of end-users.

Article 11.5. Submarine Cable Systems

Each Party may provide reasonable and non-discriminatory treatment for access to submarine cable systems (including landing facilities) in its territory, where a supplier is authorised to operate a submarine cable facility as a public telecommunications service.

Article 11.6. Co-location

Each Party shall endeavour to ensure that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications networks or services of another Party to locate their equipment at the major supplier’s premises on a timely basis and on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, non- discriminatory and transparent.

Article 11.7. Resale

1. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers, taking into account the need to promote competition or benefits to the long-term interests of end-users.

2. Where a Party has determined that a public telecommunications service must be offered for resale by a major supplier, that Party shall ensure that any major supplier of public telecommunications networks or services in its territory does not

impose unreasonable or discriminatory conditions or limitations on the resale of that public telecommunications service.

Article 11.8. Interconnection

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory:

(a) enters into negotiations for interconnection with a supplier of public telecommunications networks or services of the other Party who is within the same territory, if requested to do so by that supplier; or

(b) provides interconnection with a supplier of public telecommunications networks or services of the other Party, to the extent provided for in its laws and regulations.

Article 11.9. Interconnection with Major Suppliers

Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities of suppliers of public telecommunications networks or services of the other Party:

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

(b) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications), and of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated suppliers, or for its subsidiaries or other affiliates;

(c) on a timely basis and on terms, conditions (including technical standards and specifications), and cost-oriented rates that are transparent and reasonable (having regard to economic feasibility); and

(d) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities and mutually agreed terms and conditions.

2. Each Party shall ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

3. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of the other Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least one of the following options:

(a) a reference interconnection offer;

(b) another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications networks or services; or

(c) the terms and conditions of an interconnection agreement in effect.

4. In addition to the options provided in paragraph 3, each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

5. Each Party shall ensure that the applicable procedures for interconnection with a major supplier in its territory are made publicly available.

6. Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

Article 11.10. Competitive Safeguards on Major Suppliers

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of public telecommunications networks or services that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. For the purposes of paragraph 1, anti-competitive practices shall include:

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

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

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

Article 11.11. Treatment by Major Suppliers

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

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

(b) availability of technical interfaces necessary for interconnection.

Article 11.12. Mobile Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide mobile number portability on a timely basis and on reasonable and non-discriminatory terms and conditions.

Article 11.13. International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. Each Party shall adopt or maintain measures to enhance transparency and competition with respect to international mobile roaming rates which may include ensuring that information regarding retail rates is easily accessible to consumers.

3. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 11.14. Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain.

2. Each Party shall administer any universal service obligation that it defines and maintains in a transparent, non-discriminatory and competitively neutral manner, and shall endeavour to ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined. Universal service obligations defined according to those principles shall not be regarded, in themselves, as anti-competitive.

Article 11.15. Allocation and Use of Scarce Resources

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

2. When allocating radio spectrum for public telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition.

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

4. Each Party retains the right to establish and apply spectrum and frequency management policies which may affect the number of suppliers of public telecommunications networks or services, provided that it does so in a manner that is consistent with this Agreement. Each Party also retains the right to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 11.16. Flexibility In the Choice of Technology

1. Neither Party shall prevent a supplier of public telecommunications networks or services from choosing the technologies it wishes to use to supply its services.

2. Notwithstanding paragraph 1, a Party may take measures to protect a legitimate public policy interest, provided that any measure is not applied in a manner that creates unnecessary obstacles to trade.

Article 11.17. Licensing Process

1. Where a licence is required for the supply of a public telecommunications network or service, a Party shall make publicly available:

(a) all the licensing criteria and procedures that it applies;

(b) the terms and conditions of individual licences and the period of time normally required to obtain a decision concerning an application for a licence. Each Party shall endeavour to ensure that the decision is taken within the stated period of time.

2. Each Party shall ensure that any licensing criteria or applicable procedure, as well as any obligation or condition imposed on or associated with a licence, is objective, transparent, non-discriminatory, and related to and not more burdensome than necessary for the kind of network or service provided.

3. Each Party shall ensure that, upon request, an applicant receives the reasons for the denial of a licence in writing, which may include in electronic form.

Article 11.18. Independent Regulatory and Dispute Resolution Authority

1. Each Party shall ensure that its telecommunications regulatory authority and telecommunications dispute resolution authority are separate from, and not accountable to, any supplier of public telecommunications networks and services.

2. Each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of public telecommunications networks or services.

3. Each Party shall ensure that regulatory decisions of, and the procedures used by, its telecommunications regulatory authority and telecommunications dispute resolution authority related to provisions contained in this Chapter are impartial with respect to all market participants.

Article 11.19. Enforcement

Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of public telecommunications networks or services provide it, promptly on request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Information requested shall be treated in accordance with the Party's law relating to confidentiality.

Article 11.20. Transparency

1. Each Party shall make publicly available online the functions of its telecommunications regulatory authority.

2. Each Party shall endeavour to ensure that suppliers of public telecommunications networks or services are provided with adequate advance notice of, and opportunity to comment on, a regulatory decision of general application that its telecommunications regulatory authority proposes.

3. Each Party shall make publicly available, including online, its measures or information relating to public telecommunications networks or services:

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

(b) specifications of technical interfaces with those networks and services;

(c) bodies responsible for the preparation and adoption of relevant standards;

(d) conditions applying to the attachment of terminal or other equipment to the public telecommunications networks; and

(e) notification, registration or licensing requirements, if any.

Article 11.21. Confidentiality

Each Party shall ensure, in accordance with its laws and regulations, the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures are not applied in a manner which constitutes a means of arbitrary or unjustifiable

discrimination, or a disguised restriction on trade in services.

Article 11.22. Dispute Settlement and Appeal

1. Each Party shall ensure that any supplier of public telecommunications networks or services affected by a decision of the telecommunications regulatory authority or telecommunications dispute resolution authority has the right to appeal against that decision to an independent judicial or administrative authority. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority or telecommunications dispute resolution authority shall stand, unless interim measures are granted in accordance with the Party's law.

2. Each Party shall ensure that a supplier of public telecommunications networks or services that is supplying those networks or services in the territory of a Party has timely recourse to its telecommunications dispute resolution authority to resolve disputes in accordance with the law of that Party.

3. Each Party shall ensure that a decision issued by its telecommunications dispute resolution authority is made publicly available, having regard to the Party's law relating to confidentiality.

4. Each Party shall ensure that the suppliers of public telecommunications networks or services involved in the dispute:

(a) are given a full statement of the reasons on which the decision is based; and

(b) may appeal the decision to a body that is independent of the telecommunications dispute resolution authority, in accordance with paragraph 1.

Article 11.23. Cooperation

1. The Parties recognise the transformational impact of telecommunications networks, infrastructure and technologies (including those that are new and emerging), and the importance of those technologies to the Parties' respective economies and societies. Accordingly, the Parties shall endeavour to:

(a) exchange information on the opportunities and challenges associated with telecommunications networks, infrastructure and technologies;

(b) work together in international fora to promote a shared approach to these opportunities and challenges; and

(c) exchange information and experience in spectrum management.

2. The Parties further recognise the importance of promoting diversified and secure telecommunications markets. To this end, each Party shall:

(a) encourage a diverse and competitive market for public telecommunications networks and services in its territory; and

(b) protect the security and integrity of its telecommunications infrastructure.

3. The Parties recognise the importance of international standards for global compatibility and interoperability of public telecommunications networks and services, and endeavour to promote those standards bilaterally and through the work of relevant international organisations.

Chapter 12. DIGITAL TRADE

Article 12.1. Definitions

For the purposes of this Chapter:

"algorithm" means a defined sequence of steps, taken to solve a problem or obtain a result;

"electronic authentication" means an electronic process that enables the confirmation of:

(a) the electronic identification of a person; or

(b) the origin and integrity of data in electronic form;

"electronic invoicing" means the automated creation, exchange and processing of a request for payments between a supplier and a buyer using a structured digital format;

“electronic registered delivery service” means a service that makes it possible to transmit data between persons by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage, or any unauthorised alterations;

“electronic signature” means data in electronic form that is in, affixed to, or logically associated with, an electronic data message that may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message; (1)

(1) For greater certainty, nothing in this definition prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the electronic data message has not been altered or verifying the identity of the signatory.

“electronic time stamp” means data in electronic form which binds other data in electronic form to a particular date and time, establishing evidence that the latter data existed at that date and time;

“electronic trust service” means an electronic service consisting of:

(a) the creation, verification and validation of electronic signatures, electronic time stamps, electronic registered delivery services, electronic seals, certificates related to those services, and certificates for website authentication; or

(b) the preservation of electronic signatures or certificates related to those services;

“emerging technology” means an enabling and innovative technology that has potentially significant application across a wide range of existing and future sectors, including:

(a) artificial intelligence, including machine learning;

(b) distributed ledger technologies;

(c) quantum technologies;

(d) immersive technologies;

(e) sensing technologies;

(f) digital twins; and

(g) the Internet of Things;

“end-user” means a natural person or juridical person to the extent provided for in a Party’s laws and regulations, using or requesting a public telecommunications service for personal, trade, business, or professional purposes;

“measure by a Party” means a measure taken by:

(a) central government and authorities of that Party; or

(b) non-governmental bodies in the exercise of powers delegated by central government or authorities of that Party;

“public telecommunications service” means a public telecommunications service as defined in Article 11.1 (Definitions – Telecommunications);

“trade administration document” means a form or document issued or controlled by a Party which must be completed by or for an importer or exporter in connection with the import or export of a good; and

“unsolicited commercial electronic message” means an electronic message (2) that is sent for commercial or marketing purposes directly to an end-user via a public telecommunications service, without the consent of the recipient or despite the explicit rejection of the recipient.

(2) For greater certainty, an electronic message includes electronic mail and text (Short Message Service or “SMS”) and multimedia (Multimedia Message Service or “MMS”) messages.

Article 12.2. Objective

1. The Parties recognise the benefits of, and opportunities provided by, digital trade.

2. The Parties further recognise the importance of:

(a) facilitating the use and development of digital trading systems;

(b) promoting cooperation among domestic frameworks to facilitate digital trade;

(c) international cooperation with a view to developing international frameworks to govern digital trade that are free, fair, and inclusive; and

(d) adopting international and domestic frameworks that:

(i) promote the principle of technological neutrality; (3)

(3) For greater certainty, subparagraph 2(d)(i) shall not be construed to impose any obligations or commitments, or affect the interpretation of other Chapters in this Agreement.

(ii) take into account emerging technologies; and

(iii) advance the interests of consumers and businesses engaged in digital trade, while promoting consumer confidence in digital trade.

Article 12.3. Scope and General Provisions

1. This Chapter shall apply to measures by a Party affecting trade by electronic means.

2. This Chapter shall not apply to:

(a) audio-visual services; or

(b) government procurement.

3. For greater certainty, a measure that affects the supply of a service delivered or performed electronically is subject to the obligations contained in relevant provisions of Chapter 8 (Trade in Services), Chapter 9 (Financial Services) and Chapter 11 (Telecommunications), including the Party's schedules of specific commitments, and exceptions set out in this Agreement that are applicable to those obligations.

Article 12.4. Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996), adopted by the United Nations General Assembly done at New York on 12 June 1996, with additional Article 5bis as adopted in 1998.

2. Each Party shall endeavour to:

(a) avoid overly burdensome regulation of electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

3. The Parties recognise the importance of facilitating the use of electronic transferable records. To this end, each Party shall endeavour to adopt or maintain a legal or regulatory framework governing electronic transferable records that:

(a) takes into account principles and model texts developed by relevant international bodies, as appropriate; and

(b) does not deny the legal effect, validity, or enforceability of an electronic transferable record solely on the basis that it is in electronic form.

Article 12.5. Conclusion of Contracts by Electronic Means

1. Except in circumstances otherwise provided for in its law, each Party shall ensure that:

(a) its legal framework allows for a contract to be concluded by electronic means; and

(b) its law does not result in an electronic contract being deprived of legal effect, enforceability, or validity, solely on the ground that the contract has been concluded by electronic means.

2. The Parties recognise the importance of transparency for minimising barriers to the use of electronic contracts in digital trade. To that end, each Party shall:

(a) promptly publish the circumstances referred to in paragraph 1 on any official website hosted by the central level of government; (4) and

(4) For greater certainty, subparagraph 2(a) shall apply even where the circumstances are set out only in law at the central level of government.

(b) review those circumstances with a view to reducing them over time. (5)

(5) For greater certainty, reduction of the circumstances is not required as a result of that review.

Article 12.6. Electronic Signature, Electronic Authentication and Electronic Trust Services

1. The Parties recognise the benefits of electronic authentication and electronic trust services in providing greater certainty, integrity, and efficiency in the electronic transfer of information or data. Accordingly, the Parties recognise the important contribution of these services to consumer and business trust in the digital economy.

2. Except in circumstances otherwise provided for under its applicable laws and regulatory framework, neither Party shall deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, an electronic time stamp, the authenticating data resulting from electronic authentication, or of data sent and received using an electronic registered delivery service, solely on the ground that it is in electronic form.

3. Neither Party shall adopt or maintain a measure that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication method or electronic trust service for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial and administrative authorities that the use of electronic authentication or an electronic trust service in that transaction complies with the applicable legal requirements.

4. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the relevant method of electronic authentication or electronic trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent, and non-discriminatory, and shall only relate to the specific characteristics of the category of transactions concerned.

5. The Parties shall work towards the mutual recognition of electronic trust services and electronic authentication, and endeavour to engage in regulatory cooperation.

Article 12.7. Digital Identities

1. The Parties recognise that cooperation between the Parties on digital identities will promote connectivity and further growth of digital trade, while recognising that each Party may take different legal and technical approaches to digital identities. Accordingly, the Parties shall endeavour to pursue mechanisms to promote compatibility between their respective digital identity regimes.

2. The Parties shall endeavour to facilitate initiatives to promote compatibility, which may include:

(a) fostering technical cooperation between each Party's implementation of digital identities;

(b) developing comparable protection of digital identities under each Party's legal framework;

(c) supporting the development of international frameworks on digital identity regimes;

(d) identifying and implementing use cases for the mutual recognition of digital identities; and

(e) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation standards and security standards, and the promotion of the use of digital identities.

Article 12.8. Paperless Trading

1. Each Party shall make trade administration documents available to the public in electronic form, to the extent possible.

2. Each Party shall accept a trade administration document submitted electronically as the legal equivalent of the paper version of that document, except where:

(a) that Party is subject to a requirement to the contrary in its domestic law or in international law; or

(b) doing so would reduce the effectiveness of the trade administration process.

3. Each Party shall endeavour to publish information on measures related to paperless trading on relevant official websites.

4. The Parties shall, where appropriate, cooperate bilaterally and in international fora on matters related to paperless trading, including by promoting the acceptance of electronic versions of trade administration documents.

5. In developing initiatives concerning the use of paperless trading, the Parties shall take into account the principles and guidelines of relevant international bodies.

Article 12.9. Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to increase the efficiency, accuracy, and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for electronic invoicing within its territory are able to exchange relevant usable information.

2. Each Party shall ensure that the implementation of measures related to electronic invoicing in its territory is designed to support the cross-border exchange of relevant usable information between the Parties' electronic invoicing frameworks. To this end, each Party shall take into account relevant international frameworks when developing measures related to electronic invoicing.

3. The Parties recognise the economic importance of promoting the global adoption of electronic invoicing systems that are able to exchange relevant usable information with each other. To this end, the Parties shall endeavour to:

(a) promote, encourage, support or facilitate the adoption of electronic invoicing by juridical persons;

(b) promote the existence of policies and processes that support electronic invoicing;

(c) generate awareness of, and build capacity for, electronic invoicing; and

(d) share best practices and collaborate, where appropriate, on promoting the adoption of electronic invoicing systems that are able to exchange relevant information with each other.

Article 12.10. Principles on Open Internet Access

1. Subject to their applicable policies, laws and regulations, each Party shall endeavour to adopt or maintain appropriate measures to ensure that an end-user in its territory may:

(a) access, distribute, and use, a service and application of their choice available on the internet, subject to reasonable, transparent, and non- discriminatory network management;

(b) connect a device of their choice to the internet, provided that the device does not harm the network; and

(c) access information on the network management practices of their internet access service supplier, as appropriate.

Article 12.11. Data Innovation

1. The Parties recognise that data innovation promotes economic, societal and consumer benefits through improved data-driven services and technologies.

Accordingly, the Parties recognise the importance of creating an environment that enables, supports, and is conducive to, experimentation and innovation, while also acknowledging the need to protect personal information.

2. To this end, the Parties shall endeavour to support data innovation, including through:

(a) collaborating on data projects, including projects involving academia or industry, using regulatory sandboxes as required;

(b) cooperating on the development of policies, frameworks, and standards for data mobility, including consumer data portability; or

(c) sharing research and industry practices related to data innovation.

Article 12.12. Open Government Data

1. For the purposes of this Article, "government data and information" means non-proprietary data and information held by the central level of government and, to the extent provided for under a Party's laws and regulations, by other levels of government. (6)

(6) For greater certainty, this Article is without prejudice to a Party's law pertaining to intellectual property and personal data protection.

2. The Parties recognise that facilitating public access to and use of government data and information stimulates economic and social development, competitiveness, and innovation. To this end, each Party is encouraged to expand the coverage of government data and information digitally available for public access and use through engagement and consultation with interested stakeholders.

3. Each Party shall provide interested persons with a mechanism to request the disclosure of specific government data and information.

4. To the extent that a Party chooses to make government data and information available to the public, it shall endeavour to ensure that to the extent possible the data and information is in a machine-readable and open format, and can be searched, retrieved, used, reused, and redistributed.

5. To the extent that a Party chooses to make government data and information available to the public, it shall endeavour to avoid imposing a condition that unduly prevents or restricts the user of that data and information from: (7)

(7) For greater certainty, nothing in this paragraph prevents a Party from requiring a user of that information to link to original sources.

(a) reproducing, redistributing, or republishing the data and information;

(b) regrouping the data and information; or

(c) using the data and information for commercial and non-commercial purposes, including in the process of production of a new product or service.

6. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to, and use of, government data and information that the Party has made public, with a view to enhancing and generating business, and innovation opportunities, especially for SMEs, including start-ups.

Article 12.13. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive, fraudulent, and unfair commercial practices when they engage in digital trade, as well as measures conducive to the development of consumer confidence.

2. Each Party shall adopt or maintain measures that protect consumers engaged (8) in digital trade, including laws and regulations that proscribe misleading, deceptive, fraudulent, and unfair commercial activities that cause harm or potential harm to those consumers. The Parties further affirm that paragraphs 2 and 3 of Article 16.4 (Consumer Protection – Competition and Consumer Protection Policy) shall apply when consumers are engaged in digital trade.

(8) For the purposes of this Article, the term "engaged" includes the pre-transaction phase of online commercial activities.

3. While recognising that the form of protection may be different as between online and other forms of commerce, each Party shall provide a consumer engaged in an online commercial activity with a level of protection that is, in its effect, not

less than that provided under its law to a consumer engaged in another form of commerce.

4. The Parties recognise the importance of online consumer protection and, as appropriate, shall promote cooperation between their respective national consumer protection authorities and agencies or other relevant bodies on activities related to online consumer protection. To this end, the Parties affirm that cooperation under Article 16.5 (Cooperation - Competition and Consumer Protection Policy) includes cooperation with respect to online consumer protection.

5. Each Party shall endeavour to publish information on the consumer protection it provides to consumers, including how:

(a) a consumer can pursue a remedy; and

(b) a business can comply with any legal requirements.

6. The Parties further recognise the importance of improving awareness of and providing access to consumer redress mechanisms to protect a consumer engaged in an online commercial activity, including for a consumer of a Party transacting with a supplier of the other Party.

7. The Parties shall endeavour to explore the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of claims concerning digital trade.

Article 12.14. Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require a supplier of an unsolicited commercial electronic message to facilitate the ability of a recipient to prevent the ongoing reception of those messages;

(b) require the consent, pursuant to its laws and regulations, of a recipient to receive a commercial electronic message; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall endeavour to ensure, to the extent possible, that an unsolicited commercial electronic message is clearly identifiable as such, clearly discloses on whose behalf it is made, and contains the necessary information to enable an end-user to request cessation at any time.

3. Each Party shall provide access to redress or recourse against a supplier of an unsolicited commercial electronic message that does not comply with a measure adopted or maintained pursuant to paragraphs 1 or 2.

4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

5. Paragraphs 1 through 3 shall not apply to unsolicited commercial electronic messages sent via the internet or MMS messages until a Party adopts or maintains those measures regarding unsolicited commercial electronic messages sent via the internet or MMS messages.

Article 12.15. Source Code

1. Neither Party shall require the transfer of, or access to, source code (9) of software owned by a person of the other Party.

(9) For greater certainty, for the purposes of this Article, a reference to “source code” includes an algorithm embedded in the source code, but does not include the expression of that algorithm in any other form, including in prose.

2. Nothing in this Article shall be construed to: (10) (11)

(10) For greater certainty, paragraph 2 is without prejudice to Articles 28.1 (General Exceptions - General Provisions and Exceptions) and 28.2 (Security Exceptions - General Provisions and Exceptions).

(11) For greater certainty, subparagraphs (a) and (b) apply to a requirement to preserve and make available the source code of software that is designed to promote algorithmic accountability in furtherance of or following an investigation, inspection, examination, enforcement action, or judicial proceeding.

(a) preclude a regulatory body, a judicial authority, or an administrative tribunal of a Party, or a designated conformity assessment body operating in a Party's territory, from requiring a person of the other Party to preserve and make available (12) the source code of software in furtherance of or ensuing an investigation, inspection, examination, enforcement action, or judicial proceeding; or

(12) The Parties understand that this making available shall not be construed to negatively affect the status of the intellectual property rights of that source code of software.

(b) apply to a remedy imposed, enforced, or adopted by a regulatory body, a judicial authority, or an administrative tribunal of a Party, in accordance with a Party's laws and regulations, following an investigation, inspection, examination, enforcement action, or judicial proceeding.

3. Where source code of software has been revealed to a Party, or to a designated conformity assessment body operating in a Party's territory, upon its request, that Party shall adopt or maintain measures to prevent the unauthorised disclosure of source code of software. To this end, each Party shall provide for appropriate safeguards against that disclosure, including by limiting the access to, and use of, that source code of software to those who are essential to the performance of that activity only.

4. This Article shall not apply to the voluntary transfer of, or granting of access to, source code of software by a person of the other Party:

(a) on a commercial basis, such as in the context of a freely negotiated contract; or

(b) under an open-source licence, such as in the context of open-source coding.

Article 12.16. Cybersecurity

1. The Parties recognise that threats to cyber security undermine confidence in digital trade. Accordingly, the Parties shall endeavour to:

(a) build the capabilities of their respective national entities responsible for cybersecurity incident response, taking into account the evolving nature of cybersecurity threats;

(b) maintain cooperation to anticipate, identify and mitigate malicious intrusions or dissemination of malicious code that affect electronic networks, and to swiftly address cybersecurity incidents;

(c) cooperate by sharing information and best practices on matters related to cybersecurity; and

(d) support the development of open, transparent, and multi-stakeholder technical standards.

2. Given the evolving nature of cybersecurity threats, the Parties recognise that risk-based approaches can be effective in addressing those threats. Accordingly, each Party shall endeavour to employ, and shall encourage juridical persons within its jurisdiction to use, risk-based approaches to:

(a) manage cybersecurity risks and to detect, respond to, and recover from cybersecurity events; and

(b) improve their cyber resilience.

Article 12.17. Cooperation on Emerging Technologies

1. The Parties recognise that emerging technologies play important roles in promoting economic competitiveness and facilitating international trade and investment flows, and that coordinated action across multiple trade policy areas helps to maximise economic and social benefits of those technologies.

2. The Parties shall endeavour to develop governance and policy frameworks for the trusted, safe, and responsible use of emerging technologies. In developing those frameworks, the Parties recognise the importance of:

(a) taking into account the principles and guidelines of relevant international bodies; and

(b) having regard to the principles of technological interoperability and technological neutrality.

3. The Parties shall endeavour to cooperate on matters related to emerging technologies with respect to digital trade. This cooperation may include:

(a) exchanging information and sharing experiences and best practices on laws, regulations, policies, enforcement, and compliance;

(b) cooperating on issues and developments relating to emerging technologies, such as ethical use, human diversity and unintended biases, technical standards, and algorithmic transparency;

(c) promoting collaboration between each Party's governmental and non- governmental entities in relation to research and development opportunities and opportunities for investment in emerging technologies; and

(d) playing an active role, including through international fora, in:

(i) the development of international standards, regulations; and conformity assessment procedures that support the growth of emerging technologies; and

(ii) matters concerning the interaction between trade and emerging technologies.

Article 12.18. Digital Inclusion

1. The Parties recognise the importance of digital inclusion, so that all people and businesses can participate in, contribute to, and benefit from digital trade. To this end, the Parties recognise the importance of expanding and facilitating digital trade opportunities by removing barriers to participation in digital trade, and that this may require tailored approaches, developed in consultation with businesses, individuals, and other groups that disproportionately face those barriers.

2. The Parties shall cooperate on matters relating to digital inclusion, including the participation of women and other groups and individuals that disproportionately face barriers to digital trade. This cooperation may include:

(a) identifying and addressing barriers in accessing digital trade opportunities;

(b) sharing experiences and best practices for developing datasets, and conducting gender-focused analysis in relation to digital trade policies, including by developing methods for monitoring women's participation in digital trade;

(c) improving digital skills and access to online business tools; and

(d) other areas as may be mutually agreed by the Parties.

3. The Parties recognise the role played by SMEs, including women-led juridical persons, in economic growth and job creation, and the need to address the barriers to participation in digital trade for those entities. To this end, the Parties shall seek to:

(a) promote cooperation on digital trade between SMEs of the Parties;

(b) encourage SME participation in platforms that help link them with a potential business partner; and

(c) share best practices in improving digital skills and leveraging digital tools and technology to improve access to capital and credit, and other areas that could help SMEs adapt to digital trade.

4. The Parties acknowledge the existence of a digital divide between countries, and the role of digital trade in promoting social and economic development and poverty reduction. To that end, the Parties shall endeavour to undertake and strengthen cooperation, including through existing mechanisms, to promote the participation of countries that face barriers to participation in digital trade. This may include sharing best practices, active engagement in international fora and promoting developing countries' participation in, and contribution to, the global development of digital trade.

5. The Parties shall actively participate in relevant international fora to promote initiatives for advancing digital inclusion in digital trade.

Article 12.19. Cooperation

1. The Parties recognise the fast-paced and evolving nature of digital trade, and the role of cooperation between the Parties in increasing and enhancing opportunities for businesses, consumers, and society at large.

2. In addition to areas of cooperation between the Parties identified in this Chapter, the Parties shall exchange information on, and share experiences and best practices on, laws, regulations, policies, and compliance relating to digital trade.

3. The Parties shall, where appropriate, cooperate and actively participate in relevant international fora to promote the development and adoption of international frameworks for digital trade.

4. The Parties shall encourage the development, by the private sector, of methods of self-regulation that foster digital trade.

5. The Parties shall endeavour to:

(a) work together to address challenges for SMEs, including start-ups, in the use of digital trade;

(b) promote and facilitate collaboration between government entities, juridical persons, and other non-governmental entities on digital technologies, including digital innovation and emerging technologies, relating to trade, investment, and research and development opportunities; and

(c) facilitate participation by women in digital trade, acknowledging the objectives in Chapter 23 (Trade and Gender Equality).

Article 12.20. Forward Review Mechanism

1. After the date of entry into force of this Agreement, if a Party enters into a regional trade agreement (13) with a non-Party establishing disciplines within the scope of the following subparagraphs, that Party, upon request of the other Party, shall enter into consultations to extend appropriate equivalent disciplines (14) under this Agreement to those agreed with the non-party addressing:

(13) For greater certainty, for the purposes of this Article, a "regional trade agreement" means a reciprocal preferential trade agreement between two or more parties that covers substantially all trade between those parties and meets the conditions set out in Article XXIV of GATT 1994 or Article V of GATS, as applicable. It does not include a multilateral or plurilateral agreement concluded or any disciplines adopted within the framework of the WTO.

(14) For greater certainty and for the purposes of this paragraph, "equivalent disciplines" means disciplines having an equivalent legal effect and which are equivalent in substance.

(a) the adoption or maintenance of a legal framework for the protection of the data of natural persons;

(b) the prohibition or restriction of the cross-border transfer of information for the purposes of trade or investment; and

(c) the prohibition of the imposition of requirements to store or process commercial data in that Party's territory as a condition for doing business in that territory.

2. This Article shall not affect the protection of personal data provided for under each Party's law.

3. This Article shall not be construed as to oblige a Party to extend to the other Party the benefit of any commitments resulting from regulatory cooperation measures, in particular measures relating to the standards or criteria for the authorisation, licencing, or certification of a natural or juridical person to supply a service, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

Article 12.21. Review

1. The Parties shall undertake a review of this Chapter within the five years following the date of entry into force of this Agreement.

2. A review pursuant to paragraph 1 shall be undertaken to ensure that the disciplines contained in this Chapter remain relevant to the digital trade issues and challenges confronting the Parties.

3. A review pursuant to paragraph 1 shall be concluded within a reasonable period of time.

4. The Subcommittee on Trade in Services, in pursuance of paragraph 2, may:

(a) identify the disciplines or provisions; and

(b) make recommendations to the Joint Committee.

Chapter 13. INTELLECTUAL PROPERTY RIGHTS

Article 13.1. Definitions

For the purposes of this Chapter:

“Beijing Treaty” means the Beijing Treaty on Audiovisual Performances done at Beijing on 24 June 2012;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

“broadcasting” means the transmission by wire or wireless means, including by cable or satellite, for public reception of images, sounds or of images and sounds or of the representations thereof, and including transmission of encrypted signals if the means for decrypting are provided to the public by the transmitting broadcasting organisation or with its consent, and “broadcast” shall be construed accordingly;

“Budapest Treaty” means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure done at Budapest on 28 April 1977, as amended on 26 September 1980;

“ccTLDs” means country-code top level domains;

“competent authority” includes the appropriate judicial, administrative or law enforcement authorities under a Party’s law;

“covered subject matter” means each and all of the subject matter categories covered in Section G (Copyright and Related Rights), being works, performances, phonograms and broadcasts;

“Declaration on TRIPS and Public Health” means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) adopted at Doha on 14 November 2001;

“fixation” means the embodiment of sounds, moving images or representations thereof, in each case, from which they can be perceived, reproduced or communicated through a device;

“geographical indication” means an indication that identifies a good as originating (1) in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(1) The definition of “originating” in Article 1.4 (General Definitions - Initial Provisions and General Definitions) shall not apply to this Chapter.

“intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

“Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks” means the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO in 1999;

“Locarno Agreement” means the Locarno Agreement Establishing an International Classification for Industrial Designs done at Locarno on 8 October 1968, as amended on 28 September 1979;

“Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks done at Madrid on 27 June 1989, as amended on 3 October 2006 and on 12 November 2007;

“Marrakesh Treaty” means the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled done at Marrakesh on 27 June 2013;

“Nice Agreement” means the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks done at Nice on 15 June 1957, as revised at Geneva on 13 May 1977 and amended on 28 September 1979;

“Nice Classification” means the international system for the classification of goods and services for the purpose of the registration of marks established under the Nice Agreement;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and as amended on 28 September 1979;

“PCT” means the Patent Cooperation Treaty done at Washington on 19 June 1970, as amended on 28 September 1979, and modified on 3 February 1984 and on 3 October 2001;

“performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore, and “performances” shall be construed accordingly;

“phonogram” means the fixation of the sounds of a performance or of other sounds other than in the form of a fixation incorporated in a cinematographic or other audio- visual work;

“producer of a phonogram” means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

“trade secret” means information that:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

“trade secret holder” means any person lawfully in control of a trade secret;

“Vienna Agreement” means the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks done at Vienna on 12 June 1973, as amended on 1 October 1985;

“Washington Treaty” means the Treaty on Intellectual Property in Respect of Integrated Circuits done at Washington on 26 May 1989;

“WCT” means the WIPO Copyright Treaty, done at Geneva on 20 December 1996; “WIPO” means the World Intellectual Property Organization;

for greater certainty, “work” includes a cinematographic work, photographic work, and computer program; and

“WPPT” means the WIPO Performances and Phonograms Treaty, done at Geneva on 20 December 1996.

Article 13.2. Objectives

1. The objectives of this Chapter are:

(a) that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations; and

(b) to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights.

Article 13.3. Principles

1. A Party may, in formulating or amending its law, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to its socio-economic and technological development, provided that those measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 13.4. Understandings In Respect of this Chapter

1. Having regard to the underlying public policy objectives of their national systems, while recognising the different levels of economic development and capacity and differences in national legal systems, which are reflected in this Chapter, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, content, culture and the arts;

(c) foster competition and open and efficient markets;

(d) maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;

(e) establish and maintain transparent intellectual property systems; and

(f) promote and maintain adequate and effective protection and enforcement of intellectual property rights to provide confidence to right holders and users, through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the general public.

Article 13.5. Nature and Scope of Obligations

1. Each Party affirms its rights and obligations under the TRIPS Agreement, including their commitment to the Declaration on TRIPS and Public Health. This Chapter complements and further specifies the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which both Parties are a party.

2. Each Party shall give effect to the provisions of this Chapter and provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 13.6. Understandings Regarding TRIPS and Public Health Measures

1. The Parties recognise the preferable and optimal route to promote and ensure access to medicines is through voluntary mechanisms, such as voluntary licensing which may include technology transfer on mutually agreed terms.

2. The Parties reaffirm the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

(a) the Parties affirm the right to fully use the flexibilities as duly recognised in the Declaration on TRIPS and Public Health;

(b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and

(c) the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

3. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

Article 13.7. International Agreements

1. Each Party affirms that it has ratified or acceded to the following international agreements and reaffirms its obligations under each agreement:

(a) Berne Convention;

(b) Budapest Treaty;

(c) Locarno Agreement;

(d) Madrid Protocol;

(e) Marrakesh Treaty;

(f) Nice Agreement;

(g) Paris Convention;

(h) PCT;

(i) Vienna Agreement;

(j) WCT; and

(k) WPPT.

2. Each Party shall give due consideration to ratifying or acceding to the Beijing Treaty if it is not already a party to that agreement.

Article 13.8. National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals (2) of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection (3) of intellectual property rights subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT and the Washington Treaty. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under this Chapter.

(2) For the purposes of this Article, "nationals" has the same meaning as in the TRIPS Agreement.

(3) For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter.

2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that the derogation is:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 13.9. Transparency

1. Each Party shall endeavour to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to publish online information that it makes public concerning applications for trade marks, geographical indications, registered designs, patents, and plant variety rights. (4) (5)

(4) For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 13.31 (Electronic Trade Mark System) and Article 13.60 (Electronic Design System).

(5) For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.

3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trade marks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights. (6)

(6) For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted

intellectual property right.

Article 13.10. Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. A Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.

Article 13.11. Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

Article 13.12. Certain Applicants and Right Holders

A Party may provide support to certain categories of applicants and right holders such as SMEs, start-ups, or educational institutions. Support may include guidance to applicants and right holders, other initiatives, or concessions in the fee to be paid in respect of filing, processing, registration, grant and maintenance of intellectual property in accordance with the law of the Party providing that support. (7)

(7) For the purpose of this Article, the definition of SMEs, start-ups and educational institutions would be governed by the law of the Party providing that support.

Section B. Cooperation

Article 13.13. Contact Points

Each Party shall designate and notify the other Party of one or more contact points for communication on all matters covered by this Chapter no later than 60 days after the date of entry into force of this Agreement.

Article 13.14. Cooperation

1. The Parties recognise the growing importance of the protection of intellectual property and shall endeavour to cooperate on the subject matter covered by this Chapter, including through appropriate coordination and exchange of information between the relevant agencies or institutions of the Parties. The areas of cooperation may include:

(a) the establishment of arrangements between their respective collecting societies;

(b) engagement with SMEs, start-ups and educational institutions including at SME and start-up focused events and through public-private engagement with SMEs and start-ups, particularly in relation to the use, protection and enforcement of intellectual property rights;

(c) the exchange of information on issues of interest to SMEs and start-ups seeking intellectual property protection;

(d) educational and awareness campaigns relating to intellectual property rights aimed at the public and businesses;

(e) the exchange of information in relation to intellectual property policy and law relevant to new and emerging technologies, such as artificial intelligence and clean and green technology;

(f) sharing of best practices on aspects of intellectual property policy and law with the aim of supporting the development and deployment of environmentally friendly and low-emissions technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services;

(g) collaboration on best practices, projects and programmes aimed at reducing intellectual property right infringement,

including:

(i) coordination to prevent counterfeiting and piracy of goods;

(ii) sharing of experience of intellectual property rights enforcement between customs, law enforcement and judicial bodies; and

(iii) voluntary stakeholder initiatives to reduce intellectual property right infringement, including over the internet and other marketplaces;

(h) capacity-building and technical assistance, particularly in relation to intellectual property administration and registration systems, reducing intellectual property right infringement and improving enforcement of intellectual property rights; and

(i) the exchange of information on developments in domestic and international intellectual property policy, including policies involving the use of intellectual property for research, innovation and economic growth.

2. In addition, the Parties shall endeavour to cooperate in relation to activities for improving the international intellectual property regulatory framework, including by:

(a) fostering international harmonisation, administration and enforcement of intellectual property rights; and

(b) working together at the WTO and WIPO on relevant activities including in relation to relevant multilateral intellectual property agreements.

3. The Parties shall cooperate and share best practices on legal protection and effective legal remedies against the unauthorised circumvention of technological protection measures, which includes the manufacturing and trafficking of devices that may be used for the circumvention of any effective technological measures.

Article 13.15. Working Group on Intellectual Property Rights

1. The Parties hereby establish a Working Group on Intellectual Property Rights composed of government representatives of each Party. The Working Group may also invite experts to attend meetings and advise the Working Group on any matter falling within its functions.

2. The Working Group may meet physically or virtually, as agreed by the Parties.

3. Without prejudice and as a complement to Article 13.14 (Cooperation), the Working Group shall:

(a) review and monitor the implementation and operation of this Chapter;

(b) discuss issues pertaining to the protection and enforcement of intellectual property rights and the promotion of efficient and transparent administration of intellectual property systems, and exchange information relating to intellectual property rights matters under this Chapter, including how intellectual property protection contributes to innovation, creativity, economic growth and employment;

(c) report its findings and the outcomes of its discussions to the Joint Committee;

(d) carry out other functions as may be delegated by the Joint Committee; and

(e) carry out the functions specified in Article 13.39 (Modifications to the List of Protected Geographical Indications).

4. Without prejudice to other provisions under this Chapter, the Working Group shall meet within one year of the date of entry into force of this Agreement and thereafter annually if requested by either Party.

Article 13.16. Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems, simplifying and streamlining the procedures and processes of their respective patent offices, and promoting transparent systems, to the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of the Parties, which may include cooperating under the WIPO CASE system administered by the World Intellectual Property Organisation, and also exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to share best practices to reduce differences in the procedures and processes of their respective patent offices.

Article 13.17. Cooperation on Collective and Certification Marks

1. Under the Working Group on Intellectual Property Rights, the Parties shall exchange general information on the registration and protection of India's Geographical Indications listed in Annex 13C (Geographical Indications for Goods Other than Wines, Spirits, Agricultural Products, and Foodstuffs Protected in India as Goods of Handicrafts, Natural Goods and Manufactured Goods) as collective or certification marks under the United Kingdom's trade mark system.

2. The United Kingdom shall promote to producers in India the use of collective or certification marks under the United Kingdom's trade mark system, as a means of protecting geographical indications for goods other than wines, spirits, agricultural products, and foodstuffs.

Article 13.18. Cooperation on Trade Marks

The Parties recognise the importance of improving the quality and efficiency of their respective trade mark systems and shall cooperate and engage in general discussions relating to that subject.

Article 13.19. Cooperation on Geographical Indications

The Parties shall cooperate and exchange general information to gain a better understanding of each other's sui generis systems for the protection of geographical indications, in their territories, for wines, spirits, agricultural products, and foodstuffs, and, in particular, the relationship between those systems and the protection of prior trade marks.

Article 13.20. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

The Parties affirm their commitment to work together through discussion and by the exchange of information at the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Article 13.21. Cooperation In the Area of Traditional Knowledge Associated with Genetic Resources

1. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with genetic resources and traditional knowledge associated with genetic resources.

2. The Parties shall endeavour to pursue quality patent examination, which shall include:

(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources; and

(c) the use of databases or digital libraries containing genetic resources and associated traditional knowledge, such as India's Traditional Knowledge Digital Library, (8) if reasonably accessible, applicable and appropriate.

(8) As owned and maintained by the Government of the Republic of India.

Article 13.22. Cooperation on Transfer of Technology

1. The Parties agree to exchange views and information on their practices and policies affecting the voluntary transfer of technology. This may include measures to facilitate information flows, business partnerships, licensing and subcontracting deals, on a voluntary basis.

2. With respect to the transfer of technology, the Parties shall ensure that the legitimate interests of intellectual property

right holders are protected.

Article 13.23. Cooperation on Request

Cooperation activities undertaken under this Chapter may be initiated on request of either Party, are subject to the availability of resources of each Party, and on terms and conditions mutually decided upon between the Parties. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.

Section C. Trade Marks

Article 13.24. Types of Signs Registrable as Trade Marks

1. A Party may require, as a condition of registration as a trade mark, that a sign be visually perceptible. A Party may also require, as a condition of registration as a trade mark, a concise and accurate description, or graphical representation, or both, of the trade mark.

2. Where a sign is not inherently capable of distinguishing the goods or services of one undertaking from those of other undertakings, a Party may make registrability as a trade mark dependent on distinctiveness acquired through use.

Article 13.25. Rights Conferred

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trade mark is registered where that use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of each Party making rights available on the basis of use.

Article 13.26. Exceptions

A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

Article 13.27. Well-Known Marks

1. Each Party shall provide for the protection of well-known trade marks as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.

2. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks.

3. No Party shall require, as a condition for determining that a trade mark is well- known, that the trade mark has been registered in the Party or in another jurisdiction.

Article 13.28. Bad Faith Applications

Each Party shall provide, in accordance with its law, that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trade mark was made in bad faith.

Article 13.29. Classification of Goods and Services

1. Each Party shall provide that:

(a) registrations and published applications for trade marks indicate the goods and services by their names, grouped according to the classes established by the Nice Classification; and

(b) goods or services may not be considered as being similar to each other on the ground that, in any application for a trade mark, including any published application, or registration of a trade mark, they are classified in the same class of the Nice

Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any application for a trade mark, including any published application, or registration of a trade mark, they are classified in different classes of the Nice Classification.

Article 13.30. Procedural Aspects of Examination, Opposition and Cancellation

1. Each Party shall provide a system for the examination and registration of trade marks that includes:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trade mark;

(b) providing the applicant with an opportunity to respond to communications from the competent authority, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trade mark;

(c) providing an opportunity to oppose an application for the registration of a trade mark and an opportunity to seek a decision that the trade mark should not have been registered through, at a minimum, administrative procedures; and

(d) requiring decisions in administrative procedures referred to in subparagraph (c) to be reasoned and in writing, which may be by electronic means.

Article 13.31. Electronic Trade Mark System

1. Each Party shall provide:

(a) a system for the electronic application for, and the renewal of, trade marks; and

(b) a publicly available electronic information system, including an online database, of trade mark applications and of registered trade marks.

Article 13.32. Terms of Protection

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

Article 13.33. Domain Names

1. In connection with each Party's system for the management of its ccTLD domain names, the Parties recognise the benefits of appropriate remedies being available in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trade mark.

2. The Parties understand that these remedies may include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

Section D. Geographical Indication

Article 13.34. Scope

1. This Section applies to the protection of geographical indications in the territories of the Parties for wines, spirits, agricultural products, and foodstuffs, through a sui generis system.

2. The Parties acknowledge that a Party may protect geographical indications for categories of goods other than wines, spirits, agricultural products, and foodstuffs, which may include handicrafts, natural goods and manufactured goods, through a sui generis or trade mark system, or other legal means. (9)

(9) The categories of goods protected by a Party under a sui generis or trade mark system, or other legal means, shall be determined by each Party in accordance with its law.

Article 13.35. System for the Protection of Geographical Indications

1. Each Party shall maintain a system for the protection of geographical indications in its territory.

2. The system referred to in paragraph 1 shall contain at least the following elements:

(a) a public register listing geographical indications protected in the territory of the Party;

(b) an administrative process of examination to verify that a geographical indication to be registered as referred to in subparagraph (a) identifies a good as originating in the territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

(c) a requirement that a geographical indication shall correspond to a specific good or goods for which a specification is laid down which may only be amended by due administrative processes;

(d) an opposition procedure that allows the legitimate interests of third parties to be taken into account;

(e) legal provisions providing that a protected geographical indication may be used by a person marketing, trading or dealing in a relevant good if the good conforms to the corresponding specification; and

(f) a procedure for the cancellation of the protection of a protected geographical indication, taking into account the legitimate interests of third parties and the users of the geographical indication in question.

Article 13.36. Initial Geographical Indications Submitted for Protection

Where, prior to the date of entry into force of this Agreement, the Parties have drawn up a list of geographical indications that may be submitted for protection under this Section, the Parties may agree, under the auspices of the Working Group on Intellectual Property Rights, that the geographical indications set out in that list shall be submitted for protection under this Section in accordance with Article 13.38 (Procedures for Geographical Indications Submitted for Protection).

Article 13.37. Additional Geographical Indications Submitted for Protection

1. Where a Party intends to seek protection for an additional geographical indication or a list of additional geographical indications of that Party in the territory of the other Party under this Section, the Parties shall enter into consultations under the auspices of the Working Group on Intellectual Property Rights with a view to agreeing whether the additional geographical indication or geographical indications shall be submitted for protection under this Section.

2. Where the Parties have so agreed under paragraph 1, the geographical indication or geographical indications shall be submitted for protection under this Section in accordance with Article 13.38 (Procedures for Geographical Indications Submitted for Protection).

Article 13.38. Procedures for Geographical Indications Submitted for Protection

1. Where the Parties have submitted, under Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection), a geographical indication for protection under this Section:

(a) the Party seeking protection of the geographical indication shall, under the auspices of the Working Group on Intellectual Property Rights, ensure that the other Party has been provided with the name of the geographical indication and its corresponding specification. The specification shall include the information listed in Annex 13A (Geographical Indication Specification), and where applicable, a translation into English; and

(b) the other Party shall, within a reasonable period of time after the receipt of the information and documentation in subparagraph (a), complete the examination of the geographical indication in accordance with its domestic requirements.

2. Where a geographical indication has passed the examination procedure for the other Party, the other Party shall complete the opposition procedures required pursuant to its domestic requirements without undue delay. (10)

(10) For greater certainty, any delay to an opposition procedure caused by factors outside of the control of a Party shall not constitute an undue delay.

3, Each Party shall, through the contact points referred to in Article 13.13 (Contact Points), inform the other Party of the progress of any examination or opposition procedure conducted pursuant to subparagraph 1(b) and paragraph 2 and shall promptly notify the other Party of any objection made under that opposition procedure to any geographical indication submitted for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for

Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection).

4. A Party shall, through the contact points referred to in Article 13.13 (Contact Points), consult the other Party if, in accordance with its domestic requirements, further information is required from the other Party in order to conduct the examination and opposition procedures conducted pursuant to subparagraph 1(b) and paragraph 2.

5. Following the examination and opposition procedures conducted pursuant to subparagraph 1(b) and paragraph 2, if an application for protection of a geographical indication under this Section is rejected, the examining Party shall, under the auspices of the Working Group on Intellectual Property Rights, provide the other Party with the reasons for the refusal and exchange information regarding refusal of the application.

6. For the purpose of protection of a geographical indication under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection), a Party may require that a public authority recognised (11) by the other Party or an accredited product certification body has verified that goods using the name of that geographical indication conform to the corresponding specification.

(11) The Parties agree that where the law of a Party provides for a system of registered proprietors of geographical indications, and such registered proprietor is considered a public authority by that Party, it shall have the authority to conduct the verification for the purposes of this paragraph.

Each Party shall ensure that each geographical indication that Party submits for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection) or paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection) is protected in its territory under the system referred to in Article 13.35 (System for the Protection of Geographical Indications).

Article 13.39. Modifications to the List of Protected Geographical Indications

1. Subject to paragraph 2, where a geographical indication has been examined and passed the opposition procedure in the other Party under its domestic requirements, the Working Group on Intellectual Property Rights shall make a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), the list of protected geographical indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) to add the name of that geographical indication.

2. The Parties shall aim for an equitable number of geographical indications of each Party to be listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs). In this respect, the Working Group on Intellectual Property Rights shall consider whether it is appropriate to delay making a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs), to allow a recommendation to be made in respect of a tranche of geographical indications and to ensure a mutually satisfactory number of geographical indications of both Parties can be added to Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs).

3. The list of protected geographical indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) may be modified to remove geographical indications, in particular where a geographical indication ceases to be protected in the territory of the Party of origin. The Working Group on Intellectual Property Rights may decide to make a recommendation to the Joint Committee to modify, pursuant to subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions), the list of protected geographical indications in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) to remove a geographical indication.

Article 13.40. Lists of Protected Geographical Indications

1. The United Kingdom shall protect the geographical indications of India listed in Part 1 of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) in accordance with this Section and its law, those geographical indications having been protected in India under the system referred to in Article 13.35 (System for the Protection of Geographical Indications) and subsequently having been examined and having completed and passed an opposition procedure in the United Kingdom under its domestic requirements.

2. India shall protect the geographical indications of the United Kingdom listed in Part 2 of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) in accordance with this Section and its law, those geographical indications having been protected in the United Kingdom under the system referred to in Article 13.35 (System for the Protection of Geographical Indications) and subsequently having been examined and having completed and passed an opposition procedure in India under its domestic requirements.

3. Annex 13C (Geographical Indications for Goods Other than Wines, Spirits, Agricultural Products, and Foodstuffs Protected in India as Goods of Handicrafts, Natural Goods and Manufactured Goods) contains a list of geographical indications for goods other than wines, spirits, agricultural products, and foodstuffs protected in India. Applications for the protection of the geographical indications relating to these goods may be submitted under the United Kingdom's trade mark system.

4. For the purposes of this Section, the date of protection of a geographical indication is the date that the modification of Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs), made pursuant to paragraph 1 of Article 13.39 (Modifications to the List of Protected Geographical Indications), listing the geographical indication is adopted.

Article 13.41. Scope of Protection of Geographical Indications

1. Having regard to the Parties' respective levels of domestic protection, each Party shall, in respect of the geographical indications protected under this Section, protect as a minimum against:

(a) use of such geographical indications by any means in the designation or presentation of goods that indicates or suggests that those goods originate in a geographical area other than the true place of origin of those goods in a manner which misleads the public as to the geographical origin of those goods, and the use of such a geographical indications in respect of goods originating in the relevant geographical area but not conforming with the corresponding specification of the geographical indication under this Section;

(b) any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention; and

(c) any use of a geographical indication, which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates. (12)

(12) For greater certainty, nothing in this Article prevents either Party from providing additional protection in accordance with domestic requirements under the Party's law.

2. Neither Party shall be required to protect a name as a geographical indication under this Section if that name:

(a) conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead consumers as to the true origin of the good; or

(b) is the term customary in common language as the common name for the good concerned in the territory of that Party.

3. Neither Party shall be required to protect a name as a geographical indication under this Section if, in light of a prior trade mark or pending application for registration of a trade mark, a Party's law would prevent protection of the geographical indication.

4. The Parties shall:

(a) as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement, enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights), to review paragraph 3;

(b) agree a timetable for further consultation at an initial meeting held as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement, or alternatively agree as soon as reasonably practicable, but no later than one year after the date of entry into force of this Agreement not to enter into further consultations;

(c) where such further consultations are entered into, review paragraph 3 with a view to amending it in the light of any relevant changes that may have occurred in the laws and regulations of the United Kingdom in consequence of the United Kingdom's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership done at Santiago on 8

March 2018; and

(d) where such further consultations are entered into, use reasonable endeavours to complete the review of paragraph 3 in a timely manner.

5. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.

6. Each Party shall decide the practical conditions of use under which homonymous geographical indications will be differentiated from each other in its territory, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

7. If a Party ("Party A") intends to consider the protection of a geographical indication of a non-Party, either pursuant to an international agreement or through its domestic system of protection referred to in Article 13.35 (System for the Protection of Geographical Indications), which is homonymous with a geographical indication of the other Party ("Party B") protected under this Section, Party A shall inform, no later than on the date of the publication for opposition of that geographical indication, Party B of the opportunity to comment, provided that the date of publication for opposition is after the date of entry into force of this Agreement.

8. Nothing in this Chapter shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in accordance with the law of the other Party. Each Party shall promptly notify the other Party if a geographical indication protected under this Section ceases to be protected in the territory of the Party of origin.

9. The Parties shall provide that geographical indications protected under this Section shall be protected through a sui generis system.

Article 13.42. Right of Use of Geographical Indications

1. Each Party shall provide that a person may use a geographical indication protected under this Section provided that such use is in accordance with the requirements under the law of the Party in which the geographical indication is protected.

2. Where a Party has a renewal requirement with respect to geographical indications under its law, both Parties shall ensure that the renewal process is streamlined and timely. (13) At least six months and no more than a year prior to the date of renewal, the Party requiring renewal shall notify the other Party of the need to fulfil its domestic requirements concerning renewal.

(13) For greater certainty, the purpose of a streamlined and timely process is to ensure that renewal procedures are conducted without undue delay, as clarified in footnote 10.

3. Upon receipt of this notification, the other Party shall, at least three months prior to the date of renewal, apply for renewal in accordance with the domestic requirements of the notifying Party.

4. For the purpose of the renewal of protection of a geographical indication under this Article, the date of renewal shall be calculated from the date of application for protection of a geographical indication, as referred to in paragraph 3 of Article 13.43 (Relationship with Trade Marks).

Article 13.43. Relationship with Trade Marks

1. Each Party shall, in accordance with its law, refuse to register or shall invalidate a trade mark in respect of a geographical indication protected under this Section, provided that an application for registration of the trade mark is submitted after the date of application for protection of the geographical indication in the territory concerned.

2. Each Party shall ensure that the protection of a geographical indication under this Section is without prejudice to the continued use of a trade mark which, in good faith, has been applied for, registered or established by use, if that possibility is provided for by the law, in the territory of a Party before the date of the application for protection of the geographical indication. A prior trade mark may continue to be used and renewed for that good notwithstanding the protection of the geographical indication provided that no grounds for the trade mark's invalidity or revocation exist in the laws and regulations of the Party concerned.

3. For the purposes of this Section, the date of application for protection of a geographical indication listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) shall be:

(a) for a geographical indication submitted for protection under this Section pursuant to Article 13.36 (Initial Geographical Indications Submitted for Protection), the date of entry into force of this Agreement; or

(b) for a geographical indication submitted for protection under this Section pursuant to paragraph 2 of Article 13.37 (Additional Geographical Indications Submitted for Protection), the date of the other Party's receipt of information and documentation provided in paragraph 1(a) of Article 13.38 (Procedures for Geographical Indications Submitted for Protection)

Article 13.44. Enforcement of Protection

1. Each Party shall require its competent authorities to take appropriate measures, in accordance with its laws and regulations, ex officio or on request of an interested party, to protect the geographical indications listed in Annex 13B (Protected Geographical Indications for Wines, Spirits, Agricultural Products, and Foodstuffs) pursuant to this Section.

2. Each Party shall designate and notify the other Party of a contact point for matters concerning enforcement of geographical indications under this Section in their respective territories. A Party and any interested person of that Party may seek guidance on the operation of the other Party's enforcement system through that contact point. The contact point shall provide relevant information relating to the enforcement matter raised, and alternative contact details, where appropriate, to that Party or its interested person. Each Party shall provide the other Party with up to date contact information of the designated contact point under this Section.

Article 13.45. Consultations on the Protection of Geographical Indications

1. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Section if:

(a) after the date of entry into force of this Agreement an international agreement enters into force between a Party and a non-Party that grants any substantive advantage, favour, privilege or immunity with regard to the protection of geographical indications for wines, spirits, agricultural products, or foodstuffs that is not granted by this Agreement; or

(b) after this Agreement has been signed by the Parties, a Party adopts any substantive change to the protection of geographical indications for wines, spirits, agricultural products, or foodstuffs provided under the sui generis system for the protection of geographical indications in effect in that Party's territory on the date of signature of this Agreement by the Parties.

2. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Section if:

(a) after the date of entry into force of this Agreement an international agreement enters into force between the United Kingdom and a non- Party that includes obligations to introduce a sui generis system for the protection of categories of goods other than wines, spirits, agricultural products, or foodstuffs in the United Kingdom; or

(b) after this Agreement has been signed by the Parties, the United Kingdom adopts a sui generis system for the protection of categories of goods other than wines, spirits, agricultural products, or foodstuffs in the United Kingdom.

3. The relevant Party shall promptly notify the other Party, through the contact points referred to in Article 13.13 (Contact Points), if any of the events or changes described in paragraph 1 or 2 occur and provide any relevant information in relation to that event or change to the other Party.

4. If an event or change described in paragraph 1 or 2 occurs, the Parties shall:

(a) enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights) as soon as reasonably practicable after the relevant event or change in paragraph 1 or 2 has taken place, and in any event no later than one year after the date of that event or change; (14)

(14) Where the relevant change in subparagraph 1(b) or 2(b) has taken place before entry into force of this Agreement, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than one year after the date of entry into force of this Agreement.

(b) agree a timetable for further consultations at an initial meeting held within the timeframe specified in subparagraph (a), or alternatively agree within the timeframe specified in subparagraph (a) not to enter into further consultations;

(c) where further consultations are entered into, review this Section with a view to amending this Agreement so that this

Section grants no less favourable treatment than the protection granted by:

(i) the international agreement referred to in subparagraph 1(a) or 2(a);

(ii) the substantive change to protection referred to in subparagraph 1(b); or

(iii) the sui generis system referred to in subparagraph 2(b); and

(d) where further consultations are entered into, use reasonable endeavours to complete a review under this Article in a timely manner.

5. Within three years of the date of entry into force of this agreement if the United Kingdom has not entered into consultations under paragraph 2, the United Kingdom shall initiate a review of its laws and regulations relating to the protection, as intellectual property, of geographical indications in relation to categories of goods other than wines, spirits, agricultural products, or foodstuffs. The United Kingdom shall complete the review in a timely manner and communicate the outcome of this review to India through the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights).

Section E. Patents

Article 13.46. Rights Conferred

1. Each Party shall provide that a patent confers on its owner the following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing (15) for these purposes that product; and

(15) This right, like all other rights conferred in this Chapter in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 13.11 (Exhaustion of Intellectual Property Rights).

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Each Party shall also provide that a patent owner has the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 13.47. Patentable Subject Matter

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. (16) Subject to paragraph 3, each Party shall make patents available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced.

(16) For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful" respectively.

2. A Party may exclude from patentability inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that the exclusion is not made merely because the exploitation is prohibited by its law.

3. A Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

Article 13.48. Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that those exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 13.49. Regulatory Review Exception

1. Without prejudice to the scope of, and consistent with, Article 13.48 (Exceptions), each Party:

(a) shall provide that a third party may do an act that would otherwise infringe a patent with respect to a pharmaceutical product invention if the act is done for purposes connected with obtaining regulatory approval (17) in that Party or another country or both; and

(17) For the purposes of Article 13.49, a Party may treat "regulatory approval" to mean "marketing approval".

(b) may provide that a third person may do an act that would otherwise infringe a patent with respect to all other types of invention if the act is done for purposes connected with obtaining regulatory approval in that Party or another country or both.

Article 13.50. Other Use without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement to authorise the use of a patent without the authorisation of the right holder.

Article 13.51. Amendments, Corrections and Observations

1. Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections, and observations in connection with its application, in accordance with their laws and regulations.

2. Neither Party shall revoke or invalidate a patent, either totally or in part, without the patent owner being given the opportunity to make observations on the intended revocation or invalidation, and to make amendments and corrections where permitted under a Party's law.

3. A Party may provide that amendments made pursuant to paragraph 1 or 2 do not go beyond the scope of the disclosure of the invention, as of the filing date.

Article 13.52. Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application, or the corresponding patent, as soon as practicable.

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 13.53. Information Relating to Published Patent Applications and Granted Patents

1. For published patent applications and granted patents, and in accordance with the Party's requirements for the prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that the information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:

(a) examination reports generated for an application, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 13.54. Conditions on Patent Applicants

1. Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of application.

2. A Party may require a patent applicant to provide information concerning the applicant's corresponding foreign application and grants. A mere failure to comply with this requirement shall not result in revocation of or refusal to grant a patent, except where the competent authority determines there is deliberate or wilful suppression of information.

3. The patent granting authority may give due consideration to information concerning the applicant's corresponding foreign application and grants which is publicly available or otherwise available to the granting authority, during the patent application process.

Article 13.55. Opposition Proceedings

1. Where a Party provides for a process that allows a third party to oppose a patent application prior to its grant, it shall ensure that this opposed patent application is processed and disposed of within a reasonable period of time and without undue delay.

2. A Party which allows a third party to oppose a patent application prior to its grant shall, subject to its law, adopt (18) measures in support of paragraph 1. (19)

(18) A Party is able to meet this obligation by adopting measures between 23 September 2023 and the date of entry into force of this Agreement.

(19) For the avoidance of doubt, the measures adopted by a Party shall be determined at its discretion. These measures may include an expedited route for the disposal of opposed patent applications.

Article 13.56. Patent Working Disclosure Requirement

1. Neither Party shall require a patent owner to provide annual disclosure of information concerning the working of a patent. Where a Party provides for periodic disclosure of information concerning the working of a patent, the periodicity shall not be less than three years and confidential information contained in the disclosure shall not be made available in the public domain, other than in exceptional circumstances. (20)

(20) A Party may determine what constitutes an exceptional circumstance.

2. Notwithstanding paragraph 1, a Party may require a patent owner to provide a disclosure concerning the working of a patent, in a given case, in accordance with its law.

3. Pursuant to paragraphs 1 and 2, failure to disclose information concerning the working of a patent shall not result in imprisonment.

Section F. Designs

Article 13.57. Protection of Registered Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon the owner of the registered industrial design in accordance with this Article.

2. A Party may provide limited exceptions to the protection of registered industrial designs, provided that those exceptions do not unreasonably conflict with the normal exploitation of registered industrial designs and do not unreasonably

prejudice the legitimate interests of the owner of the registered industrial design, taking account of the legitimate interests of third parties.

3. Each Party shall ensure that an owner of a registered industrial design has at least the right to prevent third parties not having the owner's consent from making, offering, selling, or importing an article or product bearing or embodying the registered industrial design which is a copy, or substantially a copy, of the registered industrial design, where those acts are undertaken for commercial purposes.

Article 13.58. Duration of Protection

Each Party shall ensure that the total term of protection available for registered industrial designs is no less than 15 years.

Article 13.59. Multiple Design Applications

A Party may allow for two or more industrial designs to be registered through the filing of one application, in accordance with its law.

Article 13.60. Electronic Design System

1. Each Party shall provide a:

(a) system for the electronic application for, and renewal of, registered industrial designs; and

(b) publicly available electronic information system, which must include an online database of registered industrial designs.

Article 13.61. Unregistered Designs

A Party may provide, in accordance with its law, that unregistered designs may be protected. The extent to which, and the conditions under which, that protection is conferred, including the level of originality required, shall be determined by each Party.

Section G. Copyright and Related Rights

Article 13.62. Authors

1. Each Party shall provide authors with the exclusive right to authorise or prohibit the:

(a) direct or indirect reproduction in any manner or form, in whole or in part, of their works;

(b) distribution to the public, by sale or otherwise, of the original and copies (21) of their works;

(21) The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

(c) communication to the public (22) of their works, by wire or wireless means, including broadcasting and the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(22) For the purposes of this Article, "communication to the public" shall be construed in accordance with Article 8 of the WCT.

(d) commercial rental to the public of their works in respect of at least computer programs and cinematographic works.

Article 13.63. Performers

1. Each Party shall provide performers with the exclusive right to authorise or prohibit the:

(a) fixation of their unfixed performances;

(b) direct or indirect reproduction in any manner or form, in whole or in part of fixations of their performances;

(c) distribution to the public, by sale or otherwise, of the original and copies of fixations of their performances;

(d) making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;

(e) broadcasting and the communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

(f) commercial rental to the public of fixations of their performances.

Article 13.64. Producers of Phonograms

1. Each Party shall provide producers of phonograms with the exclusive right to authorise or prohibit the:

(a) direct or indirect reproduction in any manner or form, in whole or in part, of their phonograms;

(b) distribution to the public, by sale or otherwise, of the original or copies of their phonograms;

(c) making available to the public of their phonograms by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) commercial rental to the public of their phonograms.

Article 13.65. Broadcasting Organisations

1. Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit the:

(a) fixation of their broadcasts;

(b) direct or indirect reproduction in any manner or form, in whole or in part, of fixations of their broadcasts;

(c) distribution to the public, by sale or otherwise, of fixations of their broadcasts;

(d) rebroadcasting of their broadcasts; and

(e) communication to the public of their broadcasts if that communication is made against payment of an entrance fee. A Party may determine the conditions under which this exclusive right may be exercised.

Article 13.66. Broadcasting and Communication to the Public of Phonograms Published for Commercial Purposes

1. The Parties acknowledge the importance of performers and producers of phonograms receiving equitable remuneration when their phonograms published for commercial purposes are used for broadcasting or for any communication to the public. (23)

(23) For the purposes of this Article, “communication to the public” does not include the making available to the public of a phonogram, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. The Parties shall cooperate and discuss measures with a view to facilitating equitable remuneration for performers and producers of phonograms.

Article 13.67. Artist’s Resale Right

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The Parties shall engage in discussions as soon as reasonably practicable, after the date of entry into force of this Agreement, for the establishment of a well-functioning and effective mechanism to enable the author of an original work of art and their beneficiaries to receive royalties.

3. Nothing in this Article shall require a Party to provide an artist’s resale right for authors and their beneficiaries of the

other Party on a reciprocal basis, until the mechanism as referred in paragraph 2 has been established to the satisfaction of each Party.

Article 13.68. Limitations and Exceptions

1. A Party may provide limitations or exceptions in its law to the rights provided for in this Section, but shall confine those limitations or exceptions to certain special cases that do not conflict with a normal exploitation of covered subject matter, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article is without prejudice to the scope of applicability of the limitations and exceptions to any rights permitted by the TRIPS Agreement and WIPO administered treaties to which a Party is party.

Article 13.69. Terms of Protection

1. Each Party shall provide that the rights of an author of a work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for no less than 60 years after the author's death. (24)

(24) For India, notwithstanding paragraph 1, the rights of a producer of cinematographic work shall run for 60 years from when the cinematographic work was first lawfully published in accordance with the Party's law.

2. In the case of a work of joint authorship, each Party shall provide that the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. Where the term of protection of a work is not determined by reference to the life of a natural person, each Party shall provide that the term of protection shall run for no less than 60 years from when the work was first lawfully made available to the public. (25)

(25) For the United Kingdom, this only applies to works made available to the public within 70 years from creation.

4. Each Party shall provide that the rights of broadcasting organisations shall run for no less than 25 years from the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

5. Each Party shall provide that the rights of performers for their performances shall run for no less than 50 years from making of the performance.

6. Each Party shall provide that the rights of producers of phonograms shall run for no less than 60 years from when the phonogram was first lawfully published or made available to the public. (26)

(26) For the United Kingdom, this only applies to phonograms lawfully published or made available to the public within 50 years from fixation.

7. Each Party shall provide that the terms laid down in this Article shall be calculated from the beginning of the calendar year following the event.

8. A Party may provide for longer terms of protection than those provided for in this Article.

9. Within three years of the entry into force of this Agreement, if the Parties have not entered into consultations for review pursuant to paragraph 10, India shall commence an internal domestic review in a timely manner for increasing the term of protection of works, performances, phonograms and broadcasts. India shall complete the review within a reasonable period of time and communicate the findings of this domestic review to the United Kingdom through the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights).

10. The Parties shall, following entry into force of this Agreement, enter into consultations to review this Article if:

(a) after this Agreement has been signed by the Parties India introduces a legislative change increasing the term of protection provided under this Article; or

(b) after the date of entry into force of this Agreement, an international agreement enters into force between India and a non-Party that includes obligations to increase any term of protection provided under this Article.

11. If an event or change described in paragraph 10 occurs, the Parties shall:

(a) enter into consultations under the auspices of the Working Group on Intellectual Property Rights established pursuant to Article 13.15 (Working Group on Intellectual Property Rights) as soon as reasonably practicable after the relevant event or change in paragraph 10 has taken place, and in any event no later than one year after the date of that event or change; (27)

(27) Where the relevant change in paragraph 10(a) has taken place before the date of entry into force of this Agreement, the Parties shall enter into consultations as soon as reasonably practicable after the date of entry into force of this Agreement and, in any event, no later than one year after the date of entry into force of this Agreement.

(b) where these consultations are entered into, review this Article with a view to increasing the term of protection following:

(i) the legislative change referred to in subparagraph 10(a); or

(ii) the international agreement(s) referred to in subparagraph 10(b); and

(c) following these consultations, complete the review under this Article in a timely manner.

Article 13.70. Collective Rights Management

1. The Parties shall endeavour to promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of content between the Parties, as well as encouraging the transfer of rights revenue between the respective collective management organisations for the use of that content.

2. Each Party shall endeavour to promote the transparency of collective management organisations established in their respective territories, particularly in relation to the collection of rights revenues, the deductions they make from the rights revenue collected, their distribution policies and the repertoire they represent.

3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of right holders these organisations represent either directly or via another collective management organisation.

4. Each Party shall encourage collective management organisations established in its territory to regularly, diligently and accurately distribute amounts due to represented collective management organisations in a timely manner.

Article 13.71. Technological Protection Measures

1. Each Party shall provide adequate legal protection and effective legal remedies against the unauthorised circumvention of effective technological measures that are used in connection with the exercise of rights provided under this Section and that restrict acts which are not authorised by the right holders concerned or permitted by the Party's law.

2. A Party may take appropriate measures, as necessary, to ensure that the protection afforded in accordance with this Article shall not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 13.68 (Limitations and Exceptions) from enjoying those exceptions or limitations.

Article 13.72. Rights Management Information

1. Each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing, without authority, any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of covered subject matter:

(a) to remove or alter any electronic rights management information; or

(b) to distribute, import for distribution, broadcast, communicate, or make available to the public covered subject matter, knowing that electronic rights management information has been removed or altered without authority.

2. For greater certainty, this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article 13.68 (Limitations and Exceptions) from enjoying those limitations or exceptions.

3. For the purposes of this Article, "rights management information" means:

(a) information that identifies covered subject matter, the author, performer, producer of a phonogram or any other right holder with respect to covered subject matter;

(b) information about the terms and conditions of use of covered subject matter; or

(c) any numbers or codes that represent the information described in subparagraphs (a) and (b), when any of these items of information is attached to covered subject matter, or appears in connection with the communication or making available of covered subject matter to the public.

Section H. Trade Secrets

Article 13.73. Scope of Trade Secret Protection

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that trade secret holders have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

2. Subject to paragraphs 3 and 4, each Party shall provide that at least the following practices shall be considered contrary to honest commercial practices:

(a) breach of contract;

(b) breach of confidence;

(c) inducement to breach a contract or confidence; and

(d) acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that the trade secret was acquired by practices in subparagraphs (a) through (c).

3. A Party may provide that the disclosure, acquisition or use of a trade secret is not considered contrary to honest commercial practices if:

(a) the trade secret is obtained through:

(i) independent discovery or creation; or

(ii) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;

(b) the trade secret is disclosed or acquired in the exercise of the right of workers or workers' representatives to information and consultation in accordance with the Party's law; or

(c) the disclosure, acquisition or use is required or permitted by the Party's law.

4. A Party may provide for limited exceptions and limitations to the rights of trade secret holders in circumstances where the legitimate interests of third parties, the general public or the Party outweigh the legitimate interests of trade secret holders, including:

(a) for exercising the right to freedom of expression and information, including respect for the freedom and pluralism of the media;

(b) for revealing misconduct, wrongdoing or illegal activity, provided that the person disclosing, acquiring or using the trade secret did so for the purpose of protecting the general public interest; or

(c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the Party's law, provided that the disclosure was required to exercise those functions.

Section I. Enforcement

Subsection 1. General Obligations

Article 13.74. General Obligations

1. Each Party shall provide in its law for the enforcement of intellectual property rights consistent with the TRIPS Agreement.

2. Each Party shall ensure that the enforcement procedures and remedies set out in this Chapter are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further

infringements.

3. The procedures and remedies must be:

(a) fair and equitable;

(b) applied in such a manner as to avoid the creation of barriers to legitimate trade, including electronic commerce, and to provide for safeguards against their abuse;

(c) implemented in a manner consistent with the Party's law including laws and regulations concerning freedom of expression, fair process and the right to privacy; and

(d) dissuasive and proportionate taking into account the seriousness of the infringement and the interests of third parties.

4. Procedures and remedies must not be unnecessarily complicated, costly, entail unreasonable time-limits or give rise to unwarranted delays.

5. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that of the enforcement of laws and regulations in general, nor does it affect the capacity of a Party to enforce its laws and regulations in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of laws and regulations in general.

Subsection 2. Civil Remedies

Article 13.75. Fair and Equitable Procedures

1. Each Party shall make available to a right holder (28) civil judicial procedures and remedies concerning the enforcement of any intellectual property right covered under this Chapter.

(28) For the purposes of this Article, the term "right holder" includes federations and associations that have legal standing to assert such rights.

2. Each Party shall provide that defendants have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties to the procedures shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to these procedures shall be duly entitled to substantiate their claims and to present all relevant evidence.

Article 13.76. Provisional and Precautionary Measures

1. Each Party shall provide that its judicial authorities may, on request by the applicant:

(a) issue against the alleged infringer, and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid the continuation of the alleged infringement of that right, on a provisional basis or to make that continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder; and

(b) order the seizure or delivery up of goods suspected of infringing at least trade marks, copyright, geographical indications and designs so as to prevent their entry into or movement within the channels of commerce.

2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that if the applicant demonstrates circumstances likely to endanger the recovery of damages, its judicial authorities may order the precautionary seizure of immovable property of the alleged infringer. A Party may also provide that its judicial authorities may order the precautionary seizure of movable property of the alleged infringer, including the blocking of the alleged infringer's bank accounts and other assets.

Article 13.77. Provisional Measures for Preserving Evidence

1. Further to paragraph 1 of Article 13.76 (Provisional and Precautionary Measures), each Party shall provide that its judicial authorities may also order prompt and effective provisional measures to preserve relevant evidence in relation to the

alleged infringement, subject to the protection of confidential information.

2. Each Party shall provide that its judicial authorities may adopt provisional measures where appropriate without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

Article 13.78. Evidence

1. Each Party shall provide that their judicial authorities, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, may order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Party may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 13.79. Injuctions

1. Each Party shall provide that where its judicial authorities have found an infringement of an intellectual property right, those authorities may issue an injunction aimed at prohibiting or stopping the infringement. (29)

(29) The obligations in this Section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

2. The injunction referred to in paragraph 1 shall be available against:

(a) the infringer; and

(b) where appropriate and subject to the Party's law, a third party over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.

Article 13.80. Corrective Measures

1. Each Party shall provide that their judicial authorities may order that goods that they have found to be infringing be disposed of outside the channels of commerce, without compensation of any sort to the infringer, and in such a manner as to avoid causing any harm to the right holder, or unless this would be contrary to existing constitutional requirements, destroyed.

2. Each Party shall also provide that their judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the creation of the infringing goods, be disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements, without compensation of any sort to the infringer.

3. In regard to counterfeit trade mark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

4. Each Party shall provide that their judicial authorities may order that the measures referred to in this Article are to be carried out at the expense of the infringer.

Article 13.81. Damages

1. Each Party shall provide that its judicial authorities may order an infringer who, knowingly or with reasonable grounds to know, engaged in activities infringing intellectual property rights to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.

2. In determining the amount of damages for infringements of intellectual property rights, the judicial authorities of a Party may consider any legitimate measure of value that may be submitted by the right holder, which may include lost profits

suffered by the injured party or unfair profits made by the infringer, as appropriate.

Article 13.82. Legal Costs

Each Party shall provide that its judicial authorities may order that reasonable and proportionate legal costs and other expenses incurred by the successful party in legal proceedings concerning the infringement of intellectual property rights shall be borne by the unsuccessful party.

Article 13.83. Safeguards

1. Each Party shall provide that its judicial authorities may require the applicant for a measure provided for in Article 13.76 (Provisional and Precautionary Measures) in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that an infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the person against whom a measure is sought and to prevent abuse. This security or equivalent assurance shall not unreasonably deter recourse to those procedures.

2. Each Party shall provide that its judicial authorities may order a party at whose request measures were taken and who has abused enforcement procedures with regard to intellectual property rights, to provide to a person subject to those measures adequate compensation for the injury suffered because of that abuse. The judicial authorities may also order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

Article 13.84. Confidential Information In Judicial Proceedings

1. The procedures under this Article shall provide the means to identify and protect confidential information or trade secrets, unless this would be contrary to existing constitutional requirements.

2. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities may impose penalties on a party to a proceeding, counsel, expert, or other person subject to the court's jurisdiction for violation of judicial orders (30) concerning the protection of confidential information produced or exchanged in that proceeding.

(30) For greater certainty, for the purposes of this Article, it is understood that a Party's law may use an alternative term to "judicial orders" such as "court orders".

3. Each Party shall also provide that in relation to a civil judicial proceeding, its judicial authorities may:

(a) order that a person participating in those proceedings shall not disclose or use any trade secret or alleged trade secret which the judicial authority has identified as confidential, in response to a duly reasoned application by an interested party, and on which the person participating has become aware as a result of their participation; and

(b) take measures to preserve the confidentiality of any trade secret or alleged trade secret in the proceedings relating to the alleged disclosure, acquisition, or use of a trade secret in a manner contrary to honest commercial practices. Those specific measures may include restricting access to certain documents in whole or in part, restricting access to hearings and corresponding records or transcript, and making available non-confidential versions of a judicial decision with trade secrets removed or redacted.

Article 13.85. Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, those procedures shall conform to principles equivalent in substance to those set forth in this Subsection.

Article 13.86. Trade Secrets Enforcement

1. In civil judicial proceedings, each Party shall provide that its judicial authorities may order:

(a) provisional measures to prevent the disclosure, acquisition or use of a trade secret in a manner contrary to honest commercial practices;

(b) the cessation or prohibition of the disclosure, acquisition or use of a trade secret in a manner contrary to honest

commercial practices; and

(c) damages, appropriate to compensate for the injury, to be paid to the trade secret holder by the person that knew, or was grossly negligent in failing to know, that they were disclosing, acquiring, or using a trade secret in a manner contrary to honest commercial practices.

Subsection 3. Border Measures

Article 13.87. Scope of Border Measures

1. Each Party shall provide for procedures pertaining to imports under which a right holder may submit applications requesting the competent authorities to suspend the release of, or to detain, suspected goods under customs control.

2. For the purposes of this Subsection, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, or industrial designs under the law of the Party providing the procedures.

3. A Party may exclude from the application of this Subsection small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

4. There shall be no obligation to apply the procedures, as described in this Subsection, to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

Article 13.88. Applications

1. Each Party shall provide that its competent authorities require a right holder who requests the procedures to suspend the release of, or to detain, suspected goods under customs control:

(a) to provide adequate evidence to satisfy its competent authorities that, pursuant to its law, there is prima facie an infringement of the right holder's intellectual property right; and

(b) to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable by its competent authorities.

2. Each Party shall ensure that its competent authorities decide whether they shall grant applications to suspend the release of suspected goods within a reasonable period of time of the initiation of the procedures described in Article 13.87 (Scope of Border Measures), as provided under each Party's law.

3. Each Party shall ensure that any fees imposed to cover the administrative costs, arising from the processing or recording of an application, are commensurate with the costs incurred by the competent authorities.

4. Each Party shall provide that, where requested by the customs authorities, the holder of the granted application shall be obliged to reimburse the costs incurred by the customs authorities or other parties acting on behalf of customs authorities, from the moment of detention or suspension of the release of the goods, including storage, handling and any costs relating to the destruction or disposal of the goods.

Article 13.89. Security or Equivalent Assurance

Each Party shall provide that its competent authorities may require a right holder initiating procedures referred to in Article 13.87 (Scope of Border Measures) to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 13.90. Notice of Suspension

Each Party shall provide that the importer and the applicant are promptly notified of the suspension of the release of goods.

Article 13.91. Indemnification of the Importer and of the Owner of the Goods

The Parties shall provide that their respective relevant authorities may order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods.

Article 13.92. Suspension of IPR Infringing Goods by Ex-Officio Action

1. Each Party shall provide that its competent authorities may suspend the release into free circulation of, or detain, imported suspected goods (31) under customs control ex officio, without the need for a formal complaint from a third party or right holder. Each Party shall provide that its customs authorities use risk management to identify suspected goods, which may include random selection.

(31) For greater certainty, a Party may comply with this requirement by requiring that its competent authorities have reasonable grounds for believing that the goods are suspected goods.

2. Each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

3. Each Party shall provide that its competent authorities may, where they act on their own initiative, request a right holder to supply relevant information to assist the competent authorities in the exercise of those powers.

Article 13.93. Provision of Information to Right Holder

A Party may provide that its competent authorities may inform the right holder of the names and addresses of the consignor, exporter, consignee or importer; a description of the suspected goods; the quantity of the suspected goods; and, if known, the country of origin of the suspected goods. This paragraph is without prejudice to a Party's law pertaining to privacy or confidential information and applies if a Party's competent authorities have detained or suspended the release of suspected goods.

Article 13.94. Authority to Determine Infringements

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after initiation of procedures to suspend the release of, or to detain, the suspected goods under customs control and upon due examination, whether suspected goods infringe an intellectual property right.

Article 13.95. Remedies

Each Party shall provide that its competent authorities may order the destruction or disposal of suspected goods following a determination that the goods are infringing. In cases where goods are not destroyed, each Party shall provide that, other than in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trade mark goods, the simple removal of a trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

Subsection 4. Criminal Procedures and Penalties

Article 13.96. Offences

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trade mark counterfeiting or copyright piracy on a commercial scale, whether or not carried out for commercial advantage or financial gain.

2. Each Party shall provide for criminal procedures and penalties to be applied in cases of selling, offers for sale, or distribution in the course of trade and on a commercial scale, of a label or packaging:

(a) to which a trade mark has been applied without authorisation that is identical to, or cannot be distinguished from, a trade mark registered in its territory; and

(b) that is intended to be used in the course of trade on goods that are identical to goods for which that trade mark is registered.

3. With respect to the offences specified in paragraphs 1 and 2, each Party shall provide that criminal liability for aiding and abetting is available under its law. (32)

(32) For greater certainty, this Article also applies to offences in any free trade zones in a Party.

Article 13.97. Ex-Officio Enforcement

Each Party shall provide that its competent authorities may act upon their own initiative to initiate legal action with respect to the offences specified in Article 13.96 (Offences), without the need for a formal complaint by a third party or right holder.

Article 13.98. Seizure

With respect to the offences specified in Article 13.96 (Offences), each Party shall provide that its competent authorities may order the seizure of suspected counterfeit trade mark goods or pirated copyright goods, any related materials and implements which have been predominantly used in the commission of the alleged offence, or documentary evidence relevant to the alleged offence, and assets derived from or obtained through the alleged infringing activity.

Article 13.99. Forfeiture and Destruction of Goods

1. With respect to the offences specified in Article 13.96 (Offences), each Party shall provide that its competent authorities may order the forfeiture or destruction (33) of:

(33) A Party may also provide for its competent authorities to order the disposal of items under this Article outside the channels of commerce in such a manner as to avoid causing any harm to the right holder.

(a) all counterfeit trade mark goods or pirated copyright goods;

(b) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trade mark goods; and

(c) any other labels or packaging to which a counterfeit trade mark has been applied and that have been used in the commission of the offence.

2. With respect to the offences specified in Article 13.96 (Offences), the competent authorities of a Party may order that the forfeiture, destruction or disposal of goods outside the channels of commerce shall occur without compensation of any kind to the offender.

3. With respect to the offences specified in Article 13.96 (Offences), each Party shall further provide that its competent authorities may order the forfeiture of any assets derived from or obtained through infringing activity.

Article 13.100. Evidence Held by Competent Authorities

Each Party shall provide that its competent authorities may provide access to goods, material, implements, and other evidence held by the relevant authority to a right holder. (34)

(34) For greater certainty, access to any relevant evidence under this Article may be provided to assist the right holder in civil infringement proceedings. The Parties shall also provide for the release of evidence where this is available under a Party's law.

Article 13.101. Penalties

1. With respect to the offences specified in Article 13.96 (Offences), each Party shall provide for penalties that include imprisonment or monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that its competent authorities may, in determining penalties, account for the seriousness of the circumstances, in accordance with its law. (35)

(35) Factors that may be considered in assessing the level of penalties may include threats to, or effects on, health, safety or both.

Subsection 5. Enforcement In the Digital Environment

Article 13.102. Infringement In the Digital Environment

1. Each Party shall provide that the enforcement procedures and remedies, referred to in Subsections 2 (Civil Remedies) and 4 (Criminal Procedures and Penalties), as applicable, are available under its law to proceed against an act of infringement of intellectual property rights which takes place in the digital environment.

2. For the purpose of this Subsection, infringement of intellectual property rights shall mean the infringement of copyright or related rights over digital networks, which may include the use of means of widespread distribution for infringing purposes, or trade marks over digital networks, including electronic commerce platforms and social media.

Article 13.103. Limited Liability of Online Service Providers

1. Each Party shall establish or maintain a system which in appropriate cases limits the liability of, or remedies available against an Online Service Provider ("OSP"), for infringements of copyright or related rights or trade marks committed by a user of its services. Each Party shall provide that an OSP shall qualify for this limitation of liability, in accordance with its law under certain specified conditions. Those conditions shall include, where appropriate, that the OSP be required to make reasonable efforts to prevent access to the materials infringing these rights.

2. This Article shall not affect the possibility of a court or administrative authority, in accordance with the law of a Party, requiring the OSP to terminate, remove or disable access to infringing content, including by granting an injunction pursuant to Article 13.76 (Provisional and Precautionary Measures), Article 13.79 (Injunctions) or Article 13.104 (Blocking Orders).

Article 13.104. Blocking Orders

Each Party shall provide that its civil judicial authorities may grant an injunction against an OSP, ordering the OSP to take action to block access to infringing content, in cases where the services of the OSP are used by a third party to infringe copyright or related rights and trade marks.

Article 13.105. Domain Registries

1. Each Party shall encourage their domain registry to provide the use of measures that appropriately, timely, and effectively suspend domains used in the infringement of copyright or related rights and trade marks on their respective ccTLDs. (36)

(36) For greater certainty, this Article shall not be construed as prejudicing the independence of each Party's domain registry.

2. This requirement may be satisfied by measures facilitating cooperative arrangements between the relevant domain registry, law enforcement and industry groups.

Subsection 6. Enforcement Practices

Article 13.106. Publication of Judicial Decisions

Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights are made available (37) preferably in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based.

(37) For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

Article 13.107. Access to Justice

1. The Parties recognise the importance of ensuring that all right holders have access to justice and recognise that SMEs (38) and individual right holders can disproportionately face barriers to their international trade due to unwarranted costs and delays in enforcing their intellectual property rights.

(38) For the purposes of this provision, SMEs shall be defined as including start-ups and micro-entities.

2. Each Party shall endeavour to encourage the use of alternate dispute resolution (“ADR”) mechanisms for disputes relating to intellectual property.

3. Each Party shall endeavour to further facilitate access to justice for all right holders. Those measures may include the provision of specialist intellectual property judicial authorities.

Article 13.108. Voluntary Stakeholder Initiatives

Each Party shall endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement, including in the digital environment, while preserving legitimate competition. This may include encouraging the establishment of public or private advisory groups to address issues of at least trade mark counterfeiting and copyright piracy.

Article 13.109. Public Awareness

Each Party shall, as appropriate, use reasonable efforts to enhance public awareness of the importance of respecting intellectual property rights and the detrimental effect of the infringement of intellectual property rights. This may include cooperation with the business community, civil society organisations, and right holder representatives.

Article 13.110. Specialised Expertise and Domestic Coordination

1. Each Party shall encourage the development of specialised expertise within its competent authorities responsible for the enforcement of intellectual property rights.

For the purpose of enforcing intellectual property rights, each Party recognises that effective coordination is required between their competent authorities. (39)

(39) For the avoidance of doubt, this paragraph does not create any new international coordination obligations between the Parties’ competent authorities.

Article 13.111. Environmental Considerations

Without prejudice to the obligations arising from Article 13.80 (Corrective Measures), Article 13.98 (Seizure) and Article 13.99 (Forfeiture and Destruction of Goods), the Parties recognise the importance of having due regard to environmental matters in their enforcement practices relating to the destruction and disposal of goods that have been found to infringe intellectual property rights.

Chapter 14. INNOVATION

Article 14.1. Definitions

For the purposes of this Chapter:

“innovation” means the development or implementation of a new or improved product (1) or process, or combination thereof.

(1) For the purposes of this Chapter, “product” means a good or service.

Article 14.2. Objective

The objective of this Chapter is to support innovative processes and trade in innovative products, as well as economic growth between the Parties, by further enhancing collaboration on innovation, including through cooperation on the interaction between innovation and trade policy, consistent with the laws, regulations, and policies of each Party.

Article 14.3. General Provisions

1. The Parties recognise the important role that innovation plays in their economies, including by stimulating competitiveness, increasing productivity, encouraging investment and promoting international trade.

2. The Parties confirm that their intention for this Chapter is to support innovation in their respective economies, including by fostering opportunities in innovation-intensive industries and encouraging trade in innovative products.

3. The Parties acknowledge that innovation may interact with a wide range of trade policy areas and will require appropriate coordination to ensure that economic growth opportunity is maximised.

4. The Parties acknowledge the existing collaboration on innovation between their governments, industries, universities, publicly funded research agencies and other non-governmental bodies, and confirm their commitment to further strengthening this collaboration through initiatives aimed at research and development, capacity building, technical cooperation, and the voluntary transfer and development of technology on mutually agreed fair and reasonable terms.

Article 14.4. The Innovation Working Group

1. The Parties hereby establish an Innovation Working Group, for the purposes of fostering innovation in their territories and furthering the objective of this Chapter. The Parties shall, through the Innovation Working Group, mutually identify areas of cooperation, which should be inclusive and tech-agnostic, to promote and facilitate innovation across diverse sectors and technologies. Examples of areas of cooperation may include:

(a) the commercial application of new technologies, including in economic sectors such as agriculture, health, education, advanced manufacturing, smart mobility and transportation, life sciences, aerospace, and clean energy;

(b) emerging and transformative technologies, including clean and low emissions technology, artificial intelligence, distributed ledger technologies, quantum technologies, immersive technologies, sensing technologies, digital twins, the Internet of Things, and robotics and autonomous systems;

(c) global value chain matters including supply chain resilience and the increased integration of goods and services;

(d) global innovation networks and collaboration among higher education and research institutes; and

(e) regulatory approaches that facilitate innovation, bilateral cooperation to identify and respond to future technologies and experimental testing of technologies across borders, including consideration of risk-based approaches, industry-led standards, and risk management best practices.

2. While undertaking cooperation pursuant to paragraph 1, the Innovation Working Group shall consider the potential impact of that cooperation on:

(a) gender equality and women's participation in innovation;

(b) enabling SMEs to engage in, and utilise, the benefits of innovation;

(c) facilitating trade in innovative products which support ambitions to tackle climate change; and

(d) the social and economic benefits created by innovation.

3. The Innovation Working Group shall, in order to further the objective of this Chapter:

(a) provide a forum for sharing best practice principles, and exploring opportunities in innovation policy across government, academia, research organisations, industry and business, including the start-up

(b) ecosystem, for example through participation in start-up exchange missions and platforms to allow nascent entities and start-ups of the Parties to engage with key customers and partners across geographies;

(c) review existing relationships between the Parties for opportunities to strengthen bilateral engagement on the impacts of innovation on trade; and

(d) consider any other matter as the Parties may decide.

4. The Innovation Working Group may, in respect of any matter referred to under paragraph 1:

(a) refer a matter, or make an appropriate recommendation, to the Joint Committee;

(b) develop and facilitate a cooperative activity between the Parties; and

(c) consult, engage with, or seek advice from, a non-governmental expert or stakeholder.

5. The Innovation Working Group may engage and cooperate with any other body established under this Agreement and shall ensure that its work does not duplicate the work of any other body established under this Agreement. The Innovation Working Group shall consider any matter that may be referred to it by the Joint Committee.

6. The Innovation Working Group shall be composed of government representatives of the Parties and shall be co-chaired by a representative of the government of each Party. The Innovation Working Group shall take its decisions and carry out its work by mutual agreement between the Parties and establish its own rules of procedure.

7. The Innovation Working Group shall meet at least once annually in the three years following the entry into force of this Agreement, and thereafter as agreed between the Parties. A meeting of the Innovation Working Group may be held by virtual means if the Parties agree. In the period between meetings, the Innovation Working Group may carry out its work through any means the Parties consider appropriate. The Innovation Working Group shall, subject to the protection of confidential information, publish a mutually agreed summary of discussions following each meeting, unless otherwise agreed by the Parties.

Article 14.5. Reporting

The Innovation Working Group shall decide on a work plan and may, as appropriate, submit a report to the Joint Committee on its activities. In any event, the Innovation Working Group shall submit a report to the Joint Committee within five years following its first meeting after entry into force of this Agreement.

Article 14.6. Relationship with other Chapters

Nothing in this Chapter shall be construed to impose any obligation or commitment with respect to other Chapters of this Agreement.

Article 14.7. Contact Point

Each Party shall, within 30 days of the entry into force of this Agreement, designate a contact point to facilitate the implementation of this Chapter and notify the other Party of the contact details. A Party shall promptly notify the other Party of any change to those contact details.

Article 14.8. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 15. GOVERNMENT PROCUREMENT

Article 15.1. Definitions

For the purposes of this Chapter:

“commercial goods or services” means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non- governmental buyers for non-governmental purposes;

“construction service” means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the United Nations Provisional Central Product Classification (CPC Prov);

“electronic auction” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

“in writing” or “written” means any worded or numbered expression that can be read, reproduced and later communicated and may include electronically transmitted and stored information;

“limited tendering” means a procurement method whereby the procuring entity contacts a supplier or suppliers of its

choice;

“measure” means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

“MII Order” means the India Public Procurement (Preference to Make in India), Order 2017, No. P-45021/2/2017-PP (BE-II), dated 16 September 2020;

“multi-use list” means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

“notice of intended procurement” means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

“offset” means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade, or similar action to encourage local development or to improve a Party’s balance-of-payments accounts;

“open tendering” means a procurement method whereby all interested suppliers may submit a tender;

“procuring entity” means an entity listed in Annex 15A (Government Procurement Schedules);

“qualified supplier” means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

“selective tendering” means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

“services” includes construction services, unless otherwise provided in this Chapter;

“standard” means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

“supplier” means a person or group of persons that provides or could provide goods or services;

“technical specification” means a tendering requirement that:

lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service; and

“Working Group on Government Procurement” means the Working Group on Government Procurement as established under paragraph 1 of Article 15.21 (Working Group on Government Procurement).

Article 15.2. Scope

Application of Chapter

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, “covered procurement” means government procurement:

(a) of goods, services, or any combination thereof as specified in each Party’s Schedule to Annex 15A (Government Procurement Schedules);

(b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party’s Schedule to Annex 15A (Government Procurement Schedules) at the time of publication of a notice in accordance with Article 15.6 (Notices); (1)

(1) For the UK, the estimated value of the contract shall be inclusive of VAT. For India, the estimated value of the contract shall be inclusive of all applicable taxes.

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

Activities Not Covered

3. Unless otherwise provided in a Party's Schedule to Annex 15A (Government Procurement Schedules), this Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated established financial service suppliers or services related to the sale, redemption, and distribution of public debt, including loans and government bonds, notes, and other securities;

(d) public employment contracts; or

(e) procurement conducted:

(i) for the specific purpose of providing international assistance including development aid;

(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

Schedules

4. Each Party shall specify the following information in its Schedule to Annex 15A (Government Procurement Schedules):

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, all other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any general notes;

(h) in Section H, the applicable threshold adjustment formula; and

(i) in Section I, the publication of information required under Article 15.5 (Information on the Procurement System).

Compliance

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's Schedule to Annex 15A (Government Procurement Schedules) to procure in accordance with particular requirements, Article 15.4 (General Principles) shall apply mutatis mutandis to such requirements.

Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement; and

(b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions, and interest; and

(ii) where the procurement provides for the possibility of options, the total value of those options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring contracts"), the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, the estimated monthly instalment multiplied by 48.

Article 15.3. General Exceptions

Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from imposing or enforcing measures:

(a) necessary to protect public morals, order, or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

Article 15.4. General Principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

Use of Electronic Means

3. When conducting covered procurement, a procuring entity shall use electronic means:

(a) for the publication of notices; and

(b) to the widest extent practicable, for information exchange and communication, the publication of tender documentation and the submission of tenders.

4. When conducting covered procurement by electronic means (2), a procuring entity shall:

(2) India shall ensure that its Government e-Market place (GeM) platform complies with this paragraph no later than 12 months after the date of entry into force of this Agreement.

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

Conduct of Procurement

5. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

Rules of Origin

6. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Offsets

7. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset at any stage of a procurement.

Make in India

8. Notwithstanding paragraphs 1, 2, and 7, India and its procuring entities shall be entitled to seek, take account of, impose, or enforce the MII Order at any stage of a covered procurement, provided that India and its procuring entities treat any supplier of the United Kingdom as a 'Class-II local supplier' under the MII Order where:

(a) that supplier offers goods or services having a country of origin as the United Kingdom; and

(b) the goods or services have equal to or greater than the minimum 'local content' prescribed for Class-II local suppliers in the MII Order where 'local content' means the amount of value added in the United Kingdom, which shall be the total value of the goods or service procured (excluding net domestic indirect taxes) minus the value of imported content in the goods or service (including all customs duties) as a proportion of the total value, expressed as a percentage. (3)

(3) For greater certainty, this provision shall not prevent a supplier of the United Kingdom from contributing towards the minimum local content in India.

9. Nothing in this Article shall affect India's right to amend or modify the MII Order provided that any such amendment or modification shall maintain treatment to suppliers of the United Kingdom in a manner at least equivalent to that described in paragraph 8.

Social Value

10. The United Kingdom and its procuring entities may take into account social considerations, including the social value of a procurement, at any stage of a covered procurement provided that:

(a) suppliers of India are treated no less favourably than suppliers of the United Kingdom when evaluating any social

considerations;

(b) any social considerations are based on objectively verifiable criteria; and

(c) if self-certification of the contribution towards any social consideration by a supplier is permitted at any stage of a covered procurement, such self-certification shall apply to suppliers of India.

11. Nothing in this Article shall affect the United Kingdom's right to amend or modify any of its procurement measures concerning social considerations, including social value, provided that any such amendment or modification shall maintain the treatment of suppliers of India in a manner at least equivalent to that described in paragraph 10.

Measures Not Specific to Procurement

12. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Currency

13. For greater certainty, a procuring entity may, when calling for a tender, designate any currency.

Article 15.5. Information on the Procurement System

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

(b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list in Section I of its Schedule to Annex 15A (Government Procurement Schedules):

(a) the electronic or paper media in which the Party publishes the information described in paragraph 1;

(b) the electronic media in which the Party publishes the notices required by Article 15.6 (Notices), paragraph 8 of Article 15.8 (Qualification of Suppliers), and paragraph 2 of Article 15.16 (Transparency of Procurement Information); and

(c) if applicable, the electronic media where the Party publishes its procurement data pursuant to paragraph 6 of Article 15.16 (Transparency of Procurement Information).

3. Each Party shall promptly notify the other Party of any modification to the Party's information listed in Section I of its Schedule to Annex 15A (Government Procurement Schedules).

Article 15.6. Notices

Electronic Publication of Procurement Notices

1. Notices of intended procurement and notices of planned procurement shall be directly accessible by electronic means, free of charge, through a single point of access, as listed in Section I of each Party's Schedule to Annex 15A (Government Procurement Schedules).

Notice of Intended Procurement

2. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the electronic medium listed in Annex 15A (Government Procurement Schedules), except in the circumstances described in Article 15.13 (Limited Tendering). The notice shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation (4) or electronic auction;

(4) This subparagraph is without prejudice to a Party's right to provide for its procuring entities to conduct negotiations under subparagraphs 1(b) and 1(c) of Article 15.12 (Negotiation).

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address, which can be an electronic address, and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement; and

(k) where, pursuant to Article 15.8 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them, and where applicable, any limitation on the number of suppliers that will be permitted to tender.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish in the electronic medium listed in Section I of its Party's Schedule to Annex 15A (Government Procurement Schedules) as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). The notice of planned procurement may include the subject matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 15A (Government Procurement Schedules) may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

Article 15.7. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of the Party or that the supplier has prior work experience in the territory of that Party;

(b) may require relevant prior experience where essential to meet the requirements of the procurement; and

(c) shall not exclude a supplier of the other Party from participating in a tendering procedure on the basis of a legal requirement according to which the supplier must be a natural person or a legal person.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier (5) on grounds such as:

(5) For the purposes of this paragraph, a Party, including its procuring entities, may exclude a supplier where the grounds apply to a person that is a member of the administrative, management, or supervisory body of the supplier or has powers of representation, decision, or control in the supplier.

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

Article 15.8. Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

3. If a Party or a procuring entity maintains a supplier registration system, it shall:

(a) ensure that interested suppliers have access to information on the registration system through electronic means and that interested suppliers may request registration at any time; and

(b) if a supplier makes a request to be listed on the registration system, give fair consideration to the request and inform the supplier within a reasonable period of time of the decision with respect to this request.

4. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) where its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

Selective Tendering

5. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in subparagraphs 3(a), 3(b), 3(f), 3(g), 3(j), and 3(k) of Article 15.6 (Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in subparagraphs 3(c), 3(d), 3(e), 3(h), and 3(i) of Article 15.6 (Notices) to the qualified suppliers invited to submit a tender.

6. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

7. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 5, a procuring entity shall ensure that those documents are made available at the same time to all the qualified

suppliers selected in accordance with paragraph 6.

Multi-Use Lists

8. A Party, including its procuring entities, may establish or maintain a multi-use list, provided that it makes continuously available in the electronic medium listed in Section I of its Schedule to Annex 15A (Government Procurement Schedules), a notice inviting interested suppliers to apply for inclusion on the list.

9. The notice provided for in paragraph 8 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify that a supplier satisfies those conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

(d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and provides all required documents within the time period provided for the submission of such request for participation, a procuring entity shall examine the request. If the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders, it may exclude the supplier from consideration in respect of the procurement.

Section B and Section C Entities

12. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 15A (Government Procurement Schedules) may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 8 and includes the information required under paragraph 9, as much of the information required under paragraph 3 of Article 15.6 (Notices) as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in paragraph 3 of Article 15.6 (Notices), to the extent such information is available.

13. A procuring entity covered under Section B or Section C of a Party's Schedule to Annex 15A (Government Procurement Schedules) may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 12 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

Information on Procuring Entity Decisions

14. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity or other entity of a Party rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

Article 15.9. Technical Specifications and Tender Documentation

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, or on national technical regulations, recognised national standards, or building codes. Where national standards are used in the technical specifications, a procuring entity shall indicate that it will accept tenders that satisfy standards equivalent to those national standards by including words such as 'or equivalent' in the tender documentation.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as 'or equivalent' in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in those cases, the entity includes words such as 'or equivalent' in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of that information outside the territory of the Party.

Tender Documentation

8. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

9. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take

into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

10. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

11. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, upon request, the tender documentation to any interested supplier, if the same is not readily available electronically; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

Modifications

12. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

Preliminary Market Research and Engagement

13. For greater certainty, a procuring entity may, prior to publication of a notice of intended procurement, conduct market research and engagement with suppliers with a view to informing and developing technical specifications and other tender documentation for a particular procurement or informing suppliers of its procurement plans and requirements. A procuring entity shall take appropriate steps to ensure that suppliers participating in such market research or engagement do not gain an unfair advantage over other interested suppliers.

Article 15.10. Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. Each Party shall endeavour to facilitate participation by SMEs in covered procurement, and shall to the extent possible and appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) make all tender documentation available free of charge;

(c) conduct procurement by electronic means or through other new information and communication technologies;

(d) consider the size, design, and structure of the procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs;

(e) seek opportunities to simplify administrative processes; and

(f) require prompt payment by procuring entities to their suppliers and by suppliers to their subcontractors.

3. If a Party adopts or maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

4. The Parties shall:

(a) upon request, provide information on the measures designed to assist, promote, encourage, or facilitate participation by SMEs in government procurement covered by this Chapter; and

(b) cooperate and share best practice in relation to measures to facilitate participation by SMEs in government procurement covered by this Chapter.

Article 15.11. Time Periods

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to prepare and submit a request for participation and responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

Deadlines

2. The time period for the submission of requests for participation and tenders shall be established by a procuring entity of a Party in accordance with the law of that Party, provided those time periods are established in a manner consistent with paragraph 1 and in accordance with the other provisions of this Chapter. For procuring entities of the United Kingdom, such time periods may be established in accordance with paragraphs 3 through 8. For greater certainty, paragraphs 3 through 8 shall not apply to procuring entities of India.

3. A procuring entity that uses selective tendering may establish that the final date for the submission of requests for participation may not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced.

4. Except as provided for in paragraphs 5 through 8, a procuring entity may establish that the final date for the submission of tenders may not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 4 where:

(a) the procuring entity has published a notice of planned procurement as described in paragraph 4 of Article 15.6 (Notices) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under paragraph 3 of Article 15.6 (Notices), as is available;

(b) the procuring entity, for recurring contracts, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 4 impracticable.

6. A procuring entity may reduce the time period for tendering established in accordance with paragraph 4 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 4, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 4.

8. Where a procuring entity covered under Section B or Section C of the UK's Schedule to Annex 15A (Government Procurement Schedules) has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers.

Article 15.12. Negotiation

1. A Party may provide for its procuring entities to conduct negotiations:

(a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under paragraph 2 of Article 15.6 (Notices);

(b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation; or

(c) where the procuring entity finds that the price quoted by the supplier submitting the most advantageous tender is not reasonable and justifiable and that negotiations need to be conducted with such supplier.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded with more than one supplier, provide a common deadline for all those suppliers to submit any new or revised tenders.

Article 15.13. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 15.6 (Notices) through 15.8 (Qualification of Suppliers), paragraphs 8 through 12 of Article 15.9 (Technical Specifications and Tender Documentation), and Articles 15.11 (Time Periods), 15.12 (Negotiations), 15.14 (Electronic Auctions), and 15.15 (Treatment of Tenders and Awarding of Contracts) only under any of the following circumstances:

(a) where:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive,

provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier or suppliers and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights, or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner.

2. For each contract awarded in accordance with paragraph 1, a procuring entity shall maintain a record that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

Article 15.14. Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or reranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

Article 15.15. Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall not deny a similar opportunity to participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract. If the procuring entity determines that the bidder substantially failed to demonstrate its capability to deliver the contract at the offered price, the procuring entity may reject the tender.

7. A procuring entity shall not use options, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

Article 15.16. Transparency of Procurement Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article 15.18 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. No later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish in the appropriate electronic medium listed in Section I of its Party's Schedule to Annex 15A (Government Procurement Schedules) at least the following information, which shall remain readily accessible for a reasonable period of time:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used.

3. The Parties shall use best endeavours to ensure that:

(a) the description in subparagraph 2(a) includes a classification code of the goods or services procured, such as CPV; and

(b) in cases where limited tendering was used in accordance with Article 15.13 (Limited Tendering), the information in subparagraph 2(f) includes a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Records, and Electronic Traceability

4. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and records of tendering procedures and contract awards relating to covered procurement, including the records required under Article 15.13 (Limited Tendering); and

(b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

Access to Procurement Data

5. Each Party shall collect and report to the Working Group on Government Procurement statistics on its contracts covered by this Chapter. Each report shall cover a period of one year and be submitted within two years of the end of the reporting period, and shall contain:

(a) for procuring entities covered in Section A of the Party's Schedule to Annex 15A (Government Procurement Schedules):

(i) the number and total value, for all those procuring entities, of all contracts covered by this Chapter;

(ii) the number and total value of all contracts covered by this Chapter awarded by each procuring entity. For reports provided to the Working Group on Government Procurement after the first and second reports after the entry into force of this Agreement, such information shall be broken down by categories of goods and services according to an internationally recognised uniform classification system; and

(iii) the number and total value of all contracts covered by this Chapter awarded by each entity under limited tendering;

(b) for procuring entities covered in Section B and Section C of the Party's Schedule to Annex 15A (Government Procurement Schedules), the number and total value of contracts covered by this Chapter awarded by all those entities, broken down by Section; and

(c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, if it is not feasible to provide the data.

6. If a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 5, the Party may, instead of reporting to the Working Group on Government Procurement, provide a link to the website, together with any instructions necessary to access and use those statistics.

7. If a Party publishes the information under paragraph 3 in addition to the information under paragraph 2, and if that Party makes the information under paragraphs 2 and 3 accessible to the public through a single electronic database in a form permitting analysis of the information, the Party may, instead of reporting to the Working Group on Government Procurement, provide a link to the database, together with any instructions necessary to access and use that information.

Article 15.17. Ensuring Integrity In Procurement Practices

1. Each Party shall ensure that criminal or administrative measures exist that can address corruption, fraud, and other illegal acts in its procurement.

2. These measures may include procedures to render ineligible for, or exclude from, participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in corrupt, fraudulent, or other illegal acts. When applying such procedures, each Party, including its procuring entities:

(a) may consider the gravity of the supplier's acts or omissions and any remedial measures or mitigating factors; and

(b) shall provide a supplier of the other Party directly implicated:

(i) reasonable opportunity to present facts and arguments in support of its position prior to the decision to render ineligible for, or exclude from, participation being made; and

(ii) notice that such a decision has been made and the reasons for the decision.

3. Each Party shall ensure that it has in place policies or procedures to eliminate to the extent possible or manage potential conflicts of interest on the part of those engaged in or having influence over a procurement.

4. Each Party may put in place policies or procedures that require successful suppliers to maintain and enforce appropriate measures, such as internal controls, business ethics, and compliance programmes, for preventing and detecting corruption, fraud, and other illegal acts.

Article 15.18. Disclosure of Information

Provision of Information

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially, and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 15.19. Domestic Review Procedures

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

(a) a breach of this Chapter; or

(b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants to the proceedings shall have the right to be represented and accompanied;

(d) the participants to the proceedings shall have access to all proceedings;

(e) the participants to the proceedings shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences

for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

Article 15.20. Modifications and Rectifications of Annex

1. The Parties recognise the importance of maintaining accurate and up-to-date information in their Schedules to Annex 15A (Government Procurement Schedules).

2. A Party may modify or rectify its Schedule to Annex 15A (Government Procurement Schedules), pursuant to paragraphs 3 through 11.

Notification of Proposed Modification

3. A Party shall notify any proposed modification or rectification (collectively referred to as a "modification") to its Schedule to Annex 15A in writing to the other Party.

4. The notification of proposed modification shall contain:

(a) for any proposed withdrawal of an entity from its Schedule to Annex 15A (Government Procurement Schedules) in exercise of its rights on the grounds that government control or influence over the procuring entity's covered procurement has been effectively eliminated, evidence of that elimination; or

(b) for any other proposed modification, information as to the likely consequences of the change for the coverage provided for in this Chapter; and

(c) a proposal for any necessary compensatory adjustments pursuant to paragraph 5.

Compensatory Adjustments

5. Subject to paragraphs 6 and 7, a Party shall provide appropriate compensatory adjustments for a change in coverage, if necessary, to maintain a level of coverage comparable to the coverage that existed prior to the modification.

6. The Parties may agree another form of resolution as an alternative to compensatory adjustments.

7. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification:

(a) covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) is minor or of a purely formal nature, including a rectification as described in paragraph 8.

Rectifications

8. The following modifications to a Party's Schedule to Annex 15A (Government Procurement Schedules) shall be considered a rectification, provided that they do not affect the coverage provided for in this Chapter:

(a) a change in the name of a procuring entity;

(b) a merger of two or more procuring entities listed within a Section of a Party's Schedule to Annex 15A (Government Procurement Schedules);

(c) the separation of a procuring entity listed in a Party's Schedule to Annex 15A (Government Procurement Schedules) into two or more procuring entities that are added to the procuring entities listed in the same Section of the Annex; and

(d) a change in a website reference.

Objection to Notification

9. If the other Party disputes that:

(a) a compensatory adjustment proposed under subparagraph 4(c) is adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification;

(b) the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence; or

(c) the proposed modification is a change provided for in paragraph 7(b), it shall notify the modifying Party of its objection in writing within 45 days of receipt of the notification of proposed modification referred to in paragraphs 3 and 4 or shall be deemed to have agreed to the proposed modification, and compensatory adjustments if provided, including for the purposes of Chapter 29 (Dispute Settlement).

10. Where a Party submits an objection pursuant to paragraph 9, it shall set out, as may apply, the reasons why it believes:

(a) the modification is not a change provided for in paragraph 7 and describe the effect of the proposed modification on the coverage provided for in the Chapter; and

(b) a compensatory adjustment proposed under subparagraph 4(c) is not adequate to maintain a level of coverage comparable to the coverage that existed prior to the modification.

Implementation of Modifications

11. The Joint Committee shall adopt a modification to the Schedule to Annex 15A (Government Procurement Schedules) in accordance with subparagraph 2(g) of Article 27.2 (Functions of the Joint Committee – Administrative and Institutional Provisions) to reflect any agreed modification.

Article 15.21. Working Group on Government Procurement

1. The Parties hereby establish a Working Group on Government Procurement composed of government representatives of each Party.

2. The Working Group on Government Procurement shall meet at least once every two years, or as mutually agreed by the Parties, and may meet virtually, to address matters related to the implementation and operation of this Chapter, such as:

(a) considering matters regarding government procurement that are referred to it by a Party;

(b) exchanging information relating to government procurement opportunities, including those at sub-central levels, in each Party;

(c) exchanging experience and best practices, including on the use and adoption of information technology in conducting procurement and of measures to promote environmental, social, and labour considerations in government procurement;

(d) facilitation of participation by SMEs in covered procurement, as provided for in Article 15.10 (Facilitation of Participation by SMEs); and

(e) facilitation of participation by women in government procurement to the extent possible, acknowledging the objectives in Chapter 23 (Trade and Gender Equality).

Article 15.22. Further Negotiations

Definitions

1. For the purposes of this Article, “GPA” means the Agreement on Government Procurement, set out in Annex 4 to the WTO Agreement, as amended from time to time.

General

2. If a Party agrees under another trade agreement, additional advantages or coverage relating to access to procurement markets, beyond what is included in this Agreement:

(a) the other Party may request for consultations with a view to seek such advantages or coverage from the first Party and for the other Party to extend a commensurate level of coverage of procurement to the first Party; and

(b) both Parties shall enter into such consultations at a mutually determined date.

Thresholds

3. Subject to paragraph 6, if a Party agrees under a trade agreement with a party to the GPA a threshold for central government entities less than that specified in its Schedule to Annex 15A (Government Procurement Schedules):

(a) that Party shall provide written notification to the other Party that it has agreed to the lesser threshold and shall offer to reduce its threshold to that agreed under that other trade agreement; and

(b) the other Party may accept such an offer, provided that, where applicable, the other Party also reduces its threshold to that lesser threshold.

4. Paragraph 3 shall not apply to any trade agreement entered between a Party and a non-party to this Agreement, where that non-party subsequently becomes a party to the GPA.

5. The Parties shall give effect to the outcomes described in paragraph 3 by way of amendment, in accordance with Article 30.2 (Amendments – Final Provisions). Such amendment shall not constitute a modification under Article 15.20 (Modification and Rectification of Annex).

6. A Party shall not be required to offer or reduce its threshold for central government entities as specified in its Schedule to Annex 15A (Government Procurement Schedules) in respect of the threshold for goods, SDR 130,000; in respect of the threshold for services SDR 130,000; and, in respect of the threshold for construction services, SDR 5,000,000.

MII Order

7. If India agrees under a trade agreement with a party to the GPA, advantages or coverages in respect of its government procurement market under or in connection with the MII Order in addition to the advantages or coverages provided to the United Kingdom:

(a) India shall provide written notification to the United Kingdom that it has agreed to such advantages or coverage, or the United Kingdom may provide written notification to India that it considers India has agreed to such advantages or coverage; and

(b) the Parties shall enter into consultations at a mutually determined date in order to extend a commensurate level of advantages or coverage to the United Kingdom.

8. Paragraph 7 shall not apply to any trade agreement entered between a Party and a non-party, where that non-party subsequently becomes a party to the GPA.

9. The Parties shall give effect to the outcomes described in paragraph 7 by way of amendment, in accordance with Article 30.2 (Amendments – Final Provisions). Such amendment shall not constitute a modification under Article 15.20 (Modification and Rectification of Annex).

Article 15.23. Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter for a period of four years from the date of entry into force of this Agreement.

Chapter 16. COMPETITION AND CONSUMER PROTECTION POLICY

Article 16.1. Competition Law and Authorities

1. Each Party shall maintain competition law in its territory that:

(a) proscribes anti-competitive agreements between enterprises, including cartel agreements;

(b) proscribes anti-competitive practices by enterprises that have substantial market power; and

(c) prevents or remedies mergers with substantial anti-competitive effects.

2. Subject to paragraph 3, each Party shall ensure that its competition law applies and is enforced with respect to all commercial activities in its territory in a manner that does not discriminate on the basis of an enterprise's nationality or ownership. This does not preclude a Party from providing that its competition law applies to commercial activities outside its borders that have the object, or which have or may have the effect of, restricting competition within its jurisdiction.

3. Each Party may provide for certain exemptions from its competition law provided that those exemptions are transparent and based on public policy grounds.

4. Each Party shall maintain an operationally independent national competition authority responsible for the enforcement of its competition law.

Article 16.2. Procedural Fairness

Each Party shall apply and enforce its competition law in a transparent and timely manner, respecting the principles of procedural fairness and rights of defence of the persons concerned, irrespective of their nationality or ownership status.

Article 16.3. Private Rights of Action

1. For the purposes of this Article, “private right of action” means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or national competition authority or other independent tribunal for injury to that person’s business or property caused by a breach of competition law.

2. Recognising that a private right of action is an important supplement to the public enforcement of competition law, each Party shall endeavour to maintain measures that provide a private right of action, both independently and following a finding of breach by a national competition authority, in accordance with its laws.

3. Each Party shall ensure that a right provided pursuant to paragraph 2 is available to persons of the other Party on terms that are no less favourable than those available to its own persons.

4. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 16.4. Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to enhancing consumer welfare in the territories of the Parties.

2. Each Party shall maintain measures against misleading or unfair commercial activities.

3. Each Party shall maintain laws and regulations that provide consumers with statutory rights in relation to goods and services supplied to them.

4. The Parties further recognise the importance of increasing awareness of and providing access to consumer redress mechanisms, including for consumers of a Party transacting with suppliers of the other Party.

5. The Parties recognise the benefits of dispute resolution mechanisms in facilitating the resolution of disputes between consumers and suppliers, including alternative dispute resolution mechanisms.

Article 16.5. Cooperation

1. The Parties recognise the importance of cooperation between their respective competition and consumer protection authorities to foster effective competition and consumer protection law enforcement in the territories of the Parties. To this end, the Parties may cooperate, through their competition and consumer protection authorities, on issues relating to the enforcement of competition and consumer protection law.

2. The Parties recognise that it is in their common interest to work together on technical cooperation activities to strengthen competition and consumer protection policy development and the enforcement of competition and consumer protection law.

3. Any cooperation under paragraphs 1 and 2 shall be undertaken only to the extent that it is compatible with each Party’s law and important interests and within the Parties’ available resources.

4. To implement the objectives of this Article, the Parties may enter into separate commitments or arrangements on cooperation.

Article 16.6. Transparency

1. The Parties recognise the value of transparency in relation to competition and consumer protection law and enforcement.

2. Subject to paragraph 3, each Party shall make public, or require the following to be made public:

(a) its competition laws and regulations;

(b) exemptions and immunities to its competition law;

(c) guidelines and any rules issued in relation to the administration and enforcement of its competition law; and

(d) information on the protection it provides consumers, including for consumers engaged in online commercial activities. This information shall include how consumers can pursue remedies and how enterprises can comply with any legal requirements.

3. Paragraph 2 does not require the Parties' respective national competition and consumer protection authorities to make public their internal operating procedures.

4. Each Party shall encourage enterprises to publish their policies and procedures related to consumer protection.

Article 16.7. Consultation

1. In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties.

2. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party and shall reply promptly to the request.

Article 16.8. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 17. STATE-OWNED ENTERPRISES

Article 17.1. Definitions

For the purposes of this Chapter:

"commercial activities" means activities which a juridical person undertakes with an orientation toward profit-making (1) and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the juridical person;

(1) For greater certainty, activities undertaken by a juridical person that operates on a not-for-profit basis or on a cost-recovery basis, including a juridical person that undertakes activities that may result in incidental revenue in excess of costs, are not activities undertaken with an orientation toward profit- making.

"commercial considerations" means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

"market" means the geographical and commercial market for a good or service;

"state-owned enterprise" means a company that is engaged in commercial activities in which a Party directly owns a majority of the share capital (2); and

(2) For the purposes of this Article, "a majority of the share capital" means, for the UK, "more than 50% of the share capital" and for India, "at least 51% of the paid-up share capital".

"state trading enterprise" has the meaning given in paragraph 1 of the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

Article 17.2. Scope

1. This Chapter applies only to state-owned enterprises and state trading enterprises engaged in commercial activities.

Where state-owned enterprises and state trading enterprises engage both in commercial activities and other activities, only the commercial activities are covered by this Chapter.

2. This Chapter applies only to state-owned enterprises and state trading enterprises at the central level of government.

3. This Chapter does not apply to government procurement.

4. This Chapter does not apply to measures taken in response to a national or global economic emergency (3). Such measures shall be transparent and shall not go beyond their objective.

(3) For greater certainty, an economic emergency shall be understood as one that affects the whole economy of a Party.

5. This Chapter shall not apply to any services supplied in the exercise of governmental authority. For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in GATS.

6. This Chapter shall not apply to commercial activities of state-owned enterprises and state trading enterprises where those activities are pursuant to a specific mandate that is transparent, provided in the Party's law, and based on public policy grounds (4).

(4) For the purposes of this paragraph, "public policy grounds" means grounds relating to national security, energy security, environment protection and sustainable development, social welfare, promotion of small businesses, and promotion of manufacturing and production of goods or services with a view to enhancing income and employment.

7. This Chapter shall not apply to activities of state-owned enterprises and state trading enterprises in atomic energy, defence, health, and space sectors.

8. This Chapter does not apply to:

(a) commercial banking and insurance operations;

(b) the regulatory or supervisory activities, or monetary and related credit policy and exchange rate policy, of a central bank or monetary authority of a Party;

(c) the regulatory or supervisory activities of a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial services suppliers; or

(d) activities undertaken by a Party or one of its state-owned enterprises for the purpose of the resolution of a failing or failed enterprise or branch principally engaged in the supply of financial services.

9. Article 17.6 (Commercial Considerations), Article 17.7 (Transparency) and Article 17.8 (Consultations) do not apply with respect to a state-owned enterprise or state trading enterprise if in each one of the three previous consecutive fiscal years, the annual turnover of the state-owned enterprise or state trading enterprise was less than 400 million Special Drawing Rights.

10. This Chapter does not apply to the activities of state-owned enterprises or state trading enterprises for the purpose of the adoption, enforcement or implementation of the privatisation, merger, restructuring, subsidiarisation ordivestment of assets owned or controlled by the Government of India.

11. Article 17.6 (Commercial Considerations) does not apply to the extent that a Party's state-owned enterprise or state trading enterprise makes purchases or sales of goods or services:

(a) in sectors or sub-sectors that are not included in that Party's Schedule in Annex 8B (Schedules of Specific Commitments) or Annex 9A (Schedules of Specific Commitments on Financial Services); or

(b) pursuant to a measure that is in accordance with any term, limitation, condition, or qualification to any commitment included in that Party's Schedule in Annex 8B (Schedules of Specific Commitments) or Annex 9A (Schedules of Specific Commitments on Financial Services).

Article 17.3. Principles

1. The Parties recognise that state-owned enterprises and state trading enterprises can serve public policy objectives,

including economic and social development. The Parties acknowledge, however, that certain activities of state-owned enterprises and state trading enterprises, have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade.

2. The Parties recognise the importance of strengthening cooperation with a view to further improving corporate governance, efficient management, and functioning of their respective state-owned enterprises and state trading enterprises.

3. Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining state-owned enterprises or state trading enterprises.

Article 17.4. Relationship with WTO Agreement

The Parties affirm their rights and obligations under Article XVII of GATT 1994 and the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

Article 17.5. Legal and Regulatory Framework

1. Each Party shall apply its law to state-owned enterprises and state trading enterprises in a consistent and non-discriminatory manner. A Party may grant exemptions or immunities from its law to state-owned enterprises and state trading enterprises, provided they are transparent.

2. Each Party shall ensure that any regulatory body or any other body exercising a regulatory function that the Party establishes or maintains acts impartially as between, on the one hand, state-owned enterprises and state trading enterprises, and on the other hand, non-state-owned enterprises and non-state trading enterprises. The impartiality with which such body exercises its regulatory discretion is to be assessed by reference to a relevant pattern or practice of that body.

3. Where the Parties have agreed provisions in other Chapters that conflict with this Article, the relevant provisions of those Chapters shall prevail.

Article 17.6. Commercial Considerations

Each Party shall ensure that its state-owned enterprises and state trading enterprises act in accordance with commercial considerations in the purchase or sale of goods or services.

Article 17.7. Transparency

The Parties recognise the importance of transparency in fostering understanding and cooperation between the Parties. To that end, a Party may request in writing information that is publicly available relating to the other Party's state-owned enterprises and state trading enterprises. In its request, the requesting Party shall indicate its rationale for seeking the information. The requested Party shall use best endeavours to provide the information requested.

Article 17.8. Consultations

1. To address specific matters that may arise under this Chapter, a Party shall enter into consultations upon request by the other Party. In its request, the requesting Party shall indicate how the matter negatively affects trade between the Parties. The responding Party shall accord full and sympathetic consideration to the concerns of the requesting Party.

2. During the consultations, the requesting Party may seek additional information concerning a state-owned enterprise or state trading enterprise of the responding Party. That information may include:

(a) (a) the percentage of shares that the Party or its state-owned enterprises cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

(b) (b) a description of any special shares or special voting or other rights that the Party or its state-owned enterprises hold, to the extent these rights are different from the rights attached to the general common shares of the entity;

(c) (c) a description of the government departments or public bodies which regulate the entity, a description of the reporting requirements imposed on it by those departments or public bodies, and the rights and practices, where possible, of those departments or public bodies with respect to the appointment, dismissal or remuneration of senior executives and

members of its board of directors or any other equivalent management body;

(d) (d) a description of the organisational structure of the entity and its composition of the board of directors or of any other equivalent body;

(e) (e) annual revenue and total assets of the entity over the most recent three- year period for which information is available;

(f) (f) information regarding the laws and regulations relating to the Party's state-owned enterprises and state trading enterprises; and

(h) (g) any exemptions and immunities from which the entity benefits under the Party's laws and regulations.

3. The responding Party shall endeavour to provide the requested information in writing no later than 90 days after the receipt of the request. If any requested information cannot be provided, the responding Party shall explain the absence of that information in its written response.

Article 17.9. Cooperation

1. The Parties may engage in mutually agreed technical cooperation activities, including:

(a) exchanging information regarding the Parties' experiences in improving the corporate governance and operation of their state-owned enterprises and state trading enterprises;

(b) cooperating on projects and programmes aimed at promoting the development and adoption of low-carbon, environmentally friendly and other climate-friendly technologies by their state-owned enterprises and state trading enterprises;

(c) sharing best practices on policy approaches to ensure a level playing field between state-owned enterprises, state trading enterprises and privately-owned juridical persons, including policies related to competitive neutrality; and

(d) organising international seminars, workshops, or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises and state trading enterprises.

Article 17.10. Confidentiality

Any information provided under this Chapter shall be subject to Article 28.6 (Confidentiality – General Provisions and Exceptions).

Article 17.11. Non-Application of Dispute Resolution

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 18. SUBSIDIES

Article 18.1. Definitions

For the purposes of this Chapter:

"specific subsidy" means a subsidy which is determined mutatis mutandis to be specific in accordance with Article 2 of the SCM Agreement; and

"subsidy" means a measure which fulfils mutatis mutandis the conditions set out in Article 1.1 of the SCM Agreement.

Article 18.2. Principles

1. The Parties recognise that subsidies may be granted to achieve public policy objectives such as correcting certain market failures, addressing social difficulties, and administering development programmes. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation under this Agreement. Therefore, to help promote a level playing field and foster a favourable trade environment, the Parties recognise the importance of considering whether subsidies granted have an adverse effect on

trade.

2. Nothing in this Chapter shall prevent a Party from granting a subsidy temporarily to respond to a national or global economic emergency. (1) Such subsidies shall be transparent and shall not go beyond their objective.

(1) For greater certainty, an economic emergency shall be understood as one that affects the whole economy of a Party.

Article 18.3. Scope

1. This Chapter shall only apply to a subsidy if it is a specific subsidy related to trade in goods.

2. Nothing in this Chapter shall apply to a subsidy for which the total amount granted or budgeted for over a period of two consecutive years is below 18 million Special Drawing Rights.

3. This Chapter shall not apply to subsidies related to the agricultural, fisheries, or aquaculture sectors. (2)

(2) For clarity, subsidies related to the agricultural, fisheries and aquaculture sectors shall include: (a) agricultural goods, including those covered by Annex 1 to the WTO Agreement on Agriculture; (b) fisheries goods, including those produced by fishing activities covered by the WTO Agreement on Fisheries Subsidies; and (c) aquaculture products.

Article 18.4. Relationship to the WTO Agreement

1. The Parties reaffirm their commitment to abide by the SCM Agreement and Article XVI of GATT 1994.

2. The Parties shall consult each other following the development of additional subsidies disciplines at the WTO, consistent with Article 18.3 (Scope), with a view to their incorporation into this Chapter.

Article 18.5. Use of Subsidies

Each Party shall endeavour to ensure that subsidies are used only for the specific purpose for which the subsidies were granted.

Article 18.6. Transparency

1. Each Party shall ensure transparency in the area of subsidies. To that end, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:

(a) background and authority for the subsidy including, where possible, the identification of the legal instrument under which it is granted;

(b) the form of the subsidy; and

(c) the amount of the subsidy or the amount budgeted for the subsidy.

2. The requirement imposed by paragraph 1 must be satisfied every two years.

3. If a Party makes publicly available on an official website the information specified in paragraph 1, the notification pursuant to paragraph 1 shall be deemed to have been made.

4. If a Party notifies a subsidy pursuant to Article 25.2 of the SCM Agreement, the Party shall be considered to have met the requirement of paragraph 1 with respect to that subsidy.

5. Notification of a subsidy under this Article shall be without prejudice to its legal status.

Article 18.7. Consultations

1. In the event a Party considers that a subsidy granted by the other Party has an adverse effect (3) on its trade interests under this Agreement, it may submit a written request for consultation. The Parties shall enter into consultations with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has an adverse effect on trade between the Parties.

(3) For the purpose of this Article, 'adverse effect' shall have the same meaning as in Articles 5 and 6 of the SCM Agreement.

2. During the consultations, a Party may seek additional information on a subsidy provided by the responding Party, such as:

(a) the policy objective or purpose of the subsidy;

(b) the background and authority for the subsidy (including, where possible, identification of the legal instrument under which the subsidy is granted);

(c) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;

(d) the dates and duration of the subsidy and any other time limits attached to it;

(e) the eligibility requirements of the subsidy;

(f) the total amount or the annual amount budgeted for the subsidy;

(g) the statistical data permitting an assessment of the effects of the subsidy on trade; and

(h) where possible, the name of the recipient of the subsidy.

3. The responding Party shall endeavour to provide the requested information in writing as quickly as possible and in a comprehensive manner, after the receipt of the request. If any requested information cannot be provided, the responding Party shall explain the absence of that information in its written response.

4. If the requesting Party, after the consultations, still considers that the subsidy has an adverse effect on its trade interests under this Agreement, the responding Party shall accord sympathetic consideration to the concerns of the requesting Party.

Article 18.8. Cooperation

1. The Parties recognise the importance of cooperating in the area of subsidies. The Parties share the objective of working jointly, where appropriate and subject to available resources, in order to:

(a) explore ways to improve transparency regarding subsidies;

(b) explore opportunities to collaborate in addressing market-distorting subsidies; and

(c) bilaterally exchange information on the functioning of their respective subsidy systems.

Article 18.9. Confidentiality

Any information provided under this chapter shall be subject to Article 28.6 (Confidentiality – General Provisions and Exceptions).

Article 18.10. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 19. SMALL AND MEDIUM-SIZED ENTERPRISES

Article 19.1. General Provisions

1. The Parties recognise the importance of:

(a) SMEs in their bilateral trade and investment relations; and

(b) provisions in this Agreement that are of particular benefit to SMEs.

2. The Parties affirm their commitment to promoting an environment that:

(a) facilitates and supports the development, growth, and competitiveness of SMEs;

(b) promotes job creation in SMEs; and

(c) enhances SMEs' ability to benefit from this Agreement.

3. Where appropriate, the Parties recognise the importance of initiatives, efforts, and work on SMEs developed in relevant international fora, and in taking into account their findings and recommendations.

4. The Parties also recognise the relevance of:

(a) working cooperatively to identify and address barriers to SMEs' access to international markets;

(b) considering the needs of SMEs when formulating new laws and regulations; and

(c) assessing the effect of globalisation on SMEs and, in particular, examining issues related to SMEs' access to financing, technology, and support for innovation.

Article 19.2. Information Sharing

1. Each Party shall establish or maintain its own free, publicly-accessible website containing information regarding this Agreement, including:

(a) the full text of this Agreement;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

(i) a description of the provisions in this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website referred to in paragraph 1 links to:

(a) the equivalent website of the other Party; and

(b) where appropriate, the websites of its own government authorities and other entities that provide information the Party considers useful to any SME interested in trading, investing, or doing business in that Party's territory.

3. Subject to the Parties' law and available resources, the information described in subparagraph 2(b) may include:

(a) customs regulations and procedures;

(b) enquiry points;

(c) regulations and procedures concerning intellectual property rights;

(d) technical regulations, standards, conformity assessment procedures, and sanitary and phytosanitary measures relating to importation and exportation;

(e) foreign investment regulations;

(f) business registration procedures;

(g) employment regulations;

(h) taxation information;

(i) trade promotion programmes;

(j) information related to the temporary entry of business persons; and

(k) rules on government procurement.

4. Each Party shall endeavour to include on the website referred to in paragraphs 1 and 2 a link to a database that is electronically searchable, including where possible by HS code, which contains information with respect to access to its market. That information may include:

(a) rates of customs duty to be applied by the Party to the originating goods of the other Party;

(b) the most-favoured-nation applied rates of customs duty;

(c) tariff rate quotas established by the Party;

(d) rules of origin; and

(e) other relevant measures as agreed by the Parties.

5. Each Party shall regularly, or on request of the other Party, review the information and links on the website referred to in paragraphs 1 and 2 to ensure that the information and links are up to date and accurate.

6. A Party may recommend to the other Party additional information that the other Party may consider including on its website referred to in paragraphs 1 and 2.

Article 19.3. Contact Points

1. Each Party shall designate and notify to the other Party a contact point on SMEs.

2. Each Party shall promptly notify the other Party of any change to its contact point.

3. The contact points shall:

(a) facilitate communications between the Parties on any matter a Party considers relevant to SMEs;

(b) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs; and

(c) where appropriate, facilitate coordination between the Parties and any committee, working group, or other subsidiary body established by this Agreement, on any matter covered by this Chapter.

Article 19.4. Cooperation to Increase Trade and Investment Opportunities for SMEs

1. The Parties acknowledge the importance of cooperating to achieve progress in facilitating the development, growth, and competitiveness of SMEs, and reducing barriers to SMEs' access to international markets.

2. The Parties may undertake activities to strengthen cooperation under this Chapter including:

(a) identifying ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement;

(b) exchanging and discussing each Party's experiences and best practices in supporting and assisting SMEs with respect to, among other things:

(i) training programmes;

(ii) trade education;

(iii) trade finance;

(iv) identifying commercial partners in the other Party;

(v) establishing good business credentials; and

(vi) payment practices in the other Party's market.

(c) identifying non-tariff barriers that adversely affect trade outcomes for SMEs and considering ways to minimise those barriers;

(d) promoting the participation in international trade of SMEs owned or led by under-represented groups, including women, youth, persons with a disability, and minority groups;

(e) facilitating the development of programmes to assist SMEs to participate in and integrate effectively into global markets and supply chains;

(f) fostering innovation and improving SMEs' access to digital skills and technology;

(g) promoting cooperation between the Parties' small business infrastructure, including dedicated SME centres, incubators,

and accelerators; and

(h) considering any other matter pertaining to SMEs, including any issues raised by SMEs regarding their ability to benefit from this Agreement.

3. In carrying out any activities pursuant to paragraph 2, the Parties may collaborate with experts, international organisations, or the private sector, as appropriate.

4. Any cooperation under this Article shall be undertaken only to the extent that it is compatible with each Party's law and within the Parties' available resources.

Article 19.5. Other Provisions That Benefit SMEs

1. The Parties recognise that, in addition to this Chapter, there are provisions in this Agreement that seek to enhance cooperation between the Parties on SME issues or that may be of benefit to SMEs.

2. To enable SMEs to make best use of the opportunities created by this Agreement, the Joint Committee shall, at its first meeting, adopt a joint statement describing the ways in which this Agreement benefits SMEs and outlining the provisions that may be of particular benefit to SMEs.

3. The Parties may, at any time, adopt a joint statement outlining the cooperation activities that have occurred, or will occur, in accordance with Article 19.3 (Contact Points).

Article 19.6. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 20. LABOUR

Article 20.1. Definitions

For the purposes of this Chapter:

"ILO" means the International Labour Organization;

"ILO Centenary Declaration for the Future of Work" means the ILO Centenary Declaration for the Future of Work done at Geneva on 21 June 2019;

"ILO Constitution" means the Constitution of the International Labour Organization

adopted by the Peace Conference at Versailles on 1 April 1919;

"ILO Declaration on Fundamental Principles and Rights at Work" means the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up done at Geneva on 18 June 1998, as amended in 2022;

"ILO Declaration on Social Justice for a Fair Globalization" means the ILO Declaration on Social Justice for a Fair Globalization done at Geneva on 10 June 2008, as amended in 2022;

"ILO Guidelines for a Just Transition" means the Guidelines for a just transition towards environmentally sustainable economies and societies for all adopted by the Tripartite Meeting of Experts in Geneva on 5 to 9 October 2015; and

"labour laws" means laws and regulations of a Party that are directly related to the fundamental rights and principles in the ILO Declaration on Fundamental Principles and Rights at Work. (1)

(1) For India, "laws and regulations" means an Act of the Parliament of India or delegated legislation framed pursuant to an Act of the Parliament of India, which is enforceable at the central level of government.

Article 20.2. Statement of Shared Commitment

1. The Parties affirm their commitment to encourage mutually supportive trade and labour policies and practices, including the promotion of adherence to internationally recognised labour rights and decent work, and cooperation and dialogue

between the Parties.

2. The Parties affirm their obligations as members of the ILO, and the commitments stated in the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Declaration on Social Justice for a Fair Globalization, and the ILO Centenary Declaration for the Future of Work, regarding labour rights within their territories.

3. The Parties recall the ILO Declaration on Social Justice for a Fair Globalization, and recognise that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes. The Parties also recognise that the comparative advantage of Parties must in no way be called into question.

4. The Parties recognise the important role of workers' and employers' organisations in protecting internationally recognised labour rights.

5. The Parties also recognise the goal of eliminating forced labour to promote inclusive and sustainable economic growth, productive employment, and decent work for all.

6. The Parties also recognise that the obligations under this Chapter related to labour rights and cooperation consider the different national circumstances, capacities, needs and levels of development, and respective national policies and priorities.

Article 20.3. Trade and Labour

1. The Parties recognise the sovereign right of each Party to determine and establish its own levels of domestic labour protection and its own labour priorities, and to establish, adopt, or modify its labour laws and policies accordingly, as appropriate, in a manner consistent with its international labour commitments, including those referred to in this Chapter.

2. Each Party shall strive to ensure that its labour laws and policies provide for and encourage sufficient levels of labour protection and shall strive to continue to improve those laws and policies with the goal of providing sufficient levels of labour protection.

3. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work, each Party shall respect, promote, and realise in its laws, in good faith, the principles concerning the fundamental rights at work.

4. Each Party shall endeavour to adopt or maintain laws and regulations, and practices thereunder, which provide labour protections consistent with the ILO Decent Work Agenda, as set out in the ILO Declaration on Social Justice for a Fair Globalization, with respect to wages, hours of work, and healthy and safe working conditions.

5. To establish non-compliance with respect to an obligation under paragraphs 3 or 4, a Party shall demonstrate that the other Party has failed to adopt or maintain a law, regulation, or practice to encourage trade or investment.

6. Each Party reaffirms its commitment to effectively implement in its laws and regulations, and practices thereunder, in its territory, the fundamental ILO Conventions that each Party has ratified respectively. Recalling the ILO Centenary Declaration for the Future of Work, each Party recognises the importance of working towards the ratification and implementation of the fundamental ILO Conventions, in accordance with its national conditions, circumstances, and priorities. The Parties shall, on request of a Party, exchange information, as appropriate, on their respective situations and advances regarding the ratification of the fundamental, governance, and other ILO Conventions, that are classified as up to date by the ILO.

7. Without prejudice to the sovereign right of each Party to determine and establish its own levels of domestic labour protection and its own domestic labour priorities, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective labour laws. Accordingly, the Parties shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, their respective labour laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

8. Neither Party shall, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws to encourage trade or investment between the Parties.

9. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

Article 20.4. Decent Work

Recalling the ILO Decent Work Agenda as expressed in the ILO Declaration on Social Justice for a Fair Globalization, the

Parties recognise the importance of decent work, and each Party shall, with due regard to national conditions, circumstances and priorities, endeavour to promote and cooperate in promoting through its laws and regulations, policies, and practices the objectives of the ILO Decent Work Agenda, with respect to labour protection. The Parties shall also consider, where relevant, their specific ILO Decent Work Country Programmes in furtherance of this provision.

Article 20.5. Forced Labour

Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Accordingly, each Party shall promote steps to discourage, through initiatives it considers appropriate, practices involving forced and compulsory labour, including forced and compulsory child labour.

Article 20.6. Non-Discrimination and Gender Equality In the Workplace

1. The Parties acknowledge the importance of promoting gender equality and eliminating discrimination in employment and occupation for sustainable, equitable, and inclusive growth. Accordingly, each Party affirms its commitments to non-discrimination in employment, occupations, and places of work, and to take measures to advance anti-discrimination practices and address discriminatory practices, including those related to workplace sexual harassment, gender-based violence, gender pay gaps, and flexible working arrangements, as well as improve women's access to decent work.

2. The Parties agree to share information on their respective domestic approaches and cooperate, as appropriate, on activities to address discriminatory practices, promote equality of opportunity, and improve women's access to decent work and the benefits of trade or investment. The Parties recognise the importance of carrying out cooperation activities with the inclusive participation of women. Areas of cooperation may include those listed in Article 20.9 (Cooperative Activities).

Article 20.7. Corporate Social Responsibility

1. The Parties recognise the importance of responsible business conduct and corporate social responsibility practices.

2. In light of paragraph 1, each Party shall:

(a) encourage enterprises to adopt corporate social responsibility initiatives including on labour issues that have been endorsed or are supported by that Party; and

(b) consider supporting the promotion of relevant international instruments and initiatives such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy done at Geneva on 16 November 1977, as practicable.

3. In accordance with Article 20.9 (Cooperative Activities), the Parties shall endeavour to strengthen their cooperation on corporate social responsibility and responsible business conduct bilaterally and in international fora, as appropriate.

Article 20.8. Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labour laws, including by making publicly available information related to its labour laws in accordance with its domestic procedures.

2. Each Party shall provide, in accordance with its domestic laws and regulations, appropriate access to impartial and independent tribunals for the enforcement of its labour laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, or labour tribunals, as provided for in each Party's law.

3. Each Party shall strive to ensure the availability of, and access to, its administrative, judicial, and labour tribunal proceedings for the enforcement of its labour laws which are fair, accessible, and transparent, and permit effective action against infringements of labour rights referred to in this Chapter, including appropriate remedies, as provided for in each Party's law.

Article 20.9. Cooperative Activities

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' well-being and quality of life and the principles and rights stated in the ILO Declaration on Fundamental Principles and Rights at Work, and agree to cooperate to further advance this Chapter's commitments through actions which may include:

(a) promotion of the awareness of, and respect for, principles and rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work and the concept of Decent Work as defined by the ILO in the ILO Declaration on Social Justice for a Fair Globalization;

(b) promotion of labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work;

(c) addressing violence against workers, including for trade union activity;

(d) promotion of safe and healthy working conditions, including the prevention of occupational injuries and illnesses;

(e) studying the impact of labour law and standards on trade and investment, or the impact of trade and investment law on labour;

(f) promotion of, and sharing best practice of, latest labour policy, including, for example, improving compliance and enforcement mechanisms;

(g) promotion of social dialogue, including tripartite consultation and partnership;

(h) promotion of productive, quality employment and green entrepreneurship linked to sustainable growth, support for workers as part of a just transition in line with the ILO Guidelines for a Just Transition, and skill development for jobs in emerging industries, including environmental industries;

(i) addressing the challenges and opportunities of a diverse multigenerational workforce including:

(i) promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability, and other characteristics not related to merit or the requirements of employment;

(ii) promotion of equality of, elimination of discrimination against, and the employment interests of, women;

(iii) promotion of labour practices that facilitate the integration, retention, and progression of women in the job market, and seek to build the capacity and skills of women workers; and

(iv) protection of vulnerable workers, including migrant workers, and low-waged, casual, or contingent workers;

(j) collection and use of labour statistics as per available resources, including information and statistics on online platforms operating out of or from the territory of a Party, engaging workers in the territory of the other Party;

(k) assessment of skill and occupational gaps on a periodic basis, and promotion of skilling, upskilling, reskilling, and life-long learning;

(l) standards and skill sets and skill development in their respective territories;

(m) capacity building, skill and human resources development, and life-long learning, specifically for low- and medium-skilled workers;

(n) development and implementation of apprenticeship programmes in their respective territories;

(o) opportunities for skilling, upskilling, and reskilling to facilitate a just transition and decent work in accordance with the ILO Guidelines on a Just Transition and the Decent Work Agenda;

(p) opportunities for information sharing on skill availability and skill gaps in jobs in their respective territories; and

(q) any other areas as agreed by the Parties.

2. The Parties shall consider, as appropriate, any views provided by the representatives of workers, employers, and interested persons when identifying areas of cooperation, and carrying out cooperative activities.

3. The Parties may establish cooperative arrangements with the ILO and other competent international organisations to draw on their expertise and resources to further advance this Chapter's commitments.

Article 20.10. Public Submissions

1. Each Party shall endeavour to provide for the receipt and consideration of written submissions from persons of that Party regarding suggestions on the implementation of this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:

(a) raise an issue directly relevant to this Chapter;

(b) clearly identify the person making the submission; and

(c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Upon receiving a submission, the receiving Party shall consider matters raised in the submission and provide a timely response, including in writing, as appropriate.

Article 20.11. Institutional Arrangements

The Sustainability Subcommittee shall consider any matter under this Chapter related to cooperation and support any cooperation activities.

Article 20.12. Consultations between the Parties

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.

2. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall set out the reasons for the request, including identification of the measure or other matter at issue and an indication of the legal basis for the request.

3. The responding Party shall respond to the request in writing no later than 90 days after the date of receipt of the request. The period for responding to the request may be extended by a further 30 days on request of the responding Party.

4. Unless the Parties agree otherwise, they shall enter into consultations promptly and no later than 120 days after the date of receipt of the request by the responding Party.

5. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 20.13. Joint Committee Consultations

1. If the Parties have failed to resolve the matter under Article 20.12 (Consultations between the Parties), either Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant information from the ILO, governmental agencies or sources, or other mutually agreed sources or agencies.

Article 20.14. Ministerial Consultations

If the Parties have failed to resolve the matter under Article 20.13 (Joint Committee Consultations), either Party may refer the matter to the relevant Ministers of the Parties who shall seek to resolve the matter.

Article 20.15. Consultation Procedures

1. Consultations pursuant to Article 20.12 (Consultations between the Parties), Article 20.13 (Joint Committee Consultations) or Article 20.14 (Ministerial Consultations) may be held in person or by any technological means available as agreed by the Parties.

2. Consultations pursuant to Article 20.12 (Consultations between the Parties), Article 20.13 (Joint Committee Consultations), or Article 20.14 (Ministerial Consultations), and in particular, the outcomes and positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

3. Notwithstanding paragraph 2, the outcome of consultations pursuant to Article 20.14 (Ministerial Consultations) shall be

made public, unless the Parties agree otherwise. Where the outcome of Ministerial consultations is published, this shall be through a jointly agreed report.

Article 20.16. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Article 21. ENVIRONMENT

Article 21.1. Definitions

For the purposes of this Chapter:

“environmental law” means a law or regulation of a Party, the primary purpose of which is the protection of the environment, including the prevention of danger to human life or health, through:

(a) the prevention, abatement or control of the release, discharge or emission of pollutants or environmental contaminants or greenhouse gases (1); or

(1) This is without prejudice to whether the Parties consider greenhouse gases to be pollutants.

(b) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas (2) (3);

(2) For the purposes of this Chapter, the term “specially protected natural areas” means those areas as defined by the Party in its laws or regulations.

(3) The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

but does not include laws and regulations directly related to worker safety or health; and

for India, “law or regulation” means an Act of the Parliament of India or delegated legislation framed pursuant to an Act of the Parliament of India, which is enforceable at the central level of Government.

Article 21.2. Objectives

1. The Parties recall the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly Resolution 70/1 on 25 September 2015 and its Sustainable Development Goals, the Rio Declaration on Environment and Development, Agenda 21 adopted by the UN Conference on Environment and Development in 1992, the Johannesburg Declaration on Sustainable Development and its Plan of Implementation adopted in 2002, and the Rio+20 Outcome Document The Future We Want endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012.

2. The objectives of this Chapter are to promote sustainable development, mutually supportive trade and environmental policies, high levels of environmental protection, and to enhance the capacities of the Parties to address environmental issues, including through cooperation.

3. The Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development and complement the objectives of this Agreement.

4. This Chapter embodies a cooperative approach, based on common values and interests, taking into account the differences in the Parties’ respective levels of development, priorities and circumstances.

Article 21.3. General Commitments, Right to Regulate and Levels of Environmental Protection

1. The Parties recognise the sovereign right of each Party to establish its own levels of environmental protection and

priorities, and to establish, maintain or modify its environmental laws and policies accordingly.

2. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection, and to continue to improve its respective levels of environmental protection.

3. The Parties recognise that this Chapter does not oblige the Parties to harmonise their environmental standards to achieve the objectives of this Chapter.

4. Without prejudice to paragraph 1, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws, in order to encourage trade or investment between the Parties.

5. The Parties recognise that it is inappropriate to apply their environmental laws, policies or measures in a manner that would constitute an arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment between the Parties.

6. Neither Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction to encourage trade or investment between the Parties.

7. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding investigations, prosecutions and regulatory or compliance matters, and the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priority. Accordingly, the Parties understand that with respect to the enforcement of environmental laws, a Party is in compliance with paragraph 6 if a course of action or inaction reflects a reasonable exercise of that discretion or results from a bona fide decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

Article 21.4. Multilateral Environmental Agreements

1. The Parties recognise the important role that multilateral environmental agreements play in protecting the environment.

2. Each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

3. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, with respect to environmental issues of mutual interest related to multilateral environmental agreements, subject to national circumstances.

Article 21.5. Climate Change

1. The Parties recognise:

(a) the importance of achieving the ultimate objective of the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 (4) (“UNFCCC”) and the Paris Agreement done at Paris on 12 December 2015 (5) (“Paris Agreement”) in order to address the urgent threat of climate change, on the basis of the best available scientific knowledge, reflecting the principles of the UNFCCC and the Paris Agreement including equity and common but differentiated responsibilities and respective capabilities in the light of different national circumstances;

(4) Including any existing and future amendments to which the Parties are party.

(5) Including any existing and future amendments to which the Parties are party.

(b) the immediate need for enhanced action to reach respective net-zero targets, and climate resilient development;

(c) that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C;

(d) that reducing air pollution may help reduce emissions of greenhouse gases and contribute to addressing climate change;

(e) the importance of protecting, conserving and restoring nature and ecosystems to achieve the ultimate objective of the UNFCCC and the objective of the Paris Agreement, including through forests and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by protecting biodiversity, while ensuring social and environmental safeguards; and

(f) the call for parties to the UNFCCC and the Paris Agreement to accelerate efforts towards the phase-down of unabated coal power, in accordance with the Glasgow Climate Pact 2021 (6).

(6) Decision 1/CP.26 of the Conference of the Parties serving as the meeting of the Parties to the UNFCCC and Decision 1/CMA.3 of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement.

2. Accordingly, the Parties:

(a) affirm their commitment to implement the Paris Agreement with the aim of strengthening the global response to climate change by holding the increase in global average temperature to well below 2°C above pre- industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, and commit to working together to take actions to address climate change; and

(b) shall endeavour to encourage the transition to clean energy.

3. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest related to climate change, subject to national circumstances, which may include the exchange of best practices on the reduction of greenhouse gas emissions and climate adaptation and resilience.

Article 21.6. Environmental Goods and Services

1. The Parties recognise the importance of facilitating trade and investment in environmental goods and services, and the role of transfer of technology and exchange of expertise, as a means of improving environmental and economic performance, and encouraging sustainable development.

2. The Parties shall endeavour to facilitate and promote trade and investment in environmental goods and services, including by working through the Sustainability Subcommittee and in conjunction with other relevant committees established under this Agreement, as appropriate.

3. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest on ways to enhance trade in environmental goods and services, subject to national circumstances.

Article 21.7. Ozone Depleting Substances and Hydrofluorocarbons

1. The Parties recognise that emissions of ozone depleting substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. The Parties further recognise the importance of reducing the use of ozone depleting substances and hydrofluorocarbons.

2. Accordingly, each Party affirms its commitment to implement the Montreal Protocol on Substances that Deplete the Ozone Layer done at Montreal on 16 September 1987 (7) (“Montreal Protocol”) including the Kigali Amendment on the phase-down of hydrofluorocarbons done at Kigali on 15 October 2016.

(7) For greater certainty, this provision pertains to substances controlled by the Montreal Protocol and anyexisting amendments or adjustments to the Montreal Protocol, including the Kigali Amendment done atKigali on 15 October 2016 (“Kigali Amendment”), and any future amendments or adjustments to theMontreal Protocol to which the Parties are party.

3. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest related to ozone-depleting substances, and hydrofluorocarbons, subject to national circumstances, which may include:

(a) environmentally friendly alternatives to ozone-depleting substances and hydrofluorocarbons and barriers to their uptake;

(b) refrigerant management practices, policies and programmes including lifecycle management of refrigerants;

(c) combating illegal trade in ozone-depleting substances and hydrofluorocarbons; and

(d) research, design, development and demonstration of emerging technologies with low global warming potential, including sustainable cooling, as applicable based on national circumstances.

Article 21.8. Air Quality

1. The Parties recognise that air pollution is a serious threat to public health and ecosystem integrity. The Parties recognise the importance of reducing domestic air pollution and that cooperation can be beneficial in achieving these objectives, taking into account national circumstances.

2. To that end, each Party shall endeavour to reduce air pollution.

3. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest with respect to air quality, subject to national circumstances, which may include:

(a) ambient air quality planning;

(b) reduction, control, and prevention technologies and practices; and

(c) modelling and monitoring, including spatial distribution of main sources of air pollution and their associated emissions.

Article 21.9. Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment and the impact of pollution from ships. To that end, each Party affirms its commitment to implement the International Convention for the Prevention of Pollution from Ships done at London on 2 November 1973 (8) to prevent the pollution of the marine environment from ships.

(8) For greater certainty, this provision pertains to pollution regulated by the International Convention for the Prevention of Pollution from Ships done at London on 2 November 1973, as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships done at London on 17 February 1978, and the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto, done at London on 26 September 1997 ("MARPOL Convention"), and any existing and future amendments to the MARPOL Convention to which the Parties are party.

2. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest with respect to pollution of the marine environment from ships, subject to national circumstances, which may include:

(a) accidental and deliberate pollution and emissions from ships;

(b) development of technologies to minimise ship-generated waste and the encouragement of adequate port waste reception facilities;

(c) increased protection in special areas; and

(d) enforcement measures, including notifications to flag states, and as appropriate by port states.

Article 21.10. Marine Litter

1. The Parties recognise the importance of taking action to prevent and reduce marine litter, including, plastics and microplastics, in order to preserve marine ecosystems, prevent the loss of biodiversity, and mitigate marine litter's costs and impacts, including impacts on human health.

2. Recognising that the Parties are taking action to address marine litter in other fora, in accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest with respect to combatting marine litter, subject to national circumstances, which may include:

(a) addressing land and sea-based pollution;

(b) promoting waste management infrastructure; and

(c) advancing efforts related to abandoned, lost or otherwise discarded fishing gear.

Article 21.11. Marine Wild Capture Fisheries (9)

(9) For greater certainty, this Article shall not apply with respect to aquaculture or inland fishing.

1. The Parties acknowledge the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries. The Parties also acknowledge that the fate of marine capture fisheries is an urgent resource problem in many parts of the world. Accordingly, the Parties recognise the importance of taking measures aimed at the conservation and sustainable management of fisheries and marine ecosystems.

2. In this regard, the Parties acknowledge that inadequate fisheries management and illegal, unreported and unregulated ("IUU") fishing (10) can have significant negative impacts on the environment.

(10) The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the UN Food and Agricultural Organisation ("FAO"), adopted at Rome in 2001.

3. The Parties also recognise the importance of promoting good fisheries governance, and the conservation and sustainable use of marine living resources in the pursuit of the objectives of the UNCLOS (11), the United Nations Fish Stocks Agreement, done at New York on 4 December 1995 (12) and Regional Fisheries Management Organisations and Arrangements.

(11) Including any existing and future amendments to which the Parties are party.

(12) Including any existing and future amendments to which the Parties are party.

4. Each Party affirms its commitment to implement the relevant international agreements to which it is a party. (13)

(13) For greater certainty, the international agreements are: UNCLOS; the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, done at New York on 4 August 1995; the Agreement for the Establishment of theIndian Ocean Tuna Commission, done at Rome on 25 November 1993; the Convention on theConservation of Migratory Species of Wild Animals, done at Bonn on 23 June 1979; the InternationalConvention for the Regulation of Whaling, done at Washington on 2 December 1946, and any existingand future amendments to these international agreements to which the Parties are party.

5. The Parties recognise the importance of promoting the long-term conservation of sharks, marine turtles, seabirds, and marine mammals through the implementation of conservation and management measures.

6. The Parties recall the provisions of the World Trade Organization Ministerial Decision of 17 June 2022 (14) adopting the Protocol amending the Marrakesh Agreement Establishing the World Trade Organization of 15 April 1994 to introduce the Agreement on Fisheries Subsidies and the Agreement on Fisheries Subsidies thereby adopted and submitted to members for acceptance.

(14) Ministerial Decisions on 17 June 2022 on "Agreement on Fisheries Subsidies", WT/MIN(22)/33 andWT/L/1144.

7. The Parties recognise the importance of concerted international action to address issues of IUU fishing as reflected in regional and international instruments. (15)

(15) For greater certainty, this does not include international agreements to which a Party is not party.

8. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, bilaterally and in international fora, to address matters of mutual interest related to marine wild capture fisheries, subject to national circumstances.

Article 21.12. Sustainable Forest Management

1. The Parties recognise the importance of forests for providing:

(a) livelihoods and job opportunities, including for local communities, and forest dwelling and forest dependent communities (16);

(16) For greater certainty, forest dwelling and forest dependent communities refers to communities withinIndia.

(b) environmental, economic and social benefits for present and future generations; and

(c) numerous ecosystem services, including carbon storage, maintaining water quantity and quality, stabilising soils, and providing habitat for wild fauna and flora.

2. The Parties further recognise the need to protect, restore, and sustainably manage forests.

3. Accordingly, each Party shall endeavour to:

(a) support the conservation and sustainable management of forests;

(b) combat illegal logging, and associated trade; and

(c) reduce deforestation and forest degradation.

4. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, on matters of mutual interest with respect to the conservation and sustainable management of forests, subject to national circumstances, which may include:

(a) combatting illegal logging, and associated trade;

(b) promoting the conservation and sustainable management of forests;

(c) reducing deforestation and forest degradation; and

(d) sustainable supply chains and production.

Article 21.13. Conservation of Biological Diversity

1. The Parties recognise the role that terrestrial and marine biological diversity plays in achieving sustainable development, including through the provision of ecosystem services and genetic resources, and the importance of conservation and sustainable use of biological diversity.

2. The Parties recognise that threats to terrestrial and marine biological diversity include, poaching and illegal trade, in wild flora and fauna, habitat degradation and destruction, and pollution.

3. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect the environment, economic activities and development, and plant, animal, and human health. The Parties also recognise that the prevention, control, and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

4. Each Party affirms its commitment to implement the Convention on Biological Diversity done at Rio de Janeiro on 5 June 1992 (17) (“CBD”) and its protocols, and the Convention on Trade in Endangered Species of Wild Fauna and Flora done at Washington D.C. on 3 March 1973. (18)

(17) Including any existing and future amendments to which the Parties are party.

(18) Including any existing and future amendments to which the Parties are party.

5. The Parties, recognising that patents and other intellectual property rights may have an influence on the implementation of the CBD, shall cooperate in this regard, subject to national legislation and international law, in order to ensure that those rights are supportive of and do not run counter to its objectives.

6. The Parties recognise the importance of prior informed consent or approval to access genetic resources and traditional knowledge associated with genetic resources, in accordance with their respective laws and regulations, and the fair and equitable sharing, between users and providers, of benefits arising from the utilisation of genetic resources and traditional knowledge associated with genetic resources, as well as subsequent application and commercialisation. Accordingly, the Parties affirm their commitment to implement the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity done at Nagoya on 29

October 2010. (19)

(19) Including any existing and future amendments to which the Parties are party.

7. The Parties further recognise the particular losses caused to conservation from the illegal trade in ivory, and the importance of appropriate regulation of domestic markets worldwide for ivory as a means of supporting international conservation efforts. Accordingly, each Party shall endeavour to combat the illegal trade in ivory.

8. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, on matters of mutual interest with respect to the conservation of biological diversity, subject to national circumstances, which may include:

(a) protection of terrestrial and marine ecosystems and ecosystem services, including marine ecosystems and species in areas beyond national jurisdiction from trade-related impacts;

(b) combatting poaching and illegal trade in or unsustainable use of wild flora and fauna, including through consultation with interested entities;

(c) supporting efforts, to close domestic ivory markets;

(d) sharing information and management experiences, including on industry-led schemes, on the movement, prevention, detection, control, and effective management of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species;

(e) access to genetic resources and the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the CBD; and

(f) identifying opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing.

Article 21.14. Resource Efficient and Circular Economy

1. The Parties recognise that the transition towards a resource efficient and circular economy can reduce adverse environmental impacts of products and production processes and improve resource security. The Parties further recognise the role that trade can play in achieving this transition and that cooperation can be beneficial in achieving this objective, taking into account national circumstances.

2. The Parties also recognise that policy objectives to facilitate the transition to a resource efficient and circular economy include: extending product life cycles, sustainable product design, increasing re-use and recycling, and reducing waste.

3. Accordingly, each Party shall endeavour to avoid the generation of waste, including electronic waste, and reduce the amount of waste sent to landfill.

4. In accordance with Article 21.15 (Cooperation), the Parties shall cooperate, as appropriate, to address matters of mutual interest related to a transition towards a resource-efficient and circular economy, subject to national circumstances, which may include:

(a) policies and practices to encourage the shift to a resource efficient and circular economy;

(b) promoting and facilitating trade that contributes to a resource efficient and circular economy;

(c) resource efficient product design and related product information; and

(d) addressing marine plastic litter.

Article 21.15. Cooperation

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment, and to promote sustainable development and clean growth as they strengthen their trade and investment relations.

2. Accordingly, the Parties shall cooperate as provided in this Chapter. Such cooperation may take place bilaterally and in such international fora, as the Parties consider appropriate.

3. Each Party shall, as appropriate:

(a) share its priorities for cooperation with the other Party, including the objectives of that cooperation;

(b) propose cooperation activities related to the implementation of this Chapter; and

(c) develop and participate in cooperation activities and programmes in accordance with the priorities identified and agreed by the Parties.

4. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; joint analysis; the sharing of information, data and best practices on policies and procedures; and exchange of experts.

5. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources and to the applicable laws and regulations of the Parties. The Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 21.16. Contact Points

Each Party shall designate a contact point within 90 days of the date of entry into force of this Agreement in order to facilitate communication between the Parties. Each Party shall notify the other Party promptly in the event of any change to its contact point.

Article 21.17. Opportunities for Public Participation

1. The Parties recognise the importance of public access to environmental information and public participation and consultation in environmental decision making in accordance with the domestic procedures of the respective Parties.

2. Accordingly, the Parties shall endeavour to make environmental information, including data, publicly available, as appropriate.

3. Each Party shall endeavour to promote public participation with respect to the cooperative activities under this Chapter, as appropriate.

4. Each Party shall endeavour to consider and respond, as appropriate, to submissions made by persons of that Party on matters related to this Chapter, in accordance with its domestic laws and procedures.

Article 21.18. Environment Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through cooperation, dialogue, consultations, and exchange of information to address any matter arising under this Chapter.

2. Subject to paragraph 3, a Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall set out the reasons for the request.

3. Where the matter arising under this Chapter regards compliance with obligations under a multilateral environmental agreement to which the Parties are party, the requesting Party shall, where appropriate, address the matter through the consultative or other procedures under that multilateral environmental agreement.

4. The responding Party shall, unless the Parties agree otherwise, respond to the request in writing no later than 90 days after the date of receipt of the request. The period for responding to the request may be extended by 30 days upon the request of the responding Party.

5. Unless the Parties agree otherwise, they shall enter into consultations promptly and no later than 150 days after the date of receipt by the responding Party of the request.

6. The Parties shall make every effort to arrive at a mutually agreed solution to the matter, which may include appropriate cooperative activities. The Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

7. Without prejudice to Article 21.20 (Ministerial Consultations), consultations pursuant to this Article, Article 21.19 (Joint

Committee Consultations) and Article 21.20 (Ministerial Consultations), and in particular, the outcomes of the consultations and positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of either Party in any other proceedings.

Article 21.19. Joint Committee Consultations

1. If the Parties fail to resolve the matter under Article 21.18 (Environment Consultations), either Party may request that the Joint Committee convene to consider the matter by delivering a written request to the contact point of the other Party.

2. The Joint Committee shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental agencies or sources, or other mutually agreed agencies or sources.

Article 21.20. Ministerial Consultations

If the Parties fail to resolve the matter under Article 21.19 (Joint Committee Consultations), either Party may refer the matter to the relevant Ministers of the Parties by delivering a written request to the contact point of the other Party. The relevant Ministers shall seek to resolve the matter. The outcome of these consultations shall be made public unless the Parties agree otherwise. Where the outcome of consultations is published, this shall be through a jointly agreed report.

Article 21.21. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 22. TRADE AND DEVELOPMENT COOPERATION

Article 22.1. General Provisions

1. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of jobs, and the alleviation of poverty.

2. The Parties affirm trade as a vehicle for achieving the Sustainable Development Goals for all countries.

3. The Parties acknowledge that effective coordination of trade, investment and development policies can contribute to sustainable economic growth for all countries.

4. The Parties affirm their commitment to promote and strengthen an open, fair and equitable trade and investment environment that seeks to improve livelihoods, reduce poverty, and facilitate economic development across all countries.

5. The Parties affirm the importance of creating a conducive environment for active participation of developing countries in the global economy and recognise the vital contribution of the World Trade Organization to trade and development.

6. The Parties recognise that building a stronger and wider relationship across a range of interests in trade and development cooperation, based on shared values, individual strengths and strategic interests, and mutual support for South-South cooperation, can be a significant contributor to regional and global economic development and prosperity. In pursuing these interests, the Parties recognise their differing experiences, capacities, and available resources.

Article 22.2. Joint Development Cooperation Activities

1. The Parties recognise the value in undertaking joint development cooperation activities relating to trade and investment that support inclusive and sustainable economic growth in developing countries. These activities may include:

(a) an exchange of information between the Parties, relating to experiences, cooperation, best practice, technical assistance, or capacity building;

(b) mutually agreed cooperation, technical assistance, or capacity building including through existing mechanisms or projects on issues such as customs procedures, trade facilitation, technical barriers to trade, trade in services, digital trade, innovation, or trade and gender equality;

(c) mutually agreed cooperation in international fora;

(d) inviting, as appropriate, the assistance of relevant international institutions, private sector entities, non-governmental organisations, or other institutions; or

(e) an exchange of views on economic and development policies to be adopted in times of global economic crisis.

2. Each Party may monitor and assess the role this Agreement plays in relation to development, subject to its laws, regulations, policies, and practices and shall endeavour to share any outcomes with each other. The outcomes may be used to inform discussions about development cooperation activities under this Chapter which could also enhance trade between the Parties. Any activities undertaken pursuant to the outcomes of monitoring under this Chapter shall not affect the commitments and obligations contained elsewhere in this Agreement.

3. The nature and implementation of specific activities pursuant to this Article shall be mutually agreed between the Parties, and is subject to the availability of resources.

Article 22.3. Sustainability Subcommittee

The Sustainability Subcommittee shall consider any matter under this Chapter related to cooperation and support any activities pursuant to Article 22.2 (Joint Development Cooperation Activities).

Article 22.4. Contact Points

Each Party shall designate a contact point from its relevant authorities within 90 days of entry into force of this Agreement, in order to facilitate communication between the Parties on any matter relating to this Chapter. Each Party shall notify the other Party of the contact details of its contact point and shall promptly notify any change to its contact point or those contact details.

Article 22.5. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 23. TRADE AND GENDER EQUALITY

Article 23.1. Objectives

1. The purpose of this Chapter is to enhance opportunities for women within the territories of the Parties, including workers, business owners and entrepreneurs, to participate equitably in global, regional, and domestic economies. Accordingly, the Parties agree to advance women's economic empowerment and gender equality across this Agreement and incorporate a gender perspective in the Parties' trade and investment relationship.

2. The Parties acknowledge that in addition to this Chapter, there are provisions inother Chapters of this Agreement that seek to promote women's access to thebenefits of this Agreement or otherwise advance gender equality. These include:

(a) Chapter 7 (Technical Barriers to Trade);

(b) Chapter 9 (Financial Services);

(c) Chapter 12 (Digital Trade);

(d) Chapter 14 (Innovation);

(e) Chapter 15 (Government Procurement);

(f) Chapter 19 (Small and Medium-Sized Enterprises);

(g) Chapter 20 (Labour); and

(h) Chapter 22 (Trade and Development Cooperation).

Article 23.2. General Commitments

1. The Parties recognise the important contribution of women in driving sustained, inclusive, and sustainable economic growth, in line with the Declaration, Transforming our world: the 2030 Agenda for Sustainable Development adopted by the UN General Assembly Resolution A/RES/70/1 done at New York on 25 September 2015, in particular Sustainable Development Goal 5.

2. Similarly, the Parties appreciate that inclusive trade policies and the elimination of all forms of discrimination against women are important for advancing gender equality in trade. The Parties also recognise that there are commitments in the Convention on the Elimination of All Forms of Discrimination against Women done at New York on 18 December 1979, that are important for promoting women's economic empowerment and access to trade.

3. The Parties affirm their commitments under other international agreements or instruments that address women's economic empowerment and gender equality in trade to which they are party.

4. The Parties shall endeavour to implement and enforce their respective laws, policies, practices, and regulations that promote gender equality and improve women's access to trade and economic opportunities.

5. In pursuing the activities under this Chapter, the Parties recognise their differing capacities, available resources, and national laws, regulations and policies and shall consider each Party's priorities and complementarity with initiatives in existence, with the aim of achieving mutual benefits and measurable advances in women's economic empowerment and gender equality outcomes.

6. The Parties recognise that the unequal distribution of unpaid care and domestic work prevents women from participating equitably in global, regional and domestic economies, and acknowledge the importance of promoting shared responsibility within the household. The Parties further recognise the experiences of diverse groups of women participating in trade.

7. The Parties acknowledge the need to develop interventions based, in particular, on evidence they have respectively gathered to address the systemic barriers which exist for women in international trade. Accordingly, the Parties appreciate the benefit of sharing their different experiences in designing, implementing and strengthening policies, programmes and other initiatives, to promote women's full access to the benefits and opportunities of this Agreement.

Article 23.3. Cooperation Activities

1. The Parties shall undertake cooperation activities that promote the full access of women workers, business owners, and entrepreneurs to the benefits and opportunities created by this Agreement.

2. The Parties recognise the importance of carrying out the cooperation activities in this Article with the inclusive participation of women.

3. Areas of cooperation activity may include:

(a) sharing information, experiences and evidence which each Party has gathered relating to advancing gender equality in trade and applying a gender perspective to trade;

(b) improving the access of women to markets and emerging sectors, including developing trade missions for women business owners and entrepreneurs;

(c) promoting equal opportunities for women in the workplace, including workplace flexibility;

(d) sharing experiences of the development of women's leadership and business networks;

(e) promoting financial inclusion and literacy as well as access to financing and financial assistance, including trade financing;

(f) enhancing the competitiveness of women-owned enterprises and women-led SMEs to better enable them to participate and compete in local, regional, and global value chains through access to skills and capacity building programmes, information and technology;

(g) improving women's participation, leadership, and education in fields in which they are under-represented such as science, technology, engineering, and mathematics, as well as innovation and digital trade, insofar as they are related to trade;

(h) supporting economic opportunities for diverse groups of women in trade including by strengthening their professional and occupational competencies and skills;

(i) sharing information and experiences and identifying best practices relevant to supporting the equitable participation of

women in trade in developing countries not party to this Agreement;

(j) collaborating, including with other developing countries and in any multilateral fora in which each of the Parties has chosen to participate, to support women workers in global supply chains;

(k) undertaking research on trade and gender equality where appropriate; and

(l) any other areas the Parties may decide.

4. To support achievement of the objectives of this Chapter, the Parties shall endeavour to develop, and exchange information on approaches to integrating gender into data collection, analysis and evaluation, which may include:

(a) methods and procedures for the collection of sex or gender- disaggregated data, the use of indicators and evaluation methodologies, and the analysis of gender-focused statistics related to trade; and

(b) exchanging experiences and best practices for conducting gender-based analysis of trade, policies and evaluating their effects on women in their various roles in trade.

Article 23.4. Trade and Gender Equality Working Group

1. The Parties hereby establish the Trade and Gender Equality Working Group composed of government representatives of each Party. The Trade and Gender Equality Working Group shall meet at regular intervals by agreement between the Parties including as to the manner of the meetings, and in any event within one year of the date of entry into force of this Agreement. The Trade and Gender Equality Working Group shall take decisions by mutual agreement.

2. The Trade and Gender Equality Working Group may consider any matter that it regards as appropriate to advance women's economic empowerment and gender equality across this Agreement and otherwise achieve the objectives of this Chapter. The Trade and Gender Equality Working Group may make recommendations to the Joint Committee.

3. The Trade and Gender Equality Working Group shall determine on behalf of the Parties, and carry out, the cooperation activities described in Article 23.3 (Cooperation Activities) taking into account the respective priorities, differing capacities and existing initiatives of each Party. The Trade and Gender Equality Working Group shall otherwise support the effective implementation and operation of this Chapter.

4. The Trade and Gender Equality Working Group may work with other bodies and subsidiary bodies established by or under this Agreement to advance the objectives of this Chapter and support the delivery of the cooperation activities described in Article 23.3 (Cooperation Activities), while seeking to avoid duplication of their work.

5. The Trade and Gender Equality Working Group may engage with relevant stakeholders which may include women workers, business owners and entrepreneurs, including marginalised groups, in its consideration of matters relevant to this Chapter.

6. The Trade and Gender Equality Working Group shall monitor and review the implementation and operation of this Chapter and relevant provisions in other Chapters of this Agreement.

7. The Trade and Gender Equality Working Group shall, when appropriate, submit a report to the Joint Committee on the cooperation activities developed under paragraph 3 of Article 23.3 (Cooperation Activities).

8. The Trade and Gender Equality Working Group shall, at its first meeting, establish contact points who shall be responsible for communication on matters relating to the objectives of this Chapter, including those arising from relevant provisions of other Chapters. The Trade and Gender Equality Working Group shall ensure that details of the contact points remain current and accurate.

Article 23.5. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 24. GOOD REGULATORY PRACTICE

Article 24.1. Definitions

For the purposes of this Chapter:

“regulatory authority” means:

(a) for India, a Ministry or Department at the central level of government; (1)

(1) For greater certainty, for India, this does not include an autonomous governmental or statutory body.

(b) for the United Kingdom, a ministerial department of the central level of government; and

“regulatory measure” means:

(a) for India, an Act of the Indian Parliament which substantively affects bilateral trade between the Parties and covered by Chapter 6 (Sanitary and Phytosanitary Measures) and Chapter 7 (Technical Barriers to Trade), excluding any emergency measure.

(b) for the United Kingdom:

(i) an Act of the UK Parliament; or

(ii) a statutory instrument made, by a Minister of the Crown, under an Act of the UK Parliament,

related to any matter covered by this Agreement and in relation to a business activity, excluding:

(A) any measure imposing, abolishing or varying any tax, duty, levy, or other charge (or any measure in connection with that measure);

(B) any measure in connection with public sector procurement;

(C) any measure in connection with the giving of grants or other financial assistance by or on behalf of a public authority; or

(D) any measure which is to have effect for a period of less than 12 months.

Article 24.2. General Provisions

1. The purpose of this Chapter is to promote good regulatory practice and regulatory cooperation between the Parties with the aim of enhancing bilateral trade and investment, while recognising differences in both Parties’ development, political, and institutional structures, and availability of resources in developing and implementing good regulatory practice, by:

(a) promoting a transparent regulatory environment without prejudice to each Party’s right to regulate;

(b) exchanging information on regulatory measures, practices, or approaches in the areas of mutual interest of the Parties; and

(c) reinforcing bilateral cooperation between the Parties.

2. Each Party shall be free to determine its approach to good regulatory practice and regulatory cooperation under this Agreement in a manner consistent with its own legal framework, practices, and fundamental principles underlying its regulatory system.

3. This Chapter shall not be construed to require a Party to:

(a) deviate from domestic procedures for identifying its regulatory priorities and preparing and adopting regulatory measures ensuring the levels of protection that the Party considers appropriate to achieve its public policy objectives including health, safety, and environmental goals;

(b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives, or prevent a Party from implementing regulatory measures in urgent or unforeseen circumstances; or

(c) achieve any particular regulatory outcome.

Article 24.3. Internal Coordination

Each Party shall endeavour to maintain its internal coordination processes to prepare its regulatory measures in accordance with its own laws, rules, or procedures.

Article 24.4. Descriptions of Regulatory Processes

Each Party shall ensure that descriptions of the processes employed by its regulatory authorities to prepare its regulatory measures are freely and publicly available online in accordance with its own laws, rules, or procedures.

Article 24.5. Access to Regulatory Measures

In accordance with its laws and regulations, each Party shall ensure that its regulatory measures that are in effect are freely and publicly available online, and searchable.

Article 24.6. Public Consultation

1. When preparing a proposed major (2) regulatory measure, each Party shall, in accordance with its laws, rules, or procedures, make public information concerning the proposed measure.

(2) The regulatory authority of each Party may determine what constitutes a "major" regulatory measure for the purposes of its obligations under this Chapter.

2. Each Party shall endeavour to provide a reasonable opportunity to interested persons to provide comments on the publicly-available information concerning the proposed measure, in accordance with its laws, rules, or procedures. (3)

(3) For greater certainty, this paragraph does not prevent a Party from undertaking targeted consultations with interested persons.

3. Each Party may consider the comments received, pursuant to paragraph 2.

4. Each Party is encouraged to make use of electronic means of communication and to make information related to public consultation freely and publicly available online, including information on how to provide comments.

Article 24.7. Regulatory Impact Assessment

1. The Parties recognise that regulatory impact assessments may be beneficial when preparing major regulatory measures.

2. If conducting a regulatory impact assessment, each Party may, in accordance with its relevant laws, rules or procedures, consider non-binding guidelines, including:

(a) assessing the need for the major regulatory measure;

(b) examining feasible and appropriate alternatives that would achieve the Party's public policy objectives; and

(c) considering the impact of the proposed regulatory measure on small businesses.

Article 24.8. Retrospective Review

1. The Parties recognise the importance of promoting periodic retrospective reviews of its major regulatory measures at intervals each Party deems appropriate.

2. Each Party shall endeavour to identify best practices and lessons learned from those reviews. Those best practices and lessons learned may include information on:

(a) other opportunities to achieve each Party's public policy objectives; and

(b) the effect on small businesses.

Article 24.9. Regulatory Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter in order to maximise the benefits arising from it in areas of mutual interest.

2. Regulatory cooperation activities under this Chapter may include:

(a) information exchanges, dialogues, or meetings with the other Party, including in particular:

(i) exchanging experiences on regulatory impact assessments, retrospective reviews, and any other matter covered by this Chapter;

(ii) exchanging information on proposed or existing regulatory measures;

(b) training programmes, seminars, and other relevant activities; and

(c) other activities that the Parties may agree.

3. In accordance with its laws and regulations, each Party shall encourage its relevant regulatory authorities to consider, where appropriate, regulatory measures in the other Party, and relevant developments in international, regional, and other fora when planning regulatory measures.

Article 24.10. Contact Points

1. Each Party shall endeavour to designate and notify contact points to facilitate communication and cooperation between the Parties on any matter covered by this Chapter.

2. Each Party shall promptly notify the other Party of any change to its contact point.

3. The contact points may assist any other institutional body established by this Agreement in considering agreed matters of relevance to this Chapter.

4. The Parties may, via its contact points at a time to be agreed, review the definition of regulatory measure as defined in Article 24.1 (Definitions), and consider the possibility of amending that definition to extend its scope.

Article 24.11. Relation to other Chapters

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

Article 24.12. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 25. TRANSPARENCY

Article 25.1. Definitions

For the purposes of this Chapter:

“administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within the ambit of that administrative ruling or interpretation and that establishes a norm of conduct and is relevant to the implementation of this agreement, but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

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

Article 25.2. Publication

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are published without undue delay, including on the internet where feasible, or otherwise made available in a manner that enables interested persons and the other Party to become acquainted with them.

2. With respect to laws or regulations referred to in paragraph 1 that a Party proposes to adopt at the central level of government, that Party shall to the extent practicable and which it considers appropriate:

(a) publish in advance either the proposed laws or regulations, or information concerning the nature of the proposed measure; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on the proposed laws or regulations.

3. To the extent possible, when introducing or changing laws or regulations referred to in paragraph 1, each Party, in accordance with its legal system, shall endeavour to provide a reasonable period between the date when those laws or regulations are made publicly available and the date they enter into force.

4. Each Party shall, with respect to a regulation of general application adopted by its central level of government regarding any matter covered by this Agreement that is published in accordance with paragraph 1:

(a) promptly publish the regulation on an official website, or in an official journal of national circulation; and

(b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Article 25.3. Administrative Proceedings

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

(a) whenever possible, a person of the other Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated, and a general description of any issue in question;

(b) a person of the other Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

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

Article 25.4. Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures, in accordance with its legal system, for the purpose of prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

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

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

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that the decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 25.5. Provision of Information

1. If a Party considers that any actual measure may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement, it shall, to the extent possible, inform the other Party of that measure.

2. On request of a Party, the other Party shall within a reasonable period of time provide information and respond to questions pertaining to any actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

3. A Party may convey any request or provide information under this Article to the other Party through their relevant contact points.

4. Any information provided under this Article shall be without prejudice to the consistency or otherwise of the measure in question with this Agreement.

Article 25.6. Accessible and Open Government

To the extent possible and where practicable, each Party shall endeavour to ensure that information published by its central level of government with respect to any matter covered by this Agreement is accessible in open and, wherever possible, in machine- readable formats.

Article 25.7. Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under Article 25.2 (Publication).

Chapter 26. ANTI-CORRUPTION

Article 26.1. Definitions

For the purposes of this Chapter:

“act or refrain from acting in relation to the performance of or the exercise of official duties” includes any use of the public official’s position, whether or not within the official’s authorised competence;

“Anti-Bribery Convention” means the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions done at Paris on 17 December 1997;

“confiscation” means the permanent deprivation of property by order of a court or other competent authority, and includes forfeiture, where applicable;

“freezing” or “seizure” means temporarily prohibiting the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property, on the basis of an order issued by a court or other competent authority;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in those assets;

“public official” means:

(a) any natural person holding a legislative, executive, administrative, or judicial office of a Party, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that natural person’s seniority;

(b) any other natural person who performs a public function for a Party, including for a public agency or public enterprise, or provides a public service as defined under that Party’s law and as applied in the pertinent area of law in that Party; or

any other person defined as a “public official” under a Party’s law; and

“UNCAC” means the United Nations Convention against Corruption done at New York on 31 October 2003.

Article 26.2. Scope

This Chapter shall apply to measures to prevent and combat bribery and corruption in any matter affecting international trade or investment between the Parties.

Article 26.3. General Provisions

1. Each Party affirms its resolve to prevent and combat bribery and corruption in matters affecting international trade or investment.

2. Each Party recognises the need to build integrity within both the public and private sectors and that each sector has

complementary responsibilities in this regard.

3. Each Party recognises the importance of regional and multilateral initiatives to prevent and combat bribery and corruption in matters affecting trade or investment, including the United Nations, and the Financial Action Task Force, and commits to work jointly with the other Party to encourage and support appropriate initiatives to prevent and combat bribery and corruption.

4. The Parties recognise the relevant principles adopted by the G20, including: G20 High Level Principles on Organizing against Corruption; G20 High Level Principles on Corruption and Growth; G20 Guiding Principles on Enforcement of the Foreign Bribery Offence; G20 Guiding Principles to Combat Solicitation; G20 High Level Principles on Private Sector Transparency and Integrity; G20 High Level Principles on Beneficial Ownership Transparency; G20 High Level Principles for the Effective Protection of Whistleblowers; and G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery.

5. The Parties recognise that their respective competent anti-corruption authorities have established working relationships in various bilateral and multilateral forums, and that cooperation under this Agreement can enhance the Parties' joint efforts in those forums and help produce outcomes that prevent and combat bribery and corruption in matters affecting trade or investment.

6. Each Party affirms its adherence to the UNCAC. The United Kingdom also affirms its adherence to the Anti-Bribery Convention.

7. The Parties recognise that the description of offences adopted or maintained in accordance with this Chapter, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law. The Parties recognise that obligations under this Chapter shall be carried out in a manner consistent with the principles of sovereign equality and territorial integrity with respect to the Parties and that of non-intervention in the domestic affairs of the other Party. Nothing in this Chapter shall entitle a Party to undertake in the territory of the other Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of the other Party by its law.

Article 26.4. Measures to Prevent and Combat Bribery and Corruption (1)

(1) For greater certainty, the obligations in this Article to establish offences may be fulfilled by a Party through legislative or other measures which cover the range of acts or offences directly or otherwise.

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

(a) the promise, offering, or giving to a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of official duties; and

(c) the aiding or abetting, or conspiracy in, the commission of any of the offences described in subparagraphs (a) and (b).

2. Each Party shall endeavour to adopt or maintain, and enforce measures criminalising the bribery of foreign public officials and officials of public international organisations, in accordance with Article 16 of the UNCAC.

3. Each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in this Article:

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.

2. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as a criminal offence under its law, in matters affecting international trade or investment, when committed intentionally:

(a) the embezzlement, misappropriation, or other diversion (2) by a public official for the benefit of the public official or for the benefit of another person, of any property, public or private funds or securities, or any other thing of value entrusted to the public official by virtue of the public official's position; and

(2) For greater certainty, "diversion" means, for the United Kingdom, embezzlement or misappropriation that constitutes the criminal offences of theft or fraud under its law; and, for India, as determined by its legal system.

(b) by any person subject to its jurisdiction, the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of an offence established in accordance with subparagraph (a).

5. Each Party shall adopt or maintain measures as may be necessary in accordance with its laws and regulations to establish as criminal offences, in matters affecting international trade or investment, when committed intentionally, by any person subject to its jurisdiction:

(a) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illegal origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of that person's action;

(b) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of, or rights with respect to property, knowing that such property is the proceeds of crime;

(c) the acquisition, possession, or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; and

(d) participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counselling the commission of any of the offences established in accordance with subparagraphs (a) through (c).

6. Each Party shall adopt or maintain, in accordance with its law, effective, proportionate, and dissuasive penalties and appropriate procedures to enforce the measures that it adopts or maintains pursuant to paragraphs 1 through 5.

7. Neither Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

8. Each Party shall adopt or maintain measures enabling the identification, tracing, freezing, seizure, and confiscation in criminal proceedings (3) of:

(3) For greater certainty, this paragraph is without prejudice to the adoption or maintenance of such measures in non-conviction-based proceedings by either Party.

(a) proceeds, including any property, derived from the offences described in paragraphs 1, 4, and 5; and

(b) property, equipment, or other instrumentalities used in or destined for use in those offences.

9. The Parties recognise the harmful effects of facilitation payments. Each Party shall, in accordance with its laws and regulations:

(a) prohibit the use of facilitation payments; and

(b) take steps to raise awareness among its public officials of its bribery laws, and to raise global awareness of the harmful effects of facilitation payments, with a view to stopping the solicitation, payment, and the acceptance of facilitation payments.

10. Each Party shall ensure that any statute of limitations applicable to any criminal offences described in this Chapter

allows an adequate period of time for the investigation and prosecution of the offence.

Article 26.5. Persons That Report Bribery or Corruption Offences

1. Each Party shall, as it considers appropriate, adopt or maintain measures to ensure that its competent authorities which are responsible for the measures under Article 26.4 (Measures to Prevent and Combat Bribery and Corruption), or the enforcement of those measures, are known to the public.

2. Each Party shall adopt or maintain publicly available procedures for a person to report to its competent authorities, including anonymously as permitted by its law, any incident that may be considered to constitute an offence described in paragraphs 1, 4 or 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 3 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption).

3. Each Party shall consider adopting or maintaining appropriate measures, in accordance with its laws and regulations, to protect against or provide remedy for discriminatory or disciplinary treatment of any public and private sector employee who, on reasonable belief, reports to the competent authorities any suspected incident that may be considered to constitute an offence described in paragraphs 1, 4, or 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) or an act described in paragraph 3 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption). (4)

(4) For greater certainty, this paragraph is without prejudice to each Party's right to adopt or maintain additional requirements for the making of such a report provided these requirements do not have the effect of unjustifiably limiting a person's access to protection or remedy.

Article 26.6. Promoting Integrity Among Public Officials

1. To prevent and combat bribery and corruption in matters affecting international trade or investment, each Party affirms its resolve to promote, among other things, integrity, honesty, and responsibility among its public officials. To this end, each Party shall endeavour to adopt or maintain:

(a) measures to provide adequate procedures for the selection and training of individuals for public positions considered by the Party to be especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

(b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

(c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets, and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

(e) measures to facilitate reporting by public officials of acts of bribery and corruption to competent authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable, and proper performance of public functions, and measures providing for disciplinary or other procedures, if warranted, against a public official who violates the codes or standards established in accordance with this paragraph.

3. Each Party shall consider establishing procedures through which a public official accused or convicted of an offence described in this Chapter may, if appropriate, be removed, suspended, or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters affecting international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 26.7. Participation of Private Sector and Society

1. Each Party shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, in preventing and combatting bribery and corruption in matters affecting international trade or investment and to raise public awareness regarding the existence, causes, and gravity of and the threat posed by that bribery and corruption. To this end, a Party may:

(a) undertake public information activities and public education programmes that contribute to non-tolerance of bribery and corruption;

(b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes, and codes and standards of conduct for preventing and detecting bribery and corruption;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes, including those that contribute to preventing and detecting bribery and corruption; and

(d) adopt or maintain measures to respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning bribery and corruption,

in matters affecting international trade or investment.

2- Each Party shall endeavour to encourage private enterprises, taking into account their size, structure, and the sectors in which they operate, to:

(a) adopt or maintain sufficient internal auditing controls and compliance programmes to assist in preventing and detecting acts of bribery and corruption in matters affecting international trade or investment; and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

Article 26.8. Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption

1. In accordance with the applicable principles of its legal system, neither Party shall fail to effectively enforce the measures adopted or maintained to comply with Articles 26.4 (Measures to Prevent and Combat Bribery and Corruption) through 26.6 (Promoting Integrity among Public Officials), through a sustained or recurring course of action or inaction. (5)

(5) For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

2. Each Party retains the right for its law enforcement, prosecutorial, and judicial authorities to exercise discretion with respect to the enforcement of its measures to prevent and combat bribery and corruption. Each Party retains the right to take bona fide decisions with regard to the allocation of its resources with respect to that enforcement.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law enforcement actions to combat the offences described in paragraphs 1, 4, and 5 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption) and the acts described in paragraph 3 of Article 26.4 (Measures to Prevent and Combat Bribery and Corruption).

Article 26.9. Relation to other Agreements

Nothing in this Agreement affects the rights and obligations of the Parties under the Anti-Bribery Convention, the UNCAC or the United Nations Convention against Transnational Organized Crime done at New York on 15 November 2000. (6)

(6) Reference in this paragraph to the Anti-Bribery Convention does not apply to India, which is not a party to the Anti-Bribery Convention.

Article 26.10. Cooperation and Non-Application of Dispute Settlement

1. The Parties shall make every effort through dialogue, exchange of information, and cooperation to address matters that might affect the operation or application of this Chapter.

2. The Parties shall endeavour to cooperate as appropriate, in matters affecting international trade or investment, consistent with each Party's domestic law and anticorruption frameworks, in:

(a) sharing their diverse experience and best practices in developing, implementing, and enforcing their anti-corruption laws and policies, including matters of embezzlement, misappropriation, or other diversion, laundering or recovery of proceeds of crime, and beneficial ownership information;

(b) pursuing, investigating, and prosecuting any person subject to their respective jurisdictions that commits an offence described in this Chapter and in identifying, tracing, freezing, seizing, and confiscating the proceeds of crime; and

(c) developing measures regarding transparency of beneficial ownership information to prevent and combat bribery and corruption.

3, To facilitate the cooperation described in paragraphs 1 and 2, the Parties hereby establish the Anti-Corruption Working Group, composed of government representatives of each Party, including representatives with relevant expertise, under the auspices of the Joint Committee Where appropriate and with prior agreement of each Party, this working group may invite ad hoc presentations from relevant law enforcement agencies of the Parties. This working group shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties. To the extent possible, the Anti-Corruption Working Group shall avoid replacing or duplicating the work or activities of other forums between the Parties' respective competent anti-corruption authorities.

4. Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.

Chapter 27. ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 27.1. Establishment of the Joint Committee

1. The Parties hereby establish a Joint Committee, composed of government representatives of the Parties. The Joint Committee shall meet at the level of:

(a) senior officials; or

(b) when agreed by the Parties, Ministers.

Article 27.2. Functions of the Joint Committee

1. The Joint Committee shall:

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

(b) assess, review and monitor the overall operation of this Agreement;

(c) consider any proposal to amend or modify this Agreement and, if appropriate, make recommendations to the Parties;

(d) supervise and coordinate the work of subcommittees, working groups, and other subsidiary bodies established under this Agreement; and

(e) consider ways to further enhance trade between the Parties.

2. The Joint Committee may:

(a) establish, assign tasks to, or delegate functions to, a subcommittee, working group, or other subsidiary body;

(b) refer matters to, or consider matters raised by, a subcommittee, working group, or other subsidiary body;

(c) restructure, reorganise or dissolve a subcommittee, working group, or other subsidiary body established under this Agreement;

(d) develop arrangements for implementing this Agreement;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement, without prejudice to the rights of the Parties under Chapter 29 (Dispute Settlement);

(f) issue interpretations of the provisions of this Agreement, which shall be binding for panels established under Chapter 29 (Dispute Settlement);

(g) adopt, after the completion of any necessary domestic legal requirements by each Party, modifications to Annexes or

Appendices to this Agreement;

(h) discuss and consider proposals for future cooperation activities, including on analytical topics for information sharing and for facilitating the monitoring and evaluation of this Agreement; and

(i) take any other action as the Parties may agree.

Article 27.3. Decision-Making

The Joint Committee and all subcommittees, working groups, or other subsidiary bodies established under this Agreement shall take decisions by mutual agreement.

Article 27.4. Rules of Procedure of the Joint Committee

1. The Joint Committee and any subcommittee, working group or other subsidiary body established under this Agreement, shall be co-chaired by representatives of the Parties.

2. Unless otherwise provided in this Agreement, the Joint Committee and any subsidiary body established under this Agreement shall carry out its work through whatever means are appropriate, which may include electronic mail or videoconferencing.

3. Unless otherwise decided, the Joint Committee shall adopt rules of procedure at its first meeting, and any subsidiary body established under this Agreement may also establish rules of procedure for the conduct of its work.

Article 27.5. Contact Points

1. Each Party shall designate an overall contact point to receive and facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Party in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement.

3. Each Party shall promptly notify the other Party, in writing, of any changes to its overall contact point or any other contact point.

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

Article 27.6. Meeting of the Joint Committee

1. The Joint Committee shall meet within one year of entry into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise, to consider any matter relating to this Agreement.

2. The Joint Committee may meet in person or by other means, as agreed by the Parties.

3. In-person meetings conducted pursuant to paragraph 1 shall be held alternately in the territories of the Parties, unless the Parties agree otherwise. The Party hosting a session of the Joint Committee shall provide any necessary administrative support for such session.

4. Upon request by a Party, the Joint Committee and any subcommittee, working group, or other subsidiary body established under this Agreement may, if agreed by the Parties, hold special sessions without undue delay at a mutually convenient date.

5. Each Party shall be responsible for composition of its delegation.

Article 27.7. Subcommittee on Sustainability

1. The Parties hereby establish a Subcommittee on Sustainability (“Sustainability Subcommittee”), composed of government representatives of the Parties.

2. The Sustainability Subcommittee shall:

(a) monitor and review the implementation and operation of Chapter 20 (Labour), Chapter 21 (Environment), and Chapter 22

(Trade and Development Cooperation);

(b) facilitate, monitor, and as appropriate determine and prioritise, cooperative activities, including information sharing, under Article 20.9 (Cooperative Activities – Labour), Chapter 21 (Environment) and Article 22.2 (Joint Development Cooperation Activities – Trade and Development Cooperation); and

(c) produce an agreed record of its meetings and report to the Joint Committee with respect to its activities.

3. The Sustainability Subcommittee may:

(a) make recommendations, or refer matters, to the Joint Committee;

(b) cooperate with subcommittees, working groups, and other subsidiary bodies established under this Agreement on issues relevant to Chapter 20 (Labour), Chapter 21 (Environment), or Chapter 22 (Trade and Development Cooperation); and

(c) carry out any other function as the Joint Committee may decide.

4. The Sustainability Subcommittee shall meet at least once annually in the three years following the entry into force of this Agreement. Thereafter, it shall meet biennially, unless the Parties agree otherwise.

5. The Sustainability Subcommittee may meet in person or by other means, as agreed by the Parties. Each Party shall be responsible for the composition of its delegation.

Chapter 28. GENERAL PROVISIONS AND EXCEPTIONS

Article 28.1. General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 5 (Customs and Trade Facilitation), Chapter 6 (Sanitary and Phytosanitary Measures), Chapter 7 (Technical Barriers to Trade), Chapter 12 (Digital Trade), and Chapter 17 (State-Owned Enterprises), Article XX of GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis. (1)

(1) For the purposes of Chapter 17 (State-Owned Enterprises), the application of Article XX of GATT 1994 is limited to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or state trading enterprise) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Financial Services), Chapter 10 (Temporary Movement of Natural Persons), Chapter 11 (Telecommunications), Chapter 12 (Digital Trade), and Chapter 17 (State- Owned Enterprises), Article XIV of GATS is incorporated into and made part of this Agreement, mutatis mutandis. (2)

(2) For the purposes of Chapter 17 (State-Owned Enterprises), the application of Article XIV of GATS is limited to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or state trading enterprise) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

3. The Parties understand that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

4. Nothing in this Agreement shall be construed to prevent a Party from implementing a suspension of concessions or other obligations, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO.

Article 28.2. Security Exceptions

1. Nothing in this Agreement shall be construed to:

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

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

(i) relating to the production of or traffic in arms, ammunition and implements of war and to other activities carried on,

directly or indirectly, for the purpose of supplying or provisioning a military establishment;

(ii) relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;

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

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

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

2. Without prejudice to paragraph 1, nothing in this Agreement shall be construed to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests, including in time of national emergency or relating to the protection of critical public infrastructure, whether publicly or privately owned, including communications, power and water infrastructure, subject to the requirement that such action is not taken in a manner which would constitute a disguised restriction on trade.

Article 28.3. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 set out in Annex 1A of the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, in accordance with Article XII of GATS, 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. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party. A notification must be made no later than:

(a) in the case of the adoption of, or change to, a measure, 30 days after the date of the adoption or change;

(b) in the case of the maintenance of a measure, 30 days after the date of entry into force of this Agreement.

3. To the extent that it does not duplicate the process under the WTO or the International Monetary Fund (“IMF”), the Party adopting or maintaining any restrictions under this Article shall promptly commence consultations with the other Party in order to review those restrictions.

4. Any consultations pursuant to paragraph 3 that relate to restrictions adopted or maintained under subparagraph 1(b) shall discuss the balance-of-payments or external financial difficulties that led to the adoption or maintenance of the restrictive measures. The Parties shall accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves, balance of payments, and their conclusions shall be based on the assessment by the IMF of the balance-of-payments and external financial situation of the Party concerned.

Article 28.4. Taxation Measures

1. For the purposes of this Article:

“taxes” and “taxation measures” do not include:

(a) a customs duty;

(b) a fee or other charge in connection with importation commensurate with the cost of services rendered;

(c) an anti-dumping or countervailing duty; or

(d) a safeguard duty;

“direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total

amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation; (3)

(3) For greater certainty, “direct taxes” includes the taxes which are the subject of the Convention between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains done at New Delhi on 25 January 1993 (“the UK-India DTAA”) under Article 2 of that Convention.

“indirect taxes” comprise all taxation measures other than direct taxes; and

“tax convention” means the UK-India DTAA, or any other international taxation agreement or arrangement including any other convention for the avoidance of double taxation.

2. Nothing in this Agreement shall apply to direct taxes.

3. Nothing in this Agreement shall apply to indirect taxes, except for:

(a) Article 2.4 (National Treatment – Trade in Goods), including Article III of GATT 1994 as incorporated into this Agreement; and

(b) Article 2.9 (Temporary Admission – Trade in Goods).

4. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any tax convention, the tax convention shall prevail over this Agreement.

5. In the case of a tax convention between the Parties, the relevant competent authorities under that tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.

6. With respect to direct taxes neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement).

7. Nothing in this Agreement shall oblige a Party to apply any most-favoured- nation obligation in this Agreement with respect to an advantage accorded by a Party pursuant to a tax convention.

Article 28.5. Disclosure of Information

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

Article 28.6. Confidentiality

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.

2. Information provided in confidence pursuant to this Agreement shall be used only for the purposes specified by the Party providing the information.

3. Notwithstanding paragraph 1, the confidential information provided pursuant to this Agreement may be transmitted to a non-Party subject to prior consent of the Party providing the information.

4. Nothing in this Article shall prevent a Party from disclosing information where it is required to do so under its law, or to the extent it may be necessary in the context of judicial or quasi-judicial proceedings. In such situations, the Party that has received the information shall notify the other Party of the release or disclosure.

Article 28.7. The National Health Service

The Parties recall the exclusions and exceptions in this Agreement that are applicable to the National Health Service of the United Kingdom (4), including as set out in the relevant provisions of this Chapter, and Chapter 8 (Trade in Services), the Schedule of the United Kingdom in Annex 8B (Schedules of Specific Commitments), Chapter 13 (Intellectual Property Rights), and Chapter 15 (Government Procurement).

(4) For greater certainty, the National Health Service of the United Kingdom includes the National Health Service in England, Scotland, Wales, and Health and Social Care in Northern Ireland.

Chapter 29. DISPUTE SETTLEMENT

Article 29.1. Definitions

For the purposes of this Chapter:

“cases of urgency” means those cases which concern goods that rapidly lose their quality, current condition, or commercial value, in a short period of time, including perishable goods;

“Code of Conduct” means the code of conduct referred to in Article 29.21 (Rules of Procedure and Code of Conduct) and set out in Annex 29B (Code of Conduct);

“complaining Party” means the Party that requests consultations under Article 29.7 (Consultations);

“panel” means a panel established under Article 29.8 (Request for Establishment of a Panel) or reconvened under Articles 29.14 (Compliance Review), 29.15 (Compensation and Suspension of Concessions or other Obligations), or 29.16 (Compliance Review after Suspension of Concessions or other Obligations);

“responding Party” means the Party to which a request for consultations is made under Article 29.7 (Consultations); and

“Rules of Procedure” means the rules of procedure referred to in Article 29.21 (Rules of Procedure and Code of Conduct) and set out in Annex 29A (Rules of Procedure).

Article 29.2. Objective

The objective of this Chapter is to provide an effective, efficient, and transparent process for the avoidance or settlement of disputes between the Parties concerning the interpretation and application of this Agreement.

Article 29.3. Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement and shall make every effort through cooperation and consultations to arrive at a mutually agreed solution with respect to any matter that might affect its operation or application.

Article 29.4. Scope

1. Unless otherwise provided in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning the interpretation or application of this Agreement, wherever a Party considers that:

(a) a measure of the other Party is inconsistent with its obligations under this Agreement; or

(b) the other Party has otherwise failed to carry out its obligations under this Agreement.

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

Article 29.5. Choice of Forum

1. If a dispute arises regarding a right or obligation under this Agreement and a substantially equivalent right or obligation under another international agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

2. The complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of, or referred the matter to, a panel or tribunal, pursuant to Article 29.8 (Request for Establishment of a Panel) or under the relevant provisions of the other international agreement.

3. Once the complaining Party has selected the forum in which to settle the dispute, that forum shall be used to the exclusion of all other fora (1), unless the forum selected first fails to make findings on the issue in dispute for jurisdictional or procedural reasons.

(1) For greater certainty, the exclusion of other fora includes the exclusion of consultations in those fora.

Article 29.6. Good Offices, Conciliation, or Mediation

1. The Parties may at any time agree to undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.

2. If the Parties agree, procedures undertaken pursuant to paragraph 1 may continue while proceedings of the panel provided for in this Chapter are in progress.

3. Procedures undertaken pursuant to paragraph 1 and, in particular, positions taken by the Parties during these procedures shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

4. A Party may suspend or terminate the procedures undertaken pursuant to paragraph 1 at any time.

Article 29.7. Consultations

1. The Parties shall endeavour to resolve any dispute referred to in paragraph 1 of Article 29.4 (Scope) through consultations in good faith, with a view to reaching a mutually agreed solution.

2. A Party may request consultations in writing pursuant to paragraph 1, setting out the reasons for the request, including identification of the measure at issue or other matter under Article 29.4 (Scope) and an indication including a brief description of the factual and legal basis for the complaint.

3. The responding Party shall reply in writing to the request no later than 10 days after the date of receipt of the request. Unless the Parties agree otherwise, consultations shall be held no later than 30 days, or 15 days in cases of urgency, after the date of receipt of the request.

4. Unless the Parties agree otherwise, consultations shall be deemed concluded 60 days, or 30 days in cases of urgency, after the date of receipt of the request.

5. In the consultations, each Party shall:

(a) provide sufficient information to enable a full examination of how the measure at issue or other matter which is the subject of consultations might affect the operation or application of this Agreement;

(b) treat any confidential information exchanged in the course of consultations in the same manner as treated by the Party providing the information; and

(c) endeavour to ensure the participation of personnel of their competent governmental authorities or other regulatory bodies who have responsibility for or expertise in the matter subject to the consultations.

6. Consultations may be held in person or by any technological means available to the Parties. If the consultations are held in person, they shall be held in the capital of the responding Party, unless the Parties agree otherwise.

7. Consultations, and in particular, positions taken by the Parties during consultations, shall be confidential and without prejudice to the rights of a Party in any further or other proceedings.

Article 29.8. Request for Establishment of a Panel

1. The complaining Party may request in writing the establishment of a panel to examine the matter arising under this Agreement if:

(a) the responding Party does not reply to a request for, or enter into, consultations within the time period specified in paragraph 3 of Article 29.7 (Consultations); or

(b) the Parties fail to resolve the dispute through consultations within the time period specified in paragraph 4 of Article 29.7 (Consultations).

2. The request for establishment of a panel shall set out the reasons for the request, including identification of:

(a) the specific measure at issue or other matter;

(b) whether consultations have been held; and

(c) the factual and legal basis of the complaint sufficient to present the problem clearly, including the provisions of this Agreement alleged to have been breached.

3. When a complaining Party makes a written request for the establishment of a panel pursuant to paragraph 1, a panel shall be established in accordance with Article 29.9 (Composition of the Panel).

Article 29.9. Composition of the Panel

Appointment of Panellists

1. All nominations and appointments of panellists under this Article shall fully conform to the requirements in Article 29.10 (Qualifications of Panellists).

2. A panel shall be composed of three panellists, unless the Parties agree otherwise.

3. Each Party shall appoint one panellist, who may be a national of that Party.

4. The Parties shall jointly appoint the third panellist, who shall serve as the chair of the panel. To this end, each Party shall provide to the other Party a list of up to five nominees for the appointment of the chair. The chair of the panel shall not:

(a) be a national of a Party;

(b) have his or her usual place of residence in the territory of a Party;

(c) be employed by a Party; or

(d) have dealt with the dispute in any capacity.

5. Notwithstanding paragraph 4, the Parties may mutually agree to appoint the chair of the panel that does not meet the requirements of subparagraphs 4(a) through 4(d).

6. The Parties shall exchange the lists of nominees for the appointment of the chair no later than 20 days after the date of receipt of the written notification requesting the establishment of a panel.

Failure to Appoint a Panellist

7. If any of the three panellists have not been appointed 40 days after the delivery of the request for the establishment of a panel, on request of the complaining Party, the panellist shall be appointed by draw of lot in accordance with paragraphs 8 through 10.

8. Unless the Parties decide otherwise, the draw of lot shall take place no earlier than seven days and no later than 15 days after the date of delivery of the request for draw of lot. The complaining Party shall give reasonable opportunity for representatives of the responding Party to be present when the lot is drawn.

9. Where more than one panellist, including the chair, is to be selected by draw of lot, the chair shall be appointed first.

10. If a Party fails to submit the list of nominees in accordance with paragraph 6, the appointment shall be by draw of lot from the list of nominees submitted by the other Party.

Replacement of a Panellist

11. If a panellist appointed under this Article resigns or becomes unable to act, the panellist shall notify the Parties and a successor panellist shall be appointed in accordance with this Article and the Rules of Procedure. The panellist shall have all the powers and duties of the original panellist. The work of the panel, including any applicable time periods, shall be suspended beginning from the date when the original panellist becomes unable to act and ending on the date when the successor panellist is appointed.

Establishment of the Panel

12. The date of establishment of the panel shall be the date on which the last of the three selected panellists has notified to the Parties the acceptance of their appointment.

Reconvened Panels

13. If a panel is reconvened under Article 29.14 (Compliance Review), Article 29.15 (Compensation and Suspension of Concessions or other Obligations), or Article 29.16 (Compliance Review after Suspension of Concessions or other Obligations), the reconvened panel shall, to the extent possible, have the same panellists as the original panel. If this is not possible, any successor panellist shall be appointed in accordance with this Article and shall have all the powers and duties of the original panellist.

Article 29.10. Qualification of Panellists

1. All panellists appointed pursuant to Article 29.9 (Composition of the Panel) shall:

(a) have demonstrated expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen on the basis of objectivity, reliability, and sound judgement;

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

(d) serve in their individual capacities and not take instructions from any organisation or government regarding matters related to the dispute; and

(e) comply with the Code of Conduct.

2. The chair shall also have experience in dispute settlement procedures.

3. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 29.6 (Good Offices, Conciliation, or Mediation).

4. If a Party believes that a panellist is in violation of any of these requirements, then in accordance with the Rules of Procedure, the Parties shall consult and, where agreed, shall replace the panellist with a new panellist in accordance with Article 29.9 (Composition of the Panel). The new panellist shall have all the powers and duties of the original panellist.

Article 29.11. Functions of a Panel

1. Unless the Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Agreement, the Rules of Procedure, and the Code of Conduct.

Panel Assessment

2. The panel shall make an objective assessment of the matter before it, including an examination of the facts of the dispute and the applicability of and conformity with this Agreement, and to make the findings and determinations as required in its terms of reference.

3. A panel shall make its findings by consensus. If a panel is unable to reach consensus, it may make its findings by majority vote. A panel shall not disclose which panellists are associated with majority or minority opinions.

4. No finding, determination or recommendation of a panel can add to or diminish the rights and obligations of the Parties provided under this Agreement.

5. The panel, on joint request by the Parties, in its report and decisions, may suggest ways in which the responding Party could implement the panel's findings.

Terms of Reference

6. Unless the Parties agree otherwise, within 20 days of the date of establishment of a panel, the terms of reference of the panel shall be to:

(a) examine, in light of the relevant provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel; and

(b) make findings of law and fact, and determinations, as provided for in this Agreement, together with the reasons therefor in a written report or decision as provided for in this Chapter.

7. The Parties shall notify the panel of other agreed terms of reference within the time period specified in paragraph 6.

Rules of Interpretation

8. The panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international law. The panel shall also consider relevant interpretations in panel and Appellate Body reports adopted by the Dispute Settlement Body of the WTO.

Article 29.12. Reports of a Panel (2)

(2) For greater certainty paragraphs 3 through 9 shall not apply to a panel reconvened under Articles 29.14 (Compliance Review) through 29.15 (Compliance Review after Suspension of Concessions or other Obligations).

1. The reports of a panel shall be drafted without the presence of the Parties. The panellists shall assume full responsibility for the drafting of the reports and shall not delegate this responsibility. Opinions expressed in the reports of the panel shall be anonymous. The reports shall include any separate or dissenting opinions on matters not unanimously agreed by the Panel.

2. The panel shall base its reports on the relevant provisions of this Agreement, the submissions and arguments of the Parties, and on any information or advice it has obtained in accordance with the Rules of Procedure.

Interim Report

3. The panel shall issue its interim report to the Parties no later than 150 days, or no later than 120 days in cases of urgency, after the date of establishment of the panel.

4. The panel shall set out in its interim report:

(a) a descriptive section summarising the submissions and arguments of the Parties;

(b) its findings on the facts and the applicability of the provisions of this Agreement;

(c) its findings on whether:

(i) the measure at issue of the responding Party is inconsistent with its obligations under this Agreement;

(ii) the responding Party has otherwise failed to carry out its obligations under this Agreement;

(d) any other findings jointly requested by the Parties; and

(e) its reasons for the findings in subparagraphs (b) through (d).

5. In exceptional cases, if the panel considers that it cannot issue its interim report within the time period specified in paragraph 3, the panel shall promptly inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its interim report. The panel shall not exceed an additional period of 60 days, or 30 days in cases of urgency.

6. A Party may submit to the panel written comments no later than 20 days after the date of issuance of the interim report. After considering any written comments by the Parties on the interim report, the panel may modify its report and make any further examination it considers appropriate.

7. The interim report, and the contents of any comments made on an interim report, shall not be made public.

Final Report

8. The panel shall issue its final report to the Parties within 30 days of the issuance of its interim report.

9. The final report of the panel shall be binding on the Parties.

10. A Party may release a copy of the final report to the public. The release shall be subject to the protection of confidential information in accordance with the Rules of Procedure.

Article 29.13. Compliance with the Final Report

1. If the panel finds that the measure at issue of the responding Party is inconsistent with its obligations under this Agreement, or that it has failed to carry out its obligations under this Agreement, the responding Party shall take, promptly, any measure necessary to eliminate the non-conformity.

2. If immediate compliance is not possible, the responding Party shall, no later than 30 days after the date of issuance of the final report, notify the complaining Party that a reasonable period of time is necessary for compliance with the final report. The Parties shall endeavour to agree on the length of the reasonable period of time required to comply with the final report.

3. If the Parties are unable to agree on the reasonable period of time within 45 days after the date of issuance of the final report, the complaining Party may request in writing the chair of the panel to determine the length of the reasonable period of time. This request shall be made no later than 120 days after the date of issuance of the final report. The chair shall present the Parties with a decision in writing, together with reasons, no later than 45 days after the date of the request.

4. As a guideline, the reasonable period of time, where determined by the chair of the panel, shall not exceed 15 months in all cases, from the date of issuance of the final report to the Parties. The length of the reasonable period of time may be extended at any time by mutual agreement of the Parties.

5. If the responding Party considers that it has complied with the final report, it shall, no later than the date of the expiry of the reasonable period of time, provide the complaining Party with a description of the steps it has taken to comply with the final report.

Article 29.14. Compliance Review

1. If the Parties disagree on the existence of any steps taken to comply with the final report or their consistency with this Agreement, the complaining Party may request, in writing, that the panel reconvene (hereinafter referred as the "compliance panel") to decide the matter.

2. A request made pursuant to paragraph 1 may only be made after the earlier of either:

(a) the expiry of the reasonable period of time established in accordance with Article 29.13 (Compliance with the Final Report); or

(b) a notification by the responding Party, pursuant to paragraph 5 of Article 29.13 (Compliance with the Final Report), that it has complied with the final report.

3. The request referred to in paragraph 1 shall identify the issues with any steps taken to comply and the legal basis for the complaint, including the provisions of this Agreement alleged to have been breached and to be addressed by the compliance panel, sufficient to present the problem clearly.

4. The compliance panel shall make an objective assessment of the matter before it and shall set out in its compliance report:

(a) a descriptive section summarising the submissions and arguments of the Parties;

(b) its findings on the facts of the matter;

(c) its findings on the existence or consistency with this Agreement of any steps taken by the responding Party to comply with the final report; and

(d) the reasons for its findings.

5. The compliance panel shall issue an interim compliance report to the Parties no later than 90 days after the date of request pursuant to paragraph 1 and its final compliance report within 45 days thereafter.

6. In exceptional cases, if the compliance panel considers that it cannot issue its interim compliance report within the time period specified in paragraph 5, it shall promptly inform the Parties, in writing, of the reasons for the delay together with an estimate of when it will issue its interim compliance report. The compliance panel shall not exceed an additional period of 30 days.

7. A Party may submit to the compliance panel written comments no later than 20 days after the date of issuance of the interim compliance report. After considering any written comments by the Parties on the interim compliance report, the compliance panel may modify its report and make any further examination it considers appropriate. The interim compliance report and the contents of any comments made on an interim compliance report shall not be made public.

Article 291.5. Compensation and Suspension of Concessions or other Obligations

1. Compensation and suspension of concessions or other obligations shall be temporary and shall only be applied until such time as:

(a) the Parties agree on the existence or consistency of the steps notified in accordance with paragraph 1 of Article 29.16 (Compliance Review after Suspension of Concessions or other Obligations);

(b) the responding Party is found, pursuant to Article 29.16 (Compliance Review after Suspension of Concessions or other Obligations), to have complied with the final report; or

(c) the Parties have reached a mutually agreed solution.

However, neither compensation nor the suspension of concessions or other obligations is preferred to full compliance with the final report. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

Mutually Acceptable Compensation

2. The responding Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation if:

(a) the responding Party fails to provide a notification in accordance with paragraph 2 of Article 29.13 (Compliance with the Final Report);

(b) the responding Party fails to notify, pursuant to paragraph 5 of Article 29.13 (Compliance with the Final Report), any steps taken to comply with the final report; or

(c) the compliance panel finds, pursuant to Article 29.14 (Compliance Review), that the responding Party has failed to comply with the final report.

Notification for Suspension of Concessions or other Obligations

3. Where the complaining Party intends to suspend the application of concessions or other obligations under this Agreement, it shall notify the responding Party in writing, provided:

(a) the Parties decided not to enter into consultations for any of the circumstances set out in subparagraphs 2(a) to 2(c);

(b) the Parties have failed to agree on mutually acceptable compensation under paragraph 2 within 25 days of the date of the request to enter into consultations pursuant to paragraph 2; or

(c) the Parties have agreed on mutually acceptable compensation under paragraph 2 but the complaining Party considers that the responding Party has failed to observe the terms of the agreement.

4. A notification made pursuant to paragraph 3 shall specify:

(a) the level of concessions or other obligations that the complaining Party proposes to suspend;

(b) the relevant sector or sectors to which the concessions or other obligations relate; and

(c) where subparagraph 5(b) applies, the reasons on which the complaining Party's decision to suspend concessions or other obligations in a different sector is based.

Principles Applying to Suspension of Concessions or other Obligations

5. In considering what concessions or other obligations to suspend under paragraph 3, the complaining Party shall apply the following principles:

(a) the general principle is that the complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement;

(b) if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors as that in which the panel has found an inconsistency with this Agreement, the complaining Party may seek to suspend concessions or other obligations in other sectors under this agreement; and

(c) it shall only suspend concessions or other obligations that are subject to dispute settlement in accordance with Article 29.4 (Scope).

6. The level of suspension of concessions or other obligations shall not exceed a level equivalent to the level of nullification or impairment.

Right to Suspend Concessions or other Obligations

7. The complaining Party shall have the right to implement the suspension of concessions or other obligations 45 days after the date of receipt of the complaining Party's notification by the responding Party referred to in paragraph 3.

8. The right to suspend concessions or other obligations under paragraph 7 shall not be exercised if:

(a) a review is being undertaken pursuant to paragraphs 9 and 10; or

(b) the Parties have reached a mutually agreed solution in accordance with Article 29.18 (Mutually Agreed Solution), that the complaining Party shall not exercise its right to suspend concessions or other obligations pursuant to paragraph 3.

Reconvened Panel Proceedings

9. If the responding Party:

(a) objects to the proposed level of suspension of concessions or other obligations on the basis that it exceeds a level equivalent to the level of nullification or impairment;

(b) considers that it has complied with the terms and conditions of any compensation agreed pursuant to paragraph 2; or

(c) claims that the complaining Party has failed to follow the principles set out in paragraph 5,

it may request in writing, no later than 30 days after the date of receipt of the notification referred to in paragraph 3, the panel to reconvene to make findings on the matter (hereinafter referred to as the "reconvened panel").

10. The reconvened panel shall reconvene no later than 10 days after the date of the request pursuant to paragraph 9. The reconvened panel shall notify its decision to the Parties no later than 90 days after the date of the request. In exceptional cases, if the reconvened panel considers that it cannot notify its decision within this time period it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The reconvened panel shall not exceed an additional period of 30 days.

11. Concessions or other obligations shall not be suspended until the reconvened panel has notified its decision. Any suspension of concessions or other obligations shall be consistent with the reconvened panel's decision.

Article 29.16. Compliance Review after Suspension of Concessions or other Obligations

1. If the right to suspend concessions or other obligations has been exercised pursuant to paragraph 7 of Article 29.15 (Compensation and Suspension of Concessions or other Obligations) or mutually acceptable compensation has been agreed pursuant to paragraph 2 of Article 29.15 (Compensation and Suspension of Concessions or other Obligations) and the responding Party considers that it has complied with paragraph 1 of Article 29.13 (Compliance with the Final Report), the responding Party shall notify the complaining Party of the steps it has taken to comply.

2. Subject to paragraph 3, the complaining Party shall terminate the suspension of concessions or other obligations within 30 days of receipt of the notification in paragraph 1. In cases where compensation has been applied, and subject to paragraph 3, the responding Party may terminate the application of that compensation within 30 days of the complaining Party's receipt of the notification in paragraph 1.

3. If the Parties do not reach an agreement on the existence or consistency with this Agreement of any steps notified in accordance with paragraph 1, no later than 30 days after the date of the complaining Party's receipt of the notification the responding Party may request in writing the original panel to reconvene to examine the matter (hereinafter referred to as the "review panel").

4. The review panel shall notify its decision to the Parties no later than 90 days of the date of the request. In exceptional cases, if the review panel considers that it cannot notify its decision within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of when it will issue its decision. The review panel shall not exceed an additional period of 30 days.

5. If the review panel decides that the steps notified in accordance with paragraph 1 achieve compliance with the final report or are consistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation or alternative arrangement, shall be terminated no later than 30 days after the date of the decision. If the review panel decides that the measures notified in accordance with paragraph 1 do not achieve compliance with the final report or are inconsistent with this Agreement, the suspension of concessions or other obligations, or the application of the compensation or alternative arrangement, may continue. Where relevant, the level of suspension of concessions or other obligations or of the compensation or alternative arrangement, shall be adapted in light of the decision of the review panel.

Article 29.17. Suspension or Termination of Proceedings

1. On the joint request of the Parties, the panel shall suspend its work at any time for a period agreed by the Parties not exceeding 15 consecutive months.

2. The panel shall resume its work at any time on the joint request of the Parties or at the end of the agreed suspension period on the written request of a Party. The request shall be notified to the panel, as well as to the other Party, where applicable.

3. In the event of a suspension, the timeframes set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the panel's work was suspended.

4. If the work of the panel is suspended for more than 15 consecutive months, the authority of the panel shall lapse and the panel proceedings shall be terminated, unless the Parties agree otherwise.

5. The Parties may agree at any time to terminate the panel proceedings. The Parties shall jointly notify such agreement to the panel.

Article 29.18. Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 29.4 (Scope).

2. If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the panel. Upon this notification, the proceedings of the panel shall be terminated.

3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures taken to implement the mutually agreed solution. (3)

(3) Notwithstanding Article 28.6 (Confidentiality – General Provisions and Exceptions), a mutually agreed solution shall be confidential, unless otherwise agreed.

Article 29.19. Decision on Cases of Urgency

If the Parties disagree on whether a dispute concerns a case of urgency and on request of a Party, the panel shall decide, within 15 days of the request, whether a dispute concerns a case of urgency.

Article 29.20. Time Periods

Any time period referred to in this Chapter, the Rules of Procedure, or the Code of Conduct may be modified for a dispute by agreement of the Parties. The panel may at any time propose to the Parties to modify any time period, stating the reasons for the proposal.

Article 29.21. Rules of Procedure and Code of Conduct

1. The proceedings provided for in this Chapter shall be conducted in accordance with the Rules of Procedure and the Code of Conduct, unless the Parties agree otherwise.

2. Notwithstanding subparagraph 2(g) of Article 27.2 (Functions of Joint Committee – Administrative and Institutional Provisions) and Article 30.2 (Amendments – Final Provisions), amendments relating to Annex 29A (Rules of Procedures) and Annex 29B (Code of Conduct) shall be made by diplomatic notes exchanged between the governments of the Parties.

3. The Rules of Procedure shall ensure that:

(a) there is at least one hearing before the panel at which each Party may present views orally;

(b) the first hearing shall be held in the capital of the responding Party, and any additional hearings shall alternate between the capitals of the Parties, unless the Parties agree otherwise;

(c) subject to subparagraph (j), a hearing before the panel shall be open for the public to observe, unless the Parties agree otherwise. Hearings held in closed session shall be confidential;

(d) each Party has an opportunity to provide an initial written submission;

(e) the panel may at any time during the proceeding address questions in writing to a Party or the Parties;

(f) subject to subparagraph (j), the request for consultations and the request for establishment of a panel shall be released to the public;

(g) subject to subparagraph (j), a Party may release to the public its own written submissions, written versions of oral statements, and written responses to requests or questions from the panel;

(h) if the Parties agree and subject to any agreed terms and conditions, the panel may accept and consider amicus curiae submissions;

(i) subject to consultations with the Parties, the panel may seek information or technical advice from any expert that it deems appropriate; and

(j) confidential information is protected.

Article 29.22. Working Language

All proceedings of the panel and all documents and information submitted to the panel shall be in the English language.

Article 29.23. Expenses

1. The renumeration of the panellists and other expenses associated with the conduct of the panel proceedings shall be borne in equal share by both Parties, in accordance with the Rules of Procedure.

2. Each Party shall bear the cost of its own participation in the proceedings.

Article 29.24. Private Rights

Neither Party shall provide for a right of action under its laws or regulations against the other Party on the ground that a measure of the other Party is inconsistent with its obligations under this Agreement or that the other Party has otherwise failed to carry out its obligation under this Agreement.

Article 29.25. Contact Point

Each Party shall designate a contact point for this Chapter and shall notify the other Party of the contact details of that contact point within 30 days of entry into force of this Agreement. Each Party shall promptly notify the other Party of any change to those contact details. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Chapter 30. FINAL PROVISIONS

Article 30.1. Annexes, Appendices, Footnotes and Side Letters

1. The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

2. Side letters exchanged between the Parties in connection with the conclusion of this Agreement shall constitute an integral part of this Agreement if those side letters explicitly so provide.

Article 30.2. Amendments

The Parties may agree, in writing, to amend this Agreement. Such amendments shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that they have completed their respective domestic legal requirements, necessary for the entry into force of the amendments, unless the Parties agree otherwise.

Article 30.3. Territorial Extension

1. At the time of entry into force of this Agreement, or any time thereafter, this Agreement, or specified provisions of it, may be extended to such territories for whose international relations the United Kingdom is responsible. Upon delivery of a written request by the United Kingdom, the Parties shall hold consultations promptly to consider and agree the extension. Any amendment to this Agreement required to accommodate an extension shall be made in accordance with Article 30.2 (Amendments).

2. For greater certainty, an extension in accordance with paragraph 1 may include extension of further provisions of this Agreement to the Bailiwicks of Guernsey and Jersey and the Isle of Man, as well as any extension to any other territories for whose international relations the United Kingdom is responsible, including, but not limited to, Gibraltar.

Article 30.4. Territorial Disapplication

At any time after entry into force of this Agreement, the United Kingdom may give written notice to India that this Agreement, or specified provisions of it, shall no longer apply to a territory for whose international relations the United Kingdom is responsible. If the United Kingdom gives notice in writing pursuant to this Article, the Parties shall hold consultations promptly to agree a mutually satisfactory solution. Notwithstanding those consultations, if notice in writing is given that this Agreement as a whole is no longer to apply to a territory for whose international relations the United Kingdom is responsible, the disapplication shall take effect 12 months after the date on which the United Kingdom provided written notice to India, or on such other date as the Parties may agree. Any amendment to this Agreement required as a result of disapplication shall be in accordance with Article 30.2 (Amendments).

Article 30.5. General Review

1. The Parties shall undertake a general review of the Agreement, at ministerial level, with a view to furthering its objectives and building on the existing terms of this Agreement, within five years of the date of entry into force of this Agreement and thereafter every five years or at such times as may be agreed by the Parties.

2. A review pursuant to paragraph 1 shall take into account:

(a) the objective of facilitating trade through further liberalisation of market access for goods and services;

(b) that mutually beneficial outcomes flow from the implementation and overall operation of this Agreement;

(c) the work of subcommittees, working groups or other subsidiary bodies established under this Agreement, including reviews under relevant Chapters; and

(d) any other matters as may be agreed by the Parties.

Article 30.6. Entry Into Force

This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that they have completed their respective domestic legal requirements necessary for the entry into force of this Agreement or on such other date as the Parties may agree.

Article 30.7. Termination

A Party may terminate this Agreement by giving the other Party written notice. The termination shall take effect six months after the date of the notification, or on such date as the Parties may agree.

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

DONE in two originals at London on this twenty-fourth day of July, 2025.

For the Government of the Republic of India

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Piyush Goyal

Minister of Commerce and Industry

For the Government of the United Kingdom of Great Britain and Northern Ireland

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Jonathan Reynolds

Secretary of State for Business and Trade Department for Business and Trade