

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN AND THE GOVERNMENT OF MALAYSIA FOR A CLOSER ECONOMIC PARTNERSHIP**

The Government of Malaysia and the Government of the Islamic Republic of Pakistan, CONSCIOUS of the friendship and growing economic ties between them; DESIRING to provide a platform from which to unlock the benefits of deeper economic ties between the two strategically located trading centres, each serving South Asia and the Asia-Pacific regions; DESIRING to improve the efficiency and competitiveness of their goods and services sectors and to promote and expand trade and investment flows between them; DESIRING to promote greater synergy between economies of the two countries with complementary strengths in various sectors; RECOGNISING that strengthening their economic partnership will bring economic and social benefits and improve living standards in their countries; BUILDING on their rights, obligations and undertakings under the World Trade Organization; MINDFUL of the need to uphold their rights to regulate in order to meet national policy objectives; CONSIDERING that the expansion of their domestic market, through economic integration, is vital for accelerating the economic development of their countries; RECOGNISING the need for good governance and a predictable, transparent and stable business environment to enable business to conduct transactions freely, use resources efficiently and make investment and planning decisions with certainty; RECALLING the contribution made to the development of their bilateral trade and investment relationship pursuant to the Trade Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan signed in Kuala Lumpur on 5 November 1987 and the Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan for the Promotion and Protection of Investment signed in Kuala Lumpur on 7 July 1995; FURTHER RECALLING the Agreement on the Early Harvest Programme for the Free Trade Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan signed in Kuala Lumpur on 1 October 2005, as amended (hereinafter referred to as "the EHP Agreement"); and DESIRING to promote greater regional economic integration through this Agreement, HAVE AGREED as follows:

## **Chapter 1. General Provisions**

### **Article 1. Objectives**

The objectives of this Agreement are to:

- (a) establish a free trade area that will promote market opportunities for goods, services and investment between the countries of the Parties;
- (b) progressively liberalise and promote trade in goods and services, and cross-border investment flows;
- (c) promote and enhance economic, trade and investment cooperation activities between the Parties;
- (d) establish a framework of transparent, predictable and facilitative rules to govern and regulate trade and investment between the countries of the Parties including the protection of investments and investment activities;
- (e) improve the efficiency and competitiveness of their goods and services sectors; and
- (f) establish a framework to enhance closer cooperation on socio-economic partnership in areas of mutual interest as agreed by the Parties.

### **Article 2. Definitions**

For the purposes of this Agreement:

- (a) "days" means calendar days, including weekends and holidays;
- (b) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement

Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, as may be amended. For the purposes of this Agreement, references to Articles in the GATT 1994 include the interpretative notes;

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

(d) "Harmonized System" ("HS") means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, as may be amended;

(e) "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and the airspace above such areas, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living; and

(f) "Pakistan" means all the territories of the Islamic Republic of Pakistan, including its territorial sea, in which the laws and regulations of Pakistan are in force, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Pakistan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Pakistan;

(g) "Parties" means the Government of Malaysia and the Government of the Islamic Republic of Pakistan and "Party" means either the Government of Malaysia or the Government of the Islamic Republic of Pakistan;

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

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

### **Article 3. Transparency**

1. The Parties shall make publicly available their laws, regulations and national policies of general application with respect to any matter covered by this Agreement.
2. The Parties shall make easily available to the public, the names or designations of the competent authorities responsible for the laws, regulations and national policies of general application referred to in paragraph 1 of this Article.
3. Each Party shall, upon request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to the other Party in the English language with respect to matters referred to in paragraph 1 of this Article.
4. At the request of the interested persons of the countries of the Parties, each Party shall endeavour to provide information relating to the specific matters raised by the interested persons and pertaining to this Agreement. Each Party may also supply other pertinent information relating to this Agreement which it considers the interested persons should be made aware of.

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

1. Where administrative decisions, which pertain to, or affect the implementation and operation of this Agreement are taken by the competent authorities of a Party, the competent authorities shall, in accordance with the laws and regulations of the country of that Party, endeavour to:
  - (a) inform the applicant of the decision within a reasonable period of time after the submission of an application considered complete under the laws and regulations of the country of that Party; and
  - (b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.
2. The competent authorities shall, where so required by the laws and regulations of the country of the Party, establish standards for taking administrative decisions in response to applications submitted to it. The competent authorities shall endeavour to make such standards:
  - (a) as specific as possible; and
  - (b) publicly available except when it would extraordinarily raise administrative difficulties for the Party.

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

1. Each Party shall maintain judicial or quasi-judicial tribunals or procedures for the purpose of prompt review or appeal as the case may be, and where warranted, correction of actions taken by the respective competent authorities in the matters covered by this Agreement. Such tribunals or procedures shall be independent of the authorities entrusted with the administrative enforcement of such actions.
2. Each Party shall ensure that the parties in such tribunals or procedures are provided with the right to:
  - (a) a reasonable opportunity to support or defend their respective positions; and

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

3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that the decision referred to in paragraph 1 of this Article is implemented by the relevant authorities.

## **Article 6. Confidentiality**

1. Each Party shall undertake, in accordance with its laws and regulations, to observe the confidentiality of information provided by the other Party.

2. Notwithstanding paragraph 1 of this Article, the information provided under this Agreement may be transmitted to a third party subject to the prior written consent of the providing Party.

3. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

4. In the event of termination of this Agreement, the Parties agree that the provisions of this Article shall continue to apply, unless otherwise agreed by the Parties.

## **Article 7. State Trading Enterprises**

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

## **Article 8. Joint Committee**

1. A Joint Committee shall be established under this Agreement.

2. The functions of the Joint Committee shall be to:

(a) review the implementation and operation of this Agreement;

(b) submit a report to the Parties through the focal points referred to in Article 10 on the implementation and operation of this Agreement;

(c) consider and recommend to the Parties any amendments to this Agreement;

(d) facilitate the avoidance and settlement of disputes arising from this Agreement;

(e) supervise and coordinate the work of all Sub-Committees established under this Agreement;

(f) adopt any necessary decisions; and

(g) carry out any other function as the Parties may agree.

3. The Joint Committee:

(a) shall be co-chaired by senior officials of the Parties, unless the Parties agree to convene the meeting at ministerial level; and

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

4. The Joint Committee shall establish its rules and procedures and financial arrangements.

5. The Joint Committee shall convene its inaugural meeting within one year after the entry into force of this Agreement. Its subsequent meetings shall be held at such frequency as the Parties may agree upon. The Joint Committee shall convene alternately in Malaysia and Pakistan, unless the Parties otherwise agree. Special meetings of the Joint Committee may be convened within 30 days upon the request of either Party.

## **Article 9. Sub-committees**

The following Sub-Committees shall be established upon the entry into force of this Agreement:

(a) Sub-Committee on Trade in Goods;

(b) Sub-Committee on Trade in Services;

(c) Sub-Committee on Customs Procedures; and (d) Sub-Committee on Investment.

## **Article 10. Focal Points**

Communications between the Parties on any matter relating to this Agreement shall be facilitated through the following focal points:

(a) in the case of Malaysia, the Ministry of International Trade and Industry; and

(b) in the case of Pakistan, the Ministry of Commerce.

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

## **Article 11. Definitions**

For the purposes of this Chapter:

(a) "customs duties" means duties imposed in connection with the importation of a good provided that such customs duties shall not include:

(i) charges equivalent to internal taxes, including excise duties, sales tax, and goods and services taxes imposed in accordance with a Party's commitments under paragraph 2 of Article III of the GATT 1994;

(ii) anti-dumping or countervailing duty or safeguard duty applied in accordance with Chapter 5; or

(iii) fees or other charges that are limited in amount to the approximate cost of services rendered, and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

(b) "customs value of goods" means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

(c) "originating goods" means the goods that qualify as originating goods in accordance with Chapter 3;

(d) "goods" includes manufactured goods and commodities in their raw, semi-processed and processed forms.

## **Article 12. Classification of Goods**

For the purposes of this Agreement, the classification of goods in trade between the countries of the Parties shall be in conformity with the Harmonized System.

## **Article 13. National Treatment**

Each Party shall accord national treatment to the goods of the country of the other Party in accordance with Article III of the GATT 1994.

## **Article 14. Reduction or Elimination of Customs Duties**

1. Customs duties which are levied at zero percent or nil on the date of signing of this Agreement shall be kept at zero percent or nil by the Parties.

2. Customs duties in excess of zero percent or nil shall be reduced and where relevant, eliminated by the Parties on originating goods of the other Party in accordance with each Party's Schedule of Concessions in Annex 1.

## **Article 15. Modification or Withdrawal of Concessions**

1. Nothing in this Agreement shall prevent a Party from accelerating the implementation of concessions provided for in this Agreement or to incorporate new goods into such concessions, provided that such arrangements are notified to the other Party.

2. Either Party may, by mutual agreement, modify or withdraw any concession provided in Annex 1. Such mutual agreement shall include provisions for compensatory adjustment with respect to other goods. The Party modifying or withdrawing any concession provided in Annex 1 shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than provided in this Agreement prior to such agreement.

3. The modification or withdrawal of concessions shall be treated as an amendment to Annex 1 and shall enter into force in accordance with the procedures set out in Article 131.

## **Article 16. Customs Valuation**

For the purposes of determining the customs value of goods traded between the countries of the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended shall, mutatis mutandis, be incorporated into and made part of this Agreement.

## **Article 17. Non-tariff Measures**

1. Except where expressly permitted by this Agreement or by the Parties' obligations under the WTO Agreement, neither Party shall adopt or maintain any non-tariff measure which constitutes a restriction on goods traded between the Parties.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 of this Article and that they are not constituted, adopted or applied with a view to or with the effect of creating unnecessary restrictions to trade between the Parties.

3. Each Party shall identify the non-tariff measures which are creating unnecessary restrictions to trade for elimination upon

the entry into force of this Agreement. The time frame for elimination of these non-tariff measures shall be mutually agreed upon by the Parties.

## **Article 18. Restrictions to Safeguard the Balance-of-payments**

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.
2. Any measure taken for balance-of-payments purposes shall be in accordance with Article XII, Section B of Article XVIII and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, which shall, mutatis mutandis, be incorporated into and made part of this Agreement.
3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

## **Article 19. Sub-committee on Trade In Goods**

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 9 shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) discussing any issues related to this Chapter;
  - (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
  - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 8.
2. The Sub-Committee shall meet at such venue and time as may be agreed by the Parties.
3. The Sub-Committee shall be:
  - (a) composed of representatives of the Parties; and
  - (b) co-chaired by officials of the Parties.

## **Chapter 3. Rules of Origin**

### **Article 20. Definitions**

For the purposes of this Chapter:

- (a) "CIF" means the value of the good imported, and includes the cost of freight and insurance up to the port or place of entry into the country of importation;
- (b) "designated government authority" means the government authority of each Party that is responsible for the issuing of the Certificate of Origin in accordance with Article 33;
- (c) "FOB" means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad;
- (d) "goods" shall include materials and products which can be wholly obtained or produced, or manufactured, even if they are intended for later use in another manufacturing operation;
- (e) "materials" include raw materials, ingredients, parts, components, sub-components, sub-assembly or goods that are physically incorporated into another good or are subject to a process in the production of another good;
- (f) "originating goods" mean goods that qualify as originating in accordance with Article 21;
- (g) "preferential treatment" means the rate of customs duties applicable to an originating good of the country of an exporting Party in accordance with Article 14;
- (h) "production" means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling a good;

### **Article 21. Origin Criteria**

1. For the purposes of this Agreement, goods imported by a Party, which are consigned directly within the meaning of Article 27 shall qualify as originating goods and be eligible for preferential treatment if they conform to the origin criteria under any one of the following:
  - (a) goods which are wholly obtained or produced in the territory of the country of the exporting Party as defined in Article 22; or
  - (b) goods otherwise deemed to be originating under Articles 23, 24 or 25. 2. Notwithstanding subparagraph (b) of paragraph 1 of this Article, for goods listed in Annex 2, Article 25 shall be solely applicable.

### **Article 22. Wholly Obtained or Produced Goods**

The following goods shall be considered as wholly obtained or produced in the territory of the country of a Party:

- (a) plants and plant products harvested, picked or gathered in the territory of the country of the Party;
- (b) live animals born and raised in the territory of the country of the Party;
- (c) goods obtained from live animals referred to in paragraph (b);
- (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of the country of the Party;
- (e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d), extracted or taken from the territory of the country of the Party;
- (f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the country of that Party, provided that country has the rights to exploit such waters, seabed and beneath the seabed in accordance with international law;
- (g) goods of sea fishing and other marine goods taken from the high seas by vessels of the country of a Party or entitled to fly the flag of that country;
- (h) goods processed or produced on board factory ships of the country of a Party or entitled to fly the flag of that country, exclusively from goods referred to in paragraph (g);
- (i) articles collected in the territory of the country of the Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes; and
- (j) goods obtained or produced in the territory of the country of a Party solely from goods referred to in paragraphs (a) to (i).

## **Article 23. Not Wholly Obtained or Produced Goods**

1. A good shall be deemed to be originating if:

- (a) not less than 40 per cent of its content originates from the country a Party; or
- (b) the total value of the materials, parts or produce originating from outside of the territory of the country of a Party does not exceed 60 per cent of the FOB value of the good so produced or obtained; or
- (c) the final good undergoes a change of tariff heading, where the Harmonized System classification of the final good is different from the Harmonized System classification of all non-originating or undetermined materials used in the production of such final good. For the purposes of this subparagraph, "change of tariff heading" means a change in tariff classification at the four digit level of the Harmonized System.

2. To be deemed as originating under paragraph 1 of this Article the final process of manufacturing shall be performed within the territory of the country of the exporting Party.

3. The originating criteria set out in subparagraphs (a) and (b) of paragraph 1 of this Article shall be referred to as the Malaysia-Pakistan Closer Economic Partnership Agreement content (hereinafter referred to as "the MPCEPA content"). The formula for calculating the MPCEPA content is as follows: 
$$\text{Non-MPCEPA content: Value of Value of Non-MPCEPA + materials of Materials undetermined origin} \times 100 \% \leq 60\% \text{FOB Price}$$
 Therefore, the MPCEPA content: 
$$100\% \text{ minus non-MPCEPA content } (\%) \geq 40\%$$

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

- (a) the CIF value at the time of importation of the materials, parts or produce; or
- (b) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the country of the Party where the production takes place.

## **Article 24. Cumulative Rule of Origin**

Goods which satisfy the origin criteria under Article 21 and which are used in the territory of the country of a Party as material for a finished good, shall be deemed as goods originating in the territory of the country of the Party and eligible for preferential treatment under this Agreement where processing of the finished good has taken place, provided that in the final good the aggregate content (value of such inputs plus domestic value addition) is not less than 40 per cent.

## **Article 25. Product Specific Rules**

Goods subject to and which satisfy the Product Specific Rules as specified in Annex 2 shall be deemed as originating and eligible for preferential treatment.

## **Article 26. Minimal Operations and Processes**

The following operations or processes undertaken exclusively by itself or in combination shall be considered to be minimal and shall not be taken into account in determining the origin of goods under Article 23:

- (a) preservation of products in good condition for the purposes of transport or storage;
- (b) changes of packaging, or breaking-up and assembly of packages;

- (c) simple cleaning, including removal of oxide, oil, paint or other coverings;
- (d) simple painting and polishing operations;
- (e) simple testing or calibration;
- (f) husking, partial or total bleaching, polishing and glazing of cereals and rice;
- (g) sharpening, simple grinding, slicing or simple cutting;
- (h) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (i) affixing or printing marks, labels, logos and other like distinguishing signs on goods or their packaging;
- (j) simple mixing of goods, whether or not of different kinds; or
- (k) simple assembly of parts of products to constitute a complete good.

## **Article 27. Direct Consignment**

An originating good shall be deemed as directly consigned from the country of the exporting Party to the country of the importing Party:

- (a) if the goods are transported without passing through the territory of any third State; or
- (b) if the goods are transported for the purpose of transit through third States with or without transshipment or temporary storage in such third States, provided that:
  - (i) the transit entry is justified for geographical reasons or transport requirements;
  - (ii) the goods have not entered into trade or consumption in the territory of the third State; and
  - (iii) the goods have not undergone any operation in the territory of the third State other than unloading and reloading or any operation required to keep the goods in good condition.

## **Article 28. Treatment of Packages, Packing Materials and Containers**

1. If a good is subject to the value-added criterion provided in subparagraph (a) or (b) of paragraph 1 of Article 23 the value of the packages and packing materials for retail sale, shall be taken into account in determining the origin of that good, provided that the packages and packing materials are considered as forming a whole with the good;
2. If a good is subject to the change in tariff classification criterion provided in subparagraph (c) of paragraph 1 of Article 23, packages and packing materials classified together with the packaged product, shall not be taken into account in determining origin.
3. Packing materials and containers used exclusively for the transportation of a good shall not be taken into account in determining the origin of such good.

## **Article 29. Accessories, Spare Parts and Tools**

The origin of accessories, spare parts, tools and instructional or other information materials presented with the goods shall not be considered in determining the origin of the goods, provided that such accessories, spare parts, tools and information materials are customary to such goods and are classified with the goods by the country of the importing Party.

## **Article 30. Indirect Materials**

1. Any indirect material used in the production of a good shall be treated as originating, irrespective of whether such indirect material originates from a third State. The value of such indirect material shall be the cost registered in the accounting records of the producer of such good.
2. For the purposes of this Article, indirect materials include:
  - (a) fuel, energy, catalysts and solvents;
  - (b) equipment, devices and supplies used for testing or inspection of the goods;
  - (c) gloves, glasses, footwear, clothing, safety equipment and supplies;
  - (d) tools, dies and moulds;
  - (e) spare parts and materials used in the maintenance of equipment and buildings;
  - (f) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and
  - (g) any other material which are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

## **Article 31. Identical and Interchangeable Materials**

The origin of identical or interchangeable materials, whether mixed or physically combined, used to manufacture a good may be determined in accordance with the generally accepted accounting principles of stock control or inventory management practiced in the country of the exporting Party.

## **Article 32. Certificate of Origin**

A claim that goods are eligible for preferential treatment under this Agreement shall be supported by a Certificate of Origin in the prescribed form in Annex 3, issued by the designated government authority of the exporting Party.

## **Article 33. Operational Certification Procedure**

For the purposes of implementing the rules of origin under this Chapter, the Operational Certification Procedures as set out in Annex 4 shall apply.

# **Chapter 4. Customs Procedures and Cooperation**

## **Article 34. Definitions**

For the purposes of this Chapter:

- (a) "customs authority" means the authority that according to the legislation of the country of each Party is responsible for the administration and enforcement of its customs laws:
  - (i) in the case of Malaysia, the Royal Malaysian Customs, and
  - (ii) in the case of Pakistan, the Central Board of Revenue;
- (b) "customs laws" means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, relating to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;
- (c) "information" means any data, documents, reports and certified or authenticated copies thereof or other communications;
- (d) "persons" means both natural and legal persons;
- (e) "requesting authority" means the customs authority which requests assistance; and
- (f) "requested authority" means the customs authority from which assistance is requested.

## **Article 35. Objectives**

The objectives of this Chapter are to:

- (a) simplify and harmonise customs procedures of the countries of the Parties;
- (b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the country of the Parties;
- (c) ensure efficient and expeditious clearance of goods;
- (d) facilitate trade in goods between the countries of the Parties;
- (e) promote cooperation between the customs authorities; and
- (f) exchange information relating to all customs matters.

## **Article 36. Scope and Coverage**

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the countries of the Parties.
2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations in force in the country of each Party and within the competence and available resources of the customs authorities.

## **Article 37. Transparency**

1. Each Party shall ensure that all relevant information pertaining to its customs laws is easily accessible to the other Party.
2. At the request of either Party, the other Party shall endeavour to provide information relating to a specific customs matter raised by the other Party. Either Party may also supply other pertinent information relating to such customs matter which it considers that the other Party should be made aware of.



## **Article 38. Customs Clearance**

1. The Parties shall endeavour to apply customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance of goods traded between the countries of the Parties, each Party shall:
  - (a) make use of information and communications technology;
  - (b) simplify its customs procedures;
  - (c) harmonise its customs procedures, as far as possible, with relevant international standards and best practices, such as those recommended by the World Customs Organization.

## **Article 39. Temporary Admission of Goods**

1. Each Party shall facilitate temporary admission of goods in accordance with the international standards and practices.
2. For the purposes of this Article, the term "temporary admission" means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

## **Article 40. Cooperation and Capacity Building**

1. The Parties shall cooperate and exchange information with each other on customs matters.
2. Bilateral cooperation shall include capacity building, such as training, technical assistance, exchange of experts and any other forms of cooperation, as may be mutually agreed upon by the Parties, for trade facilitation.
3. To the extent permitted by their national laws and regulations, the customs authorities shall assist each other in relation to:
  - (a) implementation and operation of this Chapter;
  - (b) facilitation of trade in goods between countries of the Parties;
  - (c) enforcement of prohibitions and restrictions on exports to and imports from their respective territories;
  - (d) cooperation in any other areas as may be mutually agreed upon by the Parties; and
  - (e) joint efforts to combat customs fraud.

## **Article 41. Mutual Assistance**

1. The customs authority of a Party shall, to the extent possible, provide the customs authority of the other Party, upon request or on its own initiative, with information which helps to ensure proper application of customs laws and the prevention of violation or attempted violation of customs laws.
2. To the extent permitted by their customs laws, the customs authorities may provide each other with mutual assistance in order to prevent or investigate violations of customs law.
3. The request pursuant to paragraph 1 of this Article shall, wherever appropriate, specify:
  - (a) the verification procedures that the requesting authority has undertaken or attempted to undertake; and
  - (b) the specific information that the requesting authority requires, which may include:
    - (i) subject and reason for the request;
    - (ii) a brief description of the matter and the action requested; and
    - (iii) the names and addresses of the parties concerned with the proceedings, if known.

## **Article 42. Information on the Application and Enforcement of Customs Laws**

The customs authorities shall exchange information on:

- (a) new enforcement techniques proven to be effective;
- (b) new trends, means or methods of committing violation or attempted violation of customs laws;
- (c) goods known to be associated with the violation or attempted violation of customs laws, as well as transport and storage methods used for such goods;
- (d) persons known to have committed or suspected of having violated or attempted violation of customs laws; and
- (e) any other information that can assist the customs authorities of the Parties in using risk management for the purposes of appropriate customs control and facilitation of customs clearance of goods traded between the countries of the Parties.

## **Article 43. Information Relating to Import and Export**

1. The requested authority shall, on request by the requesting authority, provide the requesting authority with information

relating to:

- (a) whether goods imported into the territory of the requesting authority have been lawfully exported from the territory of the requested authority; and
  - (b) whether goods exported from the territory of the requesting authority have been lawfully imported into the territory of the requested authority and whether the goods have been placed under any customs procedures.
2. The customs authorities shall, by mutual consent, cooperate by exchange of personnel between them in order to share best practices in the enforcement of customs laws.

## **Article 44. Assistance In the Assessment of Import or Export Duties and Taxes**

1. The requested authority shall, on request by the requesting authority having reasons to believe that a customs offence has been committed in its territory, communicate available information which may help to ensure the proper assessment of import or export duties and taxes:
  - (a) in respect of the value of goods for customs purposes:
    - (i) the commercial invoices presented to the customs authority of the exporting or importing Party or copies of such invoices, whether certified or not by the customs authority, as the circumstances may require; and
    - (ii) a copy of the declaration of value made on exportation or importation of the goods in the country of the exporting or importing Party;
  - (b) in respect of the tariff classification of goods:
    - (i) analyses carried out by official authorities or laboratory services, if conducted in relation thereto, to enable the customs authorities to determine the tariff classification of the goods; and
    - (ii) the tariff description declared on importation or exportation; and
  - (c) in respect of the origin of goods, the declaration of origin made to the customs authorities at the time of importation or exportation.

## **Article 45. Information and Communications Technology**

1. The Parties shall endeavour to establish an electronic data interchange to provide for bilateral exchange of information on trade between them or any customs matter.
2. The customs authorities of the Parties shall exchange information, including best practices, on the use of information and communications technology for the purpose of improving customs procedures.

## **Article 46. Risk Management**

1. In order to facilitate customs clearance of goods traded between the countries of the Parties, the customs authorities shall continue to use risk management methodology.
2. The customs authorities shall exchange information, including best practices, on risk management techniques and other enforcement techniques.

## **Article 47. Enforcement Against Illicit Trafficking**

The customs authorities shall, wherever possible, cooperate and exchange information in their enforcement against the trafficking of illicit drugs and other prohibited goods in their respective territories.

## **Article 48. Intellectual Property Rights**

The customs authorities shall, wherever possible, cooperate and exchange information in their enforcement against importation and exportation of goods suspected of infringing intellectual property rights.

## **Article 49. Exchange of Information**

1. Any information communicated under this Chapter shall be treated as confidential unless the requested authority consents in writing to the disclosure of such information.
2. The requested authority may limit the information communicated under this Chapter if the requesting authority is unable to give the assurance that the information is used solely for the purpose it was requested for.
3. If a requesting authority would be unable to comply with a similar request in case such a request was made by the requested authority, the requesting authority shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the requested authority.

4. Any information communicated under this Chapter shall be used only by the requesting authority, solely for the purpose of administrative assistance according to the terms set out in this Chapter.
5. Any information communicated under this Chapter, if required for use in criminal proceedings, shall be requested through the diplomatic channel or any other channel established in accordance with the laws and regulations of the country of the requested authority. The requested authority shall make its best efforts to respond promptly and favourably to meet any reasonable deadlines indicated by the requesting authority.
6. Notwithstanding the provisions of this Chapter, if the communication of any information requested under this Chapter is prohibited by the laws or regulations, considered to be incompatible or prejudicial to the national interest or national security of the country of the requested authority, the requested authority shall not be required to provide such information or may provide such information subject to any terms, conditions or limitations it may prescribe.
7. In the event of termination of this Agreement, the provisions of this Article, with the exception of paragraphs 2 and 3, shall continue to apply unless otherwise agreed by the Parties.

## **Article 50. Sub-committee on Customs Procedures**

1. For the purposes of the effective implementation and cooperation of this Chapter, the functions of the Sub-Committee on Customs Procedures (hereinafter referred to in this Chapter as "the Sub-Committee") established in accordance with Article 9 shall be to:
  - (a) review the implementation and operation of this Chapter;
  - (b) identify areas to be improved for facilitating trade between the countries of the Parties;
  - (c) report the outcome of discussions of the Sub-Committee to the Joint Committee;
  - (d) implement decisions or proposals approved by the Joint Committee, in accordance with paragraph (c) or otherwise; and
  - (e) carry out other functions as may be delegated by the Joint Committee.
2. The Sub-Committee shall be co-chaired by officials from the customs authorities of the Parties.
3. The Sub-Committee shall comprise officials from the customs authorities of the Parties. Other government officials of either Party with the necessary expertise relevant to the issues to be discussed may be included on an ad hoc basis.
4. The Sub-Committee may, by consensus, invite representatives of relevant entities other than the Parties with the necessary expertise relevant to the issues to be discussed to participate in the meetings of the Sub-Committee.
5. The Sub-Committee shall meet at such place and number of times as may be mutually agreed upon by the Parties.

## **Article 51. Publication and Enquiry Points**

For the purposes of this Chapter, each Party shall:

- (a) publish on the internet or in print form all statutory and regulatory provisions and procedures applicable or enforced by its customs authority; and
- (b) designate one or more enquiry points to address enquiries from the other Party concerning customs matters, and shall make available on the Internet, or print form, information concerning procedures for making such enquiries.

# **Chapter 5. Trade Remedies**

## **Article 52. Anti-dumping**

Each Party shall retain its rights and obligations under Article VI of the GATT 1994 and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as set out in the national legislations of both Parties.

## **Article 53. Subsidies and Countervailing Measures**

Each Party shall retain its rights and obligations under Articles VI and XVI of the GATT 1994 and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as set out in the national legislations of the countries of the Parties.

## **Article 54. Bilateral Safeguard Measures**

1. A Party (hereinafter referred to in this Article as "the affected Party") shall have the right to apply bilateral safeguard measures on an originating good of the country of the other Party if, as a result of the reduction or elimination of a customs duty in accordance with Article 14, such originating good is being imported into the territory of the country of a Party in such increased quantities, in absolute terms, or relative to domestic production and under such conditions as to cause serious

injury or threat of serious injury to domestic industry producing a like or directly competitive good. The affected Party may:

- (a) suspend the further reduction of any rate of customs duty on the originating good provided for under this Agreement;
- (b) increase the rate of customs duty on the originating good to a level not exceeding the most-favoured-nation applied rate of customs duty on the originating good in effect at the time the bilateral safeguard measure is taken.

2. The affected Party shall have the right to apply bilateral safeguard measures on an originating good within the transition period for that originating good. The transition period for a good shall begin from the date of entry into force of this Agreement and end five years from the date of completion of tariff reduction and, where relevant, elimination for that good.

3. In applying bilateral safeguard measures, the Parties shall adopt the rules for the application of safeguard measures, including provisional measures, as provided under the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Safeguards"), with the exception of the quantitative restriction measures set out in Article 5, and Articles 9, 12, 13 and 14 of the Agreement on Safeguards. As such, all other provisions of the Agreement on Safeguards shall, mutatis mutandis, be incorporated into and form an integral part of this Agreement.

4. Notwithstanding paragraph 3 of this Article, the following conditions and limitations shall apply to an investigation or a bilateral safeguard measure:

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

(i) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(ii) making a finding of serious injury or threat thereof caused by increased imports; and (iii) taking a decision to apply or extend a bilateral safeguard measure.

(b) In making the notifications referred to in subparagraphs (ii) and (iii) of paragraph (a), the affected Party proposing to apply a bilateral safeguard measure shall provide the other Party with all pertinent information, which shall include:

(i) evidence of serious injury or threat thereof caused by the increased imports;

(ii) precise description of the originating good involved and the proposed bilateral safeguard measure; and

(iii) proposed date of introduction and expected duration. The affected Party proposing to apply a bilateral safeguard measure may be requested by the other Party to provide additional information as it may consider necessary and the affected Party shall respond accordingly. In the case of an extension of a bilateral safeguard measure, evidence that the industry concerned is adjusting shall also be provided.

(c) The affected Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking or extending any such bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation, exchanging views on the proposed bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 8 of this Article.

(d) The provisions on notification in this Article shall not require any Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private;

(e) The affected Party shall apply the bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(a), (b) and (c) of the Agreement on Safeguards.

(f) An investigation shall be promptly terminated without any bilateral safeguard measure being applied if imports of the originating good represent less than 8 per cent of total imports.

(g) Investigations shall in all cases be completed within one year following the date of initiation of the investigation.

5. Any bilateral safeguard measure may be maintained for an initial period of up to two years and may be extended for a period not exceeding one year if it is determined pursuant to the procedures referred to in paragraph 4 of this Article that the bilateral safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry is adjusting. Notwithstanding the duration of a bilateral safeguard measure on the good, such a bilateral safeguard measure shall terminate at the end of the transition period for that good.

6. No bilateral safeguard measure shall be taken against a particular good while a global safeguard measure in respect of that good is in place. In the event that a global safeguard measure is taken in respect of a particular good, any existing bilateral safeguard measure which is taken against that good shall be terminated prior to the imposition of a global safeguard measure.

7. On the affected Party's termination of a bilateral safeguard measure on a particular good, the tariff rate for that good shall be the rate that would have been in effect in accordance with Article 14, but for the bilateral safeguard measure.

8. The affected Party proposing to apply a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. If the Parties are unable to agree on compensation within 30 days, the Parties shall seek the good offices of the Joint Committee to determine the substantially equivalent level of concessions to that existing under this Agreement between the affected Party applying the bilateral safeguard measure and the exporting Party which would be affected by such a bilateral safeguard measure prior to any suspension of equivalent concessions. This action shall be applied only for the minimum period necessary to achieve the substantially equivalent effects.

9. The right of suspension referred to in paragraph 8 of this Article shall not be exercised for the first one year that a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been taken as a result of an

absolute increase in import and that such a bilateral safeguard measure conforms to the provision of this Chapter.

10. Each Party shall entrust determinations of serious injury or threat thereof in safeguard investigation proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals, to the extent provided by national laws and regulations. Negative injury determinations shall not be subject to modification, except by such review.

11. All official communications and documentations exchanged among the Parties and to the Joint Committee relating to any bilateral safeguard measures shall be in writing and shall be in the English language.

## **Article 55. Global Safeguard Measures**

Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards. Actions taken pursuant to Article XIX of the GATT 1994 and the Agreement on Safeguards shall not be subject to Chapter 12.

# **Chapter 6. Sanitary and Phytosanitary Measures**

## **Article 56. Objectives**

The objectives of this Chapter are to protect human, animal or plant life or health in the territory of the countries of the Parties, and to provide a framework to address any bilateral sanitary and phytosanitary matters so as to facilitate and increase trade between the countries of the Parties.

## **Article 57. Scope and Coverage**

1. This Chapter applies to all sanitary and phytosanitary measures in the territories of the countries of the Parties that may, directly or indirectly, affect trade between the countries of the Parties.

2. For the purposes of this Chapter:

(a) "international standards, guidelines and recommendations" shall have the same meaning as in Annex A to the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "the SPS Agreement");

(b) "sanitary and phytosanitary measure" means any measure referred to in Annex A, paragraph 1 of the SPS Agreement; and

(c) "trade between the Parties" refers to the trade in goods produced, processed or manufactured in the territories of the countries of the Parties.

3. This Chapter does not apply to technical regulations, standards and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as the "TBT Agreement").

## **Article 58. General Provisions**

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

2. With the view to facilitating and increasing bilateral trade, the Parties shall seek to enhance their cooperation in the area of sanitary and phytosanitary measures and deepen their mutual understanding and awareness of their respective systems.

3. The Parties shall seek to identify initiatives for cooperation on regulatory issues, such as bilateral recognition of equivalence, harmonisation based on international standards, guidelines and recommendations, or other cooperative arrangements.

## **Article 59. Focal Points**

1. To facilitate the implementation of this Chapter and cooperation between the Parties, each Party shall designate a focal point, who shall be responsible for coordinating all matters pertaining to this Chapter. The functions of the focal point shall include:

(a) monitoring the implementation and administration of this Chapter;

(b) enhancing communication between the Parties' agencies and ministries responsible for sanitary and phytosanitary matters and facilitate either Party's response to written requests for information or exchange of information from the other Party in print or in electronic media without undue delay;

(c) promptly addressing any bilateral sanitary and phytosanitary issues that either Party raises to enhance cooperation and consultations between the Parties to facilitate trade between the Parties;

(d) promoting the use of international standards, guidelines and recommendations by both Parties in their respective adoption and application of sanitary and phytosanitary measures; and

(e) reviewing the progress of addressing sanitary and phytosanitary matters that may arise between the Parties' agencies and ministries responsible for such matters.

2. The focal points shall carry out their functions through agreed communication channels such as telephone, fax, emails or post, whichever is most expedient in the discharge of their functions.

3. For the purposes of this Article, the focal points shall be: (a) in the case of Malaysia, the Secretary General of the Ministry of Agriculture and Agro-based Industry; and (b) in the case of Pakistan, the Secretary of the Ministry of Food, Agriculture and Livestock.

## **Article 60. Technical Working Group**

1. Where a matter covered under this Chapter cannot be clarified or resolved through the focal points, the Parties may, with mutual consent, agree to establish a technical working group with a view to identifying a workable and practical solution that would facilitate trade. Where a Party declines a request from the other Party to establish such working group, it shall, upon request, explain its reasons to the other Party. Such working group shall comprise representatives of both Parties, responsible for sanitary and phytosanitary measures.

2. The proposals of the technical working group may form the basis for a Party to consider the request by the other Party for recognition of a specific sanitary and phytosanitary measure as equivalent to the other Party's corresponding sanitary and phytosanitary requirements.

## **Article 61. Dispute Settlement**

1. Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 for any dispute or differences arising from this Chapter.

2. Any disputes or differences arising from this Chapter shall be settled amicably through consultation by the technical working group. In the event that this fails, such dispute or differences may be forwarded by either Party for consideration by the Joint Committee.

## **Article 62. Final Provision**

Nothing in this Chapter shall limit the authority of a Party to determine the level of protection it considers necessary for the protection of, inter alia, human, animal or plant life or health. In determining such level of protection, each Party retains authority to interpret the laws, regulations and administrative provisions of its country.

# **Chapter 7. Technical Barriers to Trade**

## **Article 63. Scope and Application**

1. All terms concerning technical regulations, standards and conformity assessment procedures used in this Agreement shall have the meaning given in Annex 1 of the TBT Agreement.

2. The rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment procedures shall be governed by the TBT Agreement.

## **Article 64. Technical Cooperation**

1. The Parties shall encourage appropriate institutions in their jurisdiction to strengthen their technical cooperation aimed at achieving full and effective implementation of the TBT Agreement and with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they shall encourage their competent authorities in the area of technical regulations, standards and conformity assessment procedures to cooperate in:

(a) reinforcing the role of international standards or national standards harmonised to international standards, as a basis for technical regulations;

(b) exchanging information on technical regulations and conformity assessments procedures;

(c) participating in multilateral and international fora on technical regulations, standards and conformity assessment procedures; and

(d) considering requests for implementation of any specific cooperation programme.

## **Article 65. International Standards**

1. The Parties shall utilise either national standards harmonised to international standards or international standards as a basis for cooperation in technical regulations, standards and conformity assessment procedures.
2. In determining whether an international standard or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX ("Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement") issued by the World Trade Organisation Committee on Technical Barriers to Trade or any successor document.

## **Article 66. Conformity Assessment Procedures**

Each Party shall utilise existing regional and international mutual recognition arrangements in relation to the acceptance of conformity assessment processes and procedures.

## **Article 67. Focal Point**

For the purposes of this Chapter, each Party shall establish a focal point, with the objectives of:

- (a) facilitating technical consultations on any issue relating to technical regulations, standards and conformity assessment procedures that a Party may raise;
- (b) enhancing cooperation in the development and improvement of conformity assessment procedures;
- (c) facilitating, where appropriate, cooperation between governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the respective territories; and
- (d) exchanging information on developments in national, regional and multilateral fora engaged in activities relating to standardisation, technical regulations, standards and conformity assessment procedures.

## **Chapter 8. Trade In Services**

### **Article 68. Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade in services by service suppliers of the other Party.
2. This Chapter shall not apply to:
  - (a) services supplied in the exercise of governmental authority at the central, regional or local government levels;
  - (b) any measure by a Party with respect to government procurement;
  - (c) subsidies or grants provided by a Party;
  - (d) in respect of air transport services, traffic rights, however granted, or services directly related to the exercise of traffic rights, except measures affecting:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services; and
    - (iii) computer reservation system services.
  - (e) cabotage in maritime transport services; and
  - (f) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the country of the other Party into, or their temporary stay in, its country's territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

Article 98 shall apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of the country of a Party through commercial presence in the territory of the other Party, regardless of whether or not such services sector is scheduled in a Party's Schedule of Specific Commitments in Annex 5. Note: The term "regional" refers to a state of Malaysia and a province of Pakistan.

### **Article 69. Definitions**

For purposes of this Chapter:

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

- (b) a juridical person is;
- (i) "owned" by persons of the country of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that country;
- (ii) "controlled" by persons of the country of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
- (iii) "affiliated" with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;
- (c) "commercial presence" means any type of business or professional establishment, including through:
- (i) the constitution, acquisition or maintenance of a juridical person; or
- (ii) the creation or maintenance of a branch or a representative office, within the territory of the country of a Party for the purposes of supplying a service;
- (d) "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;
- (e) "existing" means in effect on the date of entry into force of this Agreement;
- (f) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (g) "juridical person of another Party" means a juridical person which is either:
- (i) constituted or otherwise organised under the law of the country of that other Party, and is engaged in substantive business operations in the territory of the country that Party; Note: In order to prevent the possibility of companies of a third State unduly benefiting from this Agreement, companies of a third State registered in the territory of the country of another Party, their offices, liaison offices, "shell companies" and "mail box companies" and companies specifically established for providing certain services to their parent companies are not service suppliers of another Party under this Agreement.
- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
- (AA) natural persons of the country of that Party; or
- (BB) juridical persons of the country of that other Party identified under subparagraph (i) of this paragraph;
- (h) "measures adopted or maintained by a Party" means any measure of a Party, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:
- (i) central, regional or local government or authorities; or
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (i) "measures adopted or maintained by a Party affecting trade in services" includes measures affecting:
- (i) the purchase, payment or use of a service;
- (ii) 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
- (iii) the presence, including commercial presence, of persons of the country of a Party for the supply of a service in the territory of the country of the other Party;
- (j) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of the country of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service; (k) "natural person of the other Party" means a natural person who resides in the country of the other Party or elsewhere and who under the law of the country of the other Party;
- (i) in respect of Malaysia, is a citizen of Malaysia or has the right of permanent residence in Malaysia; and
- (ii) in respect of Pakistan, is a citizen of Pakistan or has the right of permanent residence in Pakistan;
- (l) "sector" of a service means with reference to a specific commitment, one or more, or all, sub-sectors of that service, as specified in a Party's Schedule of Specific Commitments in Annex 5; or otherwise, the whole of that service sector, including all of its sub-sectors, as the case may be;
- (m) "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 or the applicable conditions;
- (n) "service consumer" means any person that receives or uses a service;
- (o) "service of the other Party" means a service which is supplied:
- (i) from or in the territory of the country of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the country of the other Party, or by a person of the country of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the country of the other Party;
- (p) "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;



- (q) "service supplier" means any person that supplies a service;
- (r) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service; and
- (s) "trade in services" means the supply of a service:
  - (i) from the territory of the country of one Party into the territory of the country of the other Party ("crossborder mode");
  - (ii) in the territory of the country of one Party to the service consumer of the country of the other Party ("consumption abroad mode");
  - (iii) by a service supplier of the country of one Party, through commercial presence in the territory of the country of the other Party ("commercial presence mode"); and
  - (iv) by a service supplier of the country of one Party, through presence of natural persons of the country of that Party in the territory of the country of the other Party ("presence of natural persons mode").

## **Article 70. Market Access**

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 5.
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 the entire territory of its country, unless otherwise specified in its Schedule of Specific Commitments in Annex 5 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, except measures of a Party which limit inputs for the supply of services;
  - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
  - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
  - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## **Article 71. National Treatment**

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 5, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement in paragraph 1 of this Article 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 the like service or service suppliers of the other Party.
4. Commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

## **Article 72. Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to the Articles 70 and 71, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 5.

## **Article 73. Schedule of Specific Commitments**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 70, 71 and 72 in Annex 5.
2. With respect to sectors where the specific commitments are undertaken, each Schedule of Specific Commitments in

Annex 5 shall specify:

(a) terms, limitations and conditions on market access;  
(b) conditions and qualifications on national treatment;  
(c) undertakings relating to additional commitments; and (d) where appropriate, the time-frame for implementation of such commitments.

3. With respect to sectors or sub-sectors where the specific commitments are undertaken and set out in Annex 5 any terms, limitations, conditions and qualifications, referred to in subparagraphs (a) and (b) of paragraph 2 of this Article, shall be limited to existing nonconforming measures.

4. With respect to sectors or sub-sectors as set out in Annex 5, any change or modification in the conditions by a Party shall not result in the decrease of benefits in relation to the prevailing conditions applied to service suppliers of the other Party present in the territory of the country of the Party, compared to the benefits immediately before such change or modification comes into effect.

## **Article 74. Modification of Schedules**

1. A Party (hereinafter referred to in this Article as "modifying Party") may modify or withdraw any commitment in its Schedule of Specific Commitments in Annex 5 at any time from the date on which that commitment entered into force.

2. The modifying Party shall notify the other Party (hereinafter referred to in this Article as "the affected Party") of its intent to modify or withdraw a commitment pursuant to this Article no later than three months before the intended date of implementation of the modification or withdrawal.

3. The modifying Party may only modify or withdraw its commitments where the modifying Party makes any necessary compensatory adjustments to its Schedule of Specific Commitments to maintain a general level of mutually advantageous commitments that is not less favourable to trade in services than provided for in its Schedule prior to the modification.

4. Upon notification of a Party's intent to make such modification, the Parties shall consult and attempt to reach agreement on the necessary compensatory adjustment.

5. If agreement is not reached between the modifying Party and the affected Party on the necessary compensatory adjustment within three months, the affected Party may refer the matter to arbitration in accordance with the procedures set out in Chapter 12.

6. The modifying Party may not modify or withdraw its commitment until it has made the necessary adjustments in conformity with the findings of the arbitration referred to in paragraph 5 of this Article.

## **Article 75. Most-favoured-nation Treatment**

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

2. The provisions of paragraph 1 of this Article shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule of Specific Commitments in Annex 5.

3. If a Party has entered into an agreement on trade in services with a third State or enters into such an agreement after this Agreement enters into force, with respect to sectors, sub-sectors or activities included in its Schedule of Specific Commitments in Annex 5, it shall, upon the request of the other Party, consider according to services and service suppliers of the other Party, treatment no less favourable than that it accords to like services and service suppliers of that third State.

## **Article 76. Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non-discriminatory basis to service suppliers of the other Party. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Paragraph 2 of this Article shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorisation is required for the supply of a service, the competent authorities of a Party shall promptly, after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the

Parties shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the GATS, with a view to their incorporation into this Agreement. The Parties note that such disciplines aim to ensure that such requirements are inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service; and
- (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. Pending the incorporation of disciplines pursuant to paragraph 5 of this Article, a Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligations under this Chapter in a manner which:

- (a) does not comply with the criteria outlined in subparagraphs (a), (b) or (c) of paragraph 5 of this Article; and (b) could not reasonably have been expected of that Party at the time the obligations were undertaken.

7. In determining whether a Party is in conformity with its obligations under paragraph 6 of this Article, account shall be taken of international standards of relevant international organisations applied by that Party.

8. Each Party shall provide for adequate procedures to verify the competence of professionals of the country of the other Party.

## **Article 77. Mutual Recognition**

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

2. Recognition referred to in paragraph 1 of this Article, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally. For the purposes of fulfilment, in whole or in part, of the obligation under paragraph 1 of this Article, the Parties have agreed to adopt the Framework on Mutual Recognition Arrangements as in Annex 6.

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

(a) nothing in Article 75 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licences or certifications granted in the other Party; and

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

4. Both Parties shall facilitate development of mutual recognition arrangements among professional or regulatory bodies through facilitating discussion among these bodies and exchange of information on focal points.

## **Article 78. Transparency**

1. Each Party shall publish promptly, except in emergency situations, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting cross-border trade in services to which a Party is a signatory shall also be published.

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

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 of this Article. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

## **Article 79. Monopolies and Exclusive Service Suppliers**

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

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

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

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

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

## **Article 80. Business Practices**

1. The Parties recognise that certain business practices of services suppliers, other than those falling under Article 79, may restrain competition and thereby restrict trade in services.
2. Each Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 of this Article. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the other Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

## **Article 81. Emergency Safeguard Measures**

1. The Parties shall initiate discussions within a year from the entry into force of this Agreement to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures. These guidelines and procedures shall be annexed to and shall form part of this Agreement.
2. Notwithstanding the provisions of paragraph 1 of this Article, if a Party deems to be affected by the negative impact caused by its specific commitments as set out in Annex 5, the Party may request to hold consultations with the other Party and the other Party shall respond such request in good faith.
3. In holding the consultations referred to in paragraph 2 of this Article, the Parties shall endeavour to reach a mutually acceptable solution within a reasonable time.

## **Article 82. Payments and Transfers**

1. Except under the circumstances envisaged in Article 83, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to in this Article as "the Fund") under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 83, or at the request of the Fund.

## **Article 83. Measures to Safeguard the Balance-of-payments**

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.
2. The restrictions referred to in paragraph 1 of this Article shall:
  - (a) ensure that the other Party is treated as favourably as any third State;
  - (b) be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) avoid unnecessary damage to the commercial, economic and financial interests of the country of the other Party;
  - (d) not exceed those necessary to deal with the circumstances described in paragraph 1 of this Article; and
  - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.
3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the other Party.
5. The Party adopting any restrictions under paragraph 1 of this Article may commence consultations, upon request by the other Party, in order to engage in exchange of information and provide clarification to enquiries from the other Party with respect to the restrictions adopted by it.

## **Article 84. Denial of Benefits**

1. Subject to prior notification, a Party may deny the benefits of this Chapter to:
  - (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a third State and the juridical person has no substantive business operations in the territory of the country of the other Party; or
  - (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantive business operations in the territory of the country of the other Party.
2. A Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the

service is being supplied by a juridical person that is owned or controlled by persons of a third State, and that denying Party:

- (a) does not maintain diplomatic relations with the third State; or
- (b) adopts or maintains measures with respect to the third State 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 85. Review of Commitments**

The Parties shall consult within three years after entry into force of this Agreement or as otherwise agreed, regarding inclusion of new services sectors and sub-sectors, and progress made on paragraph 4 of Article 77, with a view to progressive liberalisation of the trade in services between them on a mutually advantageous basis.

## **Article 86. Sub-committee on Trade In Services**

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 9 shall be:

- (a) reviewing commitments, with respect to measures affecting trade in services in this Chapter, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;
- (b) reviewing the implementation and operation of this Chapter;
- (c) reviewing and discussing issues concerning the effective implementation of Articles 77 and 81;
- (d) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (e) carrying out any other functions as may be delegated by the Joint Committee in accordance with Article 8.

2. The Sub-Committee shall be:

- (a) composed of representatives of the Parties, and where appropriate, may invite representatives of relevant entities other than of the Parties with the necessary expertise relevant to the issues to be discussed; and
- (b) co-chaired by officials of the Parties.

3. The Sub-Committee shall hold its inaugural meeting within one year of the entry into force of this Agreement. Subsequent meetings shall be held at such venues and times as the Parties may mutually agree.

## **Chapter 9. Investment**

### **Article 87. Scope of Application**

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

- (a) investors of the other Party; and
- (b) investments of investors of the other Party in the territory of the country of the former Party.

2. This Chapter shall apply to existing investments at the date of entry into force of this Agreement, as well as to investment made after the entry into force.

3. This Chapter shall not apply to claims or disputes arising out of events which occurred prior to its entry into force.

4. In the event of any inconsistency between this Chapter and Chapter 8:

- (a) with respect to matters covered by Articles 89, 90 and 92, Chapter 8 shall prevail to the extent of inconsistency; and (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of the inconsistency.

### **Article 88. Definitions**

1. For the purposes of this Chapter:

(a) An enterprise is:

- (i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
- (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

(b) "enterprise of a Party" means any legal entity duly constituted or otherwise organised under applicable laws of the country of a Party, whether for profit or otherwise and whether privately-owned or governmentally-owned, including any corporation, partnership, trust, joint venture, sole proprietorship, organisation or association or branch of a company;

(c) "freely usable currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets as defined under the Articles of Agreement of the International Monetary Fund, as may be amended;

(d) "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the country of the other Party, in accordance with the latter's laws, regulations and national policies, including:

(i) shares, stocks and debentures of companies or interests in the property of such companies;  
(ii) a claim to money or a claim to any performance having financial value associated with the investment;  
(iii) rights under contract, including turnkey, construction, management, production, concessions or revenue-sharing contracts; (iv) intellectual property rights;  
(v) movable and immovable property and any other property rights such as mortgages, liens or pledges. The term "investment" also includes amounts yielded by investments, in particular, profits, interests, capital gains, dividends, royalties and fees. Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investments.

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

(e) "investor" means:

(i) any natural person having the citizenship of or the right of permanent residence in the territory of the country of a Party in accordance with its laws, regulations and national policies; or

(ii) an enterprise of a Party;

(f) "measures adopted or maintained by a Party" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form affecting investors or investments, adopted or maintained by:

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

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

Note: The term "regional" refers to a state of Malaysia or a province of Pakistan.

## **Article 89. National Treatment**

Each Party shall within its country's territory accord to investors of the other Party and to their investments, treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").

## **Article 90. Most-favoured-nation Treatment**

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

2. This Article shall not apply to treatment accorded under any bilateral, regional or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

## **Article 91. Promotion and Protection of Investment**

1. Each Party shall encourage and create favourable conditions for investors of the other Party to invest in its country's territory and take all possible measures for protection of investments, in accordance with the laws and regulations of its country and national policies.

2. Investments of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the country of the other Party.

## **Article 92. Prohibition of Performance Requirements**

1. For the purposes of this Chapter, the Parties reaffirm their commitments to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "TRIMS") and hereby incorporate the provisions of the TRIMS, as may be amended, as part of this Chapter.

2. A Party shall, upon notification by the other Party, promptly convene consultations with the other Party on any matter relating to this Article that affects the other Party's investors and their investments.

## **Article 93. Reservations**

1. Articles 89, 90 and 92 shall not apply to:

(a) any non-conforming measure that is maintained by:

(i) the central government of the country of a Party; or

(ii) a state of Malaysia or a province of Pakistan

- (b) any non-conforming measure by a local government of the country of a Party;
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); and (d) an amendment or modification of any measure referred to in subparagraphs (a) and (b), provided that the amendment does not decrease the level of conformity of the measure, as it existed immediately before the amendment or modification, with Articles 89, 90 and 92. as set out in sectors, sub-sectors and activities specifically listed in Annex 7;
2. Each Party reserves the right to adopt or maintain any measure not conforming with the obligations under Article 89 and Article 90 and Article 92 for sectors, sub-sectors and activities listed in Annex 7 other than those referred to in paragraph 1 of this Article.
3. Any amendment or modification of an existing measure or adoption of a new measure for sectors, sub-sectors or activities referred to in paragraph 2 of this Article shall not be more restrictive to existing investors and investments than the measure applied to such investors and investments immediately before such amendment or modification or adoption, unless specifically indicated in the sectors, sub-sectors or activities listed in Annex 7.
4. Neither Party may, under any measure adopted pursuant to paragraph 2 of this Article after the entry into force of this Agreement require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.
5. In cases where a Party makes an amendment or modification of existing measures or adopt new measures with respect to sectors, sub-sectors or activities listed in Annex 7, that Party shall:
- (a) promptly notify the other Party;
- (b) provide, upon request by the other Party, particulars of the amendment, modification or adoption of new measures to the other Party; and
- (c) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieve mutual satisfaction.
6. Each Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in Annex 7.
7. Articles 89, 90 and 92 shall not apply to:
- (a) government procurement; and
- (b) measures affecting investments adopted or maintained pursuant to Chapter 8 to the extent that they relate to the supply of any specific service through commercial presence.
8. Notwithstanding the provisions of Article 89 and 90 each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its country's territory, such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

## **Article 94. Expropriation**

1. Neither Party shall take any measures of expropriation or nationalisation, or measures amounting thereto, against the investments of an investor of the other Party, except under the following conditions: (a) the measures are taken for a lawful or public purpose and under due process of law; (b) the measures are non-discriminatory; (c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.
2. Such compensation shall amount to the fair market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be effectively realisable and freely transferable in freely usable currencies from the country of the Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.
3. The investor affected shall have a right to review, by a judicial or other independent authority of the Party which conducted the expropriation, of its case and of the valuation of its investment in accordance with the laws and regulations of the country of the hosting Party and the principles set out in this Article.
4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the Agreement on Trade Related Aspects of Intellectual Property Rights in Annex 1A to the WTO Agreement (hereinafter referred to as "TRIPS").

## **Article 95. Protection from Strife**

1. Investors of one Party whose investments in the territory of the country of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the country of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investors of any third State.
2. Any payments made pursuant to paragraph 1 of this Article shall be effectively realizable, freely convertible and freely transferable.

## **Article 96. Repatriation of Investment**

1. Each Party shall permit all transfers relating to investment to be made freely and without delay into and out of its country's territory in any freely usable currency. Such transfers include:
  - (a) the initial capital and additional amounts to maintain or increase investments;
  - (b) the net profits, dividends, royalties, technical fees, interest and other current incomes, accruing from any investment of the investors of the other Party;
  - (c) the proceeds from the total or partial sale or liquidation of any investment made by investors of the other Party;
  - (d) funds in repayment of borrowings or loans given by investors of one Party to the investors of the other Party which both Parties have recognised as investment;
  - (e) the net earnings and other compensations of nationals of the country of one Party who are employed and allowed to work in connection with an investment in the territory of the country of the other Party;
  - (f) the compensation provided for in Articles 94 and 95;
  - (g) payments arising out of the settlement of a dispute under Article 97.
2. The exchange rates applicable to such transfers in paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.
3. The Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.
4. Notwithstanding the provisions referred to in paragraph 1 of this Article, a Party may prevent or delay a transfer through the equitable, nondiscriminatory and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency, or the protection of the rights of the creditors;
  - (b) issuing, trading or dealing in securities;
  - (c) criminal or penal offences;
  - (d) social security, public retirement or compulsory savings scheme;
  - (e) compliance with the judgments in judicial or administrative proceedings;
  - (f) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
5. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

## **Article 97. Subrogation**

If a Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment, the other Party shall, without prejudice to the rights of the former Party, recognise the transfer of any right or title of such investors to the former Party or its designated agency and the subrogation of the former Party or its designated agency to any right or title. The subrogation rights or claims shall not exceed the original rights or claims of such investors.

## **Article 98. Settlement of Investment Disputes between a Party and an Investor of the other Party**

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

Note: For greater certainty, where an agreement executed between an investor of a Party and the other Party provides for any arbitration or dispute resolution procedures, then any dispute which arises or occurs between the parties in relation to anything or matter arising out of or in connection with that agreement shall be referred to and resolved by arbitration or dispute resolution provided in that agreement and recourse may only be made to the arbitration procedure in this Article where any breach expressly and directly arises or occurs between the parties in relation to breaches of any provisions of this Chapter.
2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement available within the country of the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").
3. An investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.
4. An investor shall not be entitled to make a claim, if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.



5. If the investment dispute cannot be settled through such consultations referred to in paragraph 3 of this Article within six months from the date on which the disputing investor requested for the consultations in writing and if the disputing investor has not submitted the investment dispute for resolution under administrative or judicial settlement, the disputing investor may:

- (a) if agreed by the disputing Party, submit the investment dispute to the Kuala Lumpur Regional Centre for Arbitration for settlement by conciliation or arbitration;
- (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, 18 March 1965, as may be amended;
- (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on 28 April 1976, as may be amended; or
- (d) if agreed with the disputing Party, submit the investment dispute to arbitration in accordance with other arbitration rules.

6. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.

7. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 5 of this Article shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted.

The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Party at issue and a summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and (c) the dispute settlement procedures set forth in paragraph 5 of this Article which the disputing investor will seek.

8. Notwithstanding paragraph 5 of this Article and subject to the laws of the disputing Party, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or a court of justice.

9. Unless the disputing parties agree otherwise, the arbitration shall be held in the territory of the country of the disputing Party.

10. The award shall include:

- (a) judgment whether or not there has been a breach by the disputing Party of any rights conferred by this Chapter in respect of the disputing investor and its investments; and
- (b) remedy if there has been such breach. The remedy shall be limited to one or both of the following:
  - (i) payment of monetary damages and applicable interest; and
  - (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules.

11. The award rendered in accordance with paragraph 10 of this Article shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of any such award and provide in the territory of the country of the disputing Party for the enforcement of such award in accordance with the relevant laws and regulations of its country.

12. Neither Party shall, in respect of an investment dispute which one of its investors has submitted to arbitration in accordance with paragraph 5 of this Article, bring an international claim before another forum unless the other Party has failed to abide by and comply with the award rendered in such investment dispute.

13. This Article shall not apply to any dispute arising between a Party and an investor of the other Party on any right or privileges conferred or created by Article 89 and 92.

14. An investor of a Party whose investments are not made in compliance with the laws, regulations and national policies of the other Party shall not:

- (a) be entitled to submit an investment dispute to conciliation or arbitration referred to in paragraph 5 of this Article; and
- (b) resort to dispute settlement procedures under Chapter 12 as a means to settle the investment disputes between the investor and the other Party.

## **Article 99. Measures to Safeguard Balance-of-payments**

1. A Party may adopt or maintain measures not conforming with its obligations under Article 89 relating to cross-border capital transactions and Article 98:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof, or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. The measures referred to in paragraph 1 of this Article shall:

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

- (b) be applied in such a manner that the other Party is treated no less favourably than any third State;
- (c) not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;
- (d) be promptly notified to the other Party; and
- (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.

## **Article 100. Prudential Measures**

Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter. Note: "financial services" shall have the same meaning as in subparagraph (a) of paragraph 5 of the Annex on Financial Services to the GATS.

## **Article 101. Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to an investment of such investor if investors of a third State own or control the enterprise, and the denying Party: (a) does not maintain diplomatic relations with the third State; or (b) adopts or maintains measures with respect to the third State that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of such investor if investors of a third State own or control the enterprise. A Party may also deny the benefits of this Chapter to an investor of the other Party if the investor has no substantial investment or business activities in the Party under whose laws it is constituted or organised. Note: In order to prevent the possibility of companies of a third State unduly benefiting from this Agreement, companies of a third State registered in another Party, their offices, liaison offices, "shell companies" and "mail box companies" and companies specifically established for providing certain services to their parent companies are deemed as investors which have no substantial investment or business activities in the territory of the country of the Party under whose laws it is constituted or organised.

## **Article 102. Facilitation of Movement of Investors**

1. Subject to its immigration laws, regulations and national policies relating to entry, stay and authorisation to work, each Party shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Party, for the purposes of establishing, developing, administering or advising on the operation in the country of the former Party of an investment to which they, or an enterprise of the other Party that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.
2. Each Party shall, to the extent possible, make publicly available, requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Party who has been granted entry and temporary stay with respect to an investment. Each Party shall endeavour to facilitate the procedures to the extent possible, in accordance with its laws and regulations.

## **Article 103. Sub-committee on Investment**

1. For the purposes of effective implementation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 9 shall be to:
  - (a) exchange information on any matters related to this Chapter;
  - (b) review and monitor the implementation and operation of this Chapter and the reservations set out in the Annex;
  - (c) discuss cooperation in promoting and facilitating investments between the countries of the Parties;
  - (d) discuss any issues related to this Chapter;
  - (e) report to the Joint Committee; and
  - (f) carry out any other functions as may be delegated by the Joint Committee
3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.
4. The Sub-Committee shall:
  - (a) comprise representatives of the Parties; and
  - (b) co-chaired by government officials of the Parties.

## **Chapter 10. Intellectual Property**

### **Article 104. Principles**

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.
2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

### **Article 105. Observance of International Obligations**

The Parties reaffirm and shall comply with their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which they are both parties.

### **Article 106. Cooperation**

The Parties shall, subject to the terms of this Agreement and the national laws, regulations and policies from time to time in force in their respective countries, endeavour to strengthen, promote and develop cooperation in the area of intellectual property. Such cooperation may, inter alia include:

- (a) exchange of information relating to developments in intellectual property policy in their respective agencies;
- (b) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;
- (c) promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other relevant organisations with an interest in the field of intellectual property;
- (d) policy dialogue on initiatives on intellectual property in multilateral and regional forums;
- (e) exchange of information and cooperation on appropriate initiatives to promote public awareness of intellectual property systems; and
- (f) such other activities and initiatives as may be mutually determined by the Parties.

### **Article 107. Focal Point**

1. To facilitate the cooperation between the Parties as provided in this Chapter, each Party shall designate a focal point, who shall be responsible for coordinating all matters pertaining to this Chapter.
2. For the purposes of this Article, the focal point in:
  - (a) Malaysia shall be: Director General Malaysia Intellectual Property Corporation (MyIPO) Kuala Lumpur
  - (b) Pakistan shall be: Director General Intellectual Property Organisation of Pakistan (IPO Pakistan) Islamabad

### **Article 108. Financial Arrangements**

The financial arrangements to cover expenses for the cooperative activities undertaken within the framework of this Chapter shall be mutually agreed upon by the Parties on a case-by-case basis subject to the availability of funds.

### **Article 109. Objective**

The Parties shall, subject to the provisions of this Agreement and the laws, regulations and national policies from time to time in force in their respective countries, endeavour to strengthen, promote and develop economic cooperation between the Parties on the basis of equality and mutual benefit.

## **Chapter 11. Economic Cooperation**

### **Article 110. Implementation**

The Joint Committee shall be responsible for encouraging and promoting economic cooperation in any area within the scope of this Agreement as may be mutually agreed upon by the Parties.

### **Article 111. Dispute Settlement**

1. Neither Party may have recourse to the dispute settlement mechanism provided for in Chapter 12 for any dispute or differences arising from this Chapter.
2. Any dispute or differences arising from this Chapter may be referred to the Joint Committee. The Joint Committee may make recommendations on such issue taking into consideration the strategic priorities and capabilities of the Parties.

## **Article 112. Financial Arrangements**

The financial arrangements to cover expenses for the economic cooperative activities undertaken within the framework of this Chapter shall be mutually agreed upon by the Parties on a case-by-case basis subject to the availability of funds.

# **Chapter 12. Dispute Settlement Mechanism**

## **Article 113. Scope and Coverage**

1. Unless otherwise provided for in this Agreement, the provisions of this Chapter shall apply to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. The rules, procedures and time frames set out in this Chapter may be waived, varied or modified by mutual agreement.
3. Findings and recommendations of an arbitral tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.
4. Arbitral tribunals appointed under this Chapter shall interpret and apply the provisions of this Agreement in accordance with customary rules of interpretation of public international law.
5. Subject to paragraph 6 of this Article, nothing in this Agreement shall prejudice the right of the Parties to have recourse to dispute settlement procedures available under any other treaty to which they are parties.
6. Once a dispute settlement procedure has been initiated between the Parties with respect to a particular dispute under this Chapter or under any other international agreement to which the Parties are parties, that forum shall be used to the exclusion of any other for that particular dispute. This paragraph does not apply if substantially separate and distinct rights or obligations under different international agreement are in dispute.
7. For the purposes of this Article, a Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to an arbitral tribunal in accordance with this Chapter or any other international agreement to which the Parties are parties.

## **Article 114. Cooperation**

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement through cooperation to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

## **Article 115. Consultations**

1. A Party may request consultations with the other Party with respect to any matter affecting the interpretation or application of this Agreement. A Party may make the request to the other Party if the Party considers that: (a) any benefit accruing to it directly or indirectly is being nullified or impaired; or (b) the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement.
2. If a Party requests consultations with regard to a matter, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request for consultations and enter into consultations in good faith.
3. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis of the complaint. Each Party shall also:
  - (a) provide sufficient information to enable a full examination of how the measure might affect the operation of this Agreement; and
  - (b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.
4. The Party to which the request is made pursuant to this Article shall reply to the request within 10 days after the date of receipt of the request and shall enter into consultations within 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

## **Article 116. Good Offices, Conciliation or Mediation**

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 117.

## **Article 117. Establishment of Arbitral Tribunals**

1. The Party which made the request for consultations in accordance with Article 115 may make a written request to the other Party to establish an arbitral tribunal under this Article provided:

(a) the Party to which the request is made does not reply to the request within 10 days after its receipt, or does not enter into such consultations within 30 days after the date the receipt of the request under Article 115; or  
(b) such consultations fail to resolve the dispute within 60 days after the date of receipt of the request for consultations.

2. The request to establish an arbitral tribunal shall include an identification of the measures at issue and an indication of the factual and legal basis of the complaint.

## **Article 118. Composition of Arbitral Tribunals**

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

2. Both Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal. If the Parties fail to agree on the third arbitrator, the Parties shall request the two arbitrators appointed pursuant to paragraph 1 of this Article to appoint the third arbitrator. If the two arbitrators fail to appoint the third arbitrator within 10 days, the Parties shall consult each other in order to jointly appoint the third arbitrator of the arbitral tribunal within a further period of 30 days.

3. If an arbitrator or the Chair appointed under this Article resigns or becomes unable to act, a successor arbitrator or Chair shall be appointed in the same manner as prescribed for the appointment of the original arbitrator or Chair, and the successor shall have all the powers and duties of the original arbitrator.

4. The date of establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed.

## **Article 119. Functions of Arbitral Tribunals**

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

2. The arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in Article 120, regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

## **Article 120. Proceedings of Arbitral Tribunals**

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The venue for the substantive meetings of the arbitral tribunal shall be decided by mutual agreement by the Parties, failing which the first substantive meeting shall be held in the capital of the country of the Party which did not request for the establishment of the arbitral tribunal, with the second substantive meeting to be held in the capital of the country of the other Party.

3. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public, provided that a Party shall treat as confidential, information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

4. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

5. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the complaining Party to present its submissions. Subsequently, and still at the same meeting, the Party complained against shall be asked to present its submissions.

6. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its rebuttal first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

7. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.
8. The Parties shall make available to the arbitral tribunal a written version of their oral statements.
9. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 of this Article shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.
10. At the request of a Party to the arbitral tribunal or on its own initiative, the arbitral tribunal may seek information and technical advice from any person or body that it deems appropriate, provided that the Parties to the arbitral proceedings so agree, and subject to such terms and conditions as such Parties may agree.
11. An arbitral tribunal shall take its decisions by consensus, provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.
12. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.
13. The findings and recommendations of the arbitral tribunal shall be set out in a final report released to the Parties pursuant to paragraph 11 of this Article. Unless the Parties otherwise agree, the arbitral tribunal shall base its final report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it, pursuant to paragraphs 9 and 10 of this Article. The final report shall set out its:
  - (a) findings of fact and law together with reasons;
  - (b) determination as to whether the measure at issue is inconsistent with the obligations under this Agreement;
  - (c) recommendation that the Party complained against, bring the measure into conformity with the obligations under this Agreement; and
  - (d) recommendations, if any, on the means to resolve the dispute.
14. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its establishment. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case however, should the period from the establishment of an arbitral tribunal to the release of the final report to the Parties exceed 150 days. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.
15. The final report of the arbitral tribunal shall be final and binding on the Parties.

## **Article 121. Suspension and Termination of Proceedings**

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.
2. The Parties may agree to terminate the proceedings before an arbitral tribunal established under this Agreement at any time by jointly notifying the Chair of the arbitral tribunal to this effect.
3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

## **Article 122. Implementation**

1. On receipt of the final report of the arbitral tribunal, the Parties shall agree on the resolution of the dispute, including the reasonable period of time necessary to implement the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the arbitral tribunal.
2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the award of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 30 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay and shall submit its report within 45 days after the date of referral of the matter to it.

## **Article 123. Compensation and Suspension of Benefits**

1. If the Parties:

- (a) are unable to agree on the resolution of the dispute pursuant to paragraph 1 of Article 122 within 45 days of issuance of the final report; or
- (b) have agreed on the resolution of the dispute pursuant to paragraph 1 of Article 122 and the Party complained against fails to implement or observe the terms of such agreement within the reasonable period of time as agreed, the Party complained against shall enter into negotiations with the complaining Party with a view to developing a mutually satisfactory agreement on any necessary compensatory adjustment.
2. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining Party to enter into negotiations on developing such compensation, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 118.
3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.
4. In considering what benefits to suspend under paragraph 2 of this Article:
- (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement; and
- (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.
5. The suspension of benefits shall be temporary and shall only be applied until such time as:
- (a) the Party removes the measure found to be inconsistent with this Agreement;
- (b) the Party that must implement the arbitral tribunal's recommendations has done so; or
- (c) a mutually satisfactory solution is reached.
6. If the Party complained against considers that:
- (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or
- (b) it has eliminated the measure found to be inconsistent with this Agreement, it may request the original arbitral tribunal to determine the matter. The original arbitral tribunal shall present its determination to the Parties within 30 days after it reconvenes. Where the original arbitral tribunal cannot hear the matter for any reason, a new arbitral tribunal shall be appointed pursuant to the procedures set out in Article 118.

## **Article 124. Expenses**

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

## **Article 125. Focal Points and Service of Documents**

Both Parties shall designate a focal point for this Chapter. Any request, acknowledgement, written submission or other document relating to the dispute settlement procedures in this Chapter shall be delivered to the relevant Party through its designated focal point.

# **Chapter 13. General Exceptions**

## **Article 126. General and Security Exceptions**

1. For the purposes of Chapters 2, 3, 4, 6, 7 and 9, Articles XX and XXI of the GATT 1994 shall, *mutatis mutandis*, be incorporated into and form part of this Agreement.
2. For the purposes of Chapters 8 and 9, other than Article 95, Articles XIV and XIV bis of the GATS shall, *mutatis mutandis*, be incorporated into and form part of this Agreement.
3. In addition, nothing in this Agreement shall be construed so as to prevent either Party from taking any action which it considers necessary for the protection of critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

## **Article 127. Taxation Measures**

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.
2. For the purposes of this Agreement, "taxation measures" means any measures levying direct or indirect taxes, including excise duties and sales tax, as defined by the national laws and regulations of the countries of the Parties as long as these taxes are not used for the purpose of protecting the domestic industry of the country of the Party levying the duties.

3. Nothing in this Agreement shall affect the rights and obligations of either Party under any other agreement on taxation measures. In the event of any inconsistency between this Agreement and any such agreement on taxation measures, that agreement shall prevail to the extent of the inconsistency.

## **Chapter 14. Final Provisions**

### **Article 128. Table of Contents and Headings**

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

### **Article 129. Annexes**

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

### **Article 130. General Review**

1. The Parties shall undertake a general review of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force and, unless otherwise agreed by both Parties, every five years thereafter.
2. Notwithstanding paragraph 1 of this Article, the Parties shall, in 2009, review the concessions set out in Annex 1.

### **Article 131. Amendment**

1. This Agreement may be amended by agreement between the Parties.
2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on a date to be agreed upon by the Parties.
3. Notwithstanding paragraph 2 of this Article, amendments relating only to the Annexes to this Agreement may be made through diplomatic notes exchanged between the Parties.
4. Amendments shall not affect the rights and obligations of the Parties provided for under this Agreement until the amendments enter into force.

### **Article 132. Regional and Local Governments and Authorities**

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

### **Article 133. Relation to other Agreements**

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

### **Article 134. Termination of Existing Agreements**

The following agreements shall terminate on the day of entry into force of this Agreement:

- (a) Trade Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan signed in Kuala Lumpur on 5 November 1987;
- (b) Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan for the Promotion and Protection of Investment signed in Kuala Lumpur on 7 July 1995; and
- (c) Agreement on the Early Harvest Programme for the Free Trade Agreement between the Government of Malaysia and the Government of The Islamic Republic of Pakistan signed in Kuala Lumpur on 1 October 2005, as amended.

### **Article 135. Termination**

1. Either Party may terminate this Agreement by giving one year notice in writing to the other Party.
2. The other Party may request in writing consultations concerning any matter that would arise from the termination within



45 days after the date of receipt of the notice referred to in paragraph 1 of this Article.

3. The requested Party shall enter into consultations in good faith with a view to reaching an equitable agreement within 30 days after the date of receipt of the request referred to in paragraph 2 of this Article.

## **Article 136. Entry Into Force**

1. This Agreement shall enter into force on the 1 January 2008 and shall remain in force unless terminated as provided for in Article 135.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 January 2008.

3. The Parties shall notify each other in writing upon the completion of its internal procedures for the entry into force of this Agreement.

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

DONE at Kuala Lumpur, Malaysia, on this 8th day of November in the year 2007 in duplicate in the English language.

For the Government of the Islamic Republic of Pakistan:

H.E. TAHIR MAHMUD QAZI

High Commissioner of Pakistan

For the Government of Malaysia:

H.E. DATO' SERI RAFIDAH AZIZ

Minister of International Trade & to Malaysia Industry

## **Annex 7. RESERVATION FOR EXISTING AND FUTURE MEASURES**

1. The Schedule of a Party sets out the reservations taken by that Party pursuant to Article 93 (Reservations).

2. Each reservation sets out the following elements, where applicable:

(a) "Sector" refers to the general sector in which a reservation is taken;

(b) "Sub-Sector" refers to the specific sector in which a reservation is taken;

(c) "Industry Classification" refers, where applicable, to the activity covered by the reservation according to domestic or international industry classification codes. For the purposes of this Annex, the term "ISIC" means the International Standard Industrial Classification of All Economic Activities, United Nations numbers as set out in the Series M No. 4, Rev.3. The industry classification number is for illustrative purposes.

(d) "Type of Reservation" specifies the obligation for which a reservation is taken;

(e) "Level of Government" indicates the level of government maintaining the measure for which a reservation is taken. The term "regional" refers to in the case of Malaysia, a state of Malaysia, or in the case of Pakistan, a province of Pakistan. The term "Central" refers to in the case of Malaysia, the Federal Government of Malaysia, or in the case of Pakistan, the Central Government of Pakistan;

(f) "Description of Reservation" sets out the scope of the sector, sub-sector or activities covered by the reservation;

(g) "Measures Identified for Transparency Purposes" identifies, to the extent possible, only for transparency and illustrative purposes, existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. For Malaysia, paragraph 2 of Article 93 (Reservations) shall apply to Reservations No. 1 to 29 of this Schedule. Paragraph 3 of Article 93 (Reservations) shall not apply to Reservations No. 3, 4, and 19 (sub-sectors: n, o, and p).

4. For Pakistan, paragraph 1 of Article 93 (Reservation) shall apply to Reservations Nos. 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 20, 21, 25, 27, 28, 29, 30, 31 of this Schedule. Paragraph 2 and 3 of Article 93 (Reservation) shall apply to Reservations Nos. 2, 5, 7, 14, 17, 22, 23, 24, 26.

## Schedule of Malaysia

1. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Regional Description of Malaysia reserves the right to maintain or adopt Reservation: any measure taken by a State Government. Measures Identified for Transparency Purposes: - Non Conforming Measures 3

2. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of National Treatment and Most-Favoured-Nation Treatment Reservation: may not be accorded in the provision of loans, grants, incentives and other subsidies. Measures Identified for Transparency Purposes: Promotion of Investments Act, 1986 Income Tax Act, 1967 Customs Act, 1967 Sales Tax Act, 1972 Excise Act, 1976 National Agriculture Policy Bank Pertanian Malaysia Act 1969 Non Conforming Measures 4

3. Sector : All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to maintain or adopt Reservation: quantitative or any measure relating to the entry and temporary stay of foreign natural persons. Measures Identified for Transparency Purposes: Immigration Act 1959/63 (Revised 1975) National immigration policies Non Conforming Measures 5

4. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Level of Government: Central and Regional Description of Prohibitions or restrictions may be imposed on foreigners Reservation: in land transactions, including ownership and lease of land and property, and natural resources associated with land. Such transactions are subject to prior approval of the Central and/or Regional authorities, in accordance with laws, regulations, policies and guidelines. Measures Identified for Transparency Purposes: National Land Code Malay Reserve Land Law Federal Constitution Land Acquisition Act, 1960 Sabah Land Ordinance Sarawak Land Ordinance Foreign Investment Committee (FIC) Guidelines Non Conforming Measures 6

5. Sector : All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure on portfolio investment, any securities to be listed or listed on a stock exchange, and securities subject to regulation governing acquisition of interests or takeovers and mergers. Note: The term portfolio investment means: i) shares, stocks or other forms of equity participation in an enterprise traded in a securities exchange, which amount to less than 10 percent of the total capital of such enterprise; or ii) debt securities, such as bonds, notes and financial derivatives, the original maturity of which is less than 12 months, unless such debt securities are arising out of intra-company debt transactions between an investor of a Party and an enterprise in the other Party of which 10 percent or more of the shares, stocks, or other forms of equity are directly or indirectly owned by the investor, or which is directly or indirectly controlled by the investor. Measures may include though not limited to licensing and foreign participation in the market. Measures Identified for Transparency Purposes: Exchange Control Act, 1958 Securities Commission Act, 1993 Securities Industry Act, 1983 Securities Industry (Central Depositories) Act, 1991 Companies Act, 1965 Futures Industry Act, 1993 The Malaysian Code on Take-Over and Mergers 1998 Non Conforming Measures 7 Foreign Investment Committee (FIC) Guidelines – Guideline on the Acquisition of Interests, Mergers and Take-Over by Locals and Foreign Interests Non Conforming Measures 8

6. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Level of Government: Central Description of Malaysia reserves the right to adopt or maintain any Reservation: measure with respect to treatment of shares in the share capital of a corporation quoted on the official list of the stock exchange, which have been deposited with the central depository, which restricts the rights, benefits, powers and privileges or make it subject to liabilities, duties and obligations, where such shares are owned by a foreigner, or the shares are quoted separately as foreign shares on the official list of a stock exchange. Measures Identified for Transparency Purposes: Securities Industry (Central Depositories) Act, 1991 Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996 Non Conforming Measures 9

7. Sector : All sectors Sub-Sector : - Industry Classification: - Type of Reservations: National Treatment (Article 89) Level of Government: Central and Regional Description of Licensing may be required from the relevant regulatory Reservation: authorities. The regulatory authority reserves the right to approve or reject the licenses in accordance with the relevant legislations, policies and guidelines. Note: This reservation shall not include export requirements or local equity requirements unless otherwise provided for in this Schedule. Malaysia reserves the right to adopt or maintain licensing requirements which may be relevant. Measures Identified for transparency purposes: Industrial Coordination Act, 1975 Companies Act, 1965 Registration of Business Ordinance Custom Act, 1967 Sales Tax Act, 1972 Goods Vehicle Levy Act, 1983 Petroleum Development, Act 1974 Excise Act, 1976 Free Zone Act, 1990 Federal Constitution National Land Code Foreign Investment Committee (FIC) Guidelines Environmental Quality Act, 1974 Non Conforming Measures 10

8. Sector: All sectors Sub-Sector : - Industry Classification: - Type of Reservations: National Treatment (Article 89) Level of Government: Central Description of Malaysia reserves the right to adopt or maintain any Reservations: measure with respect to acquisition of shares or any interest, mergers and takeover of companies and businesses in Malaysia by foreigners. Note: Interest means

holding voting rights or equity or any other rights in a company. Measures Identified for Transparency Purposes: Industrial Coordination Act, 1975 Securities Commission Act, 1993 Code on Takeovers and Mergers 1998 Foreign Investment Committee (FIC) Guidelines Non Conforming Measures 11 9. Sector : All sectors Sub-Sector: - Industry Classification: - Type of reservations: Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Most-Favoured-Nation treatment may not be accorded to Reservation: foreign investors and their investments with respect to preferential treatment granted under any future customs union or free trade area or a common market or monetary union or similar international agreements or other forms of bilateral or regional or sub-regional agreement to which Malaysia may sign or enter into after the entry into force of this agreement. Measures Identified for Transparency Purposes: All ASEAN agreements including ASEAN Free Trade Agreements with dialogue partners Indonesia, Malaysia, Thailand Growth Triangle (IMT-GT) Brunei, Indonesia, Malaysia, Philippines Growth Area (BIMP-EAGA) Investment Guarantee Agreements (IGAs) Non Conforming Measures 12 10. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of National Treatment and Most-Favoured-Nation Treatment Reservations: may not be accorded to foreign investors and their investments with respect to the privatisation or divestment of assets owned by the government. Measures Identified for Transparency Purposes: New Economic Policy National Development Policy National Vision Policy National Development Plan Privatisation Master Plan Guidelines on Privatisation Non Conforming Measures 13 11. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservations: measure relating to the transfer or disposal of equity interests or assets of a state enterprise, a government entity, or a government-linked company or a Minister of Finance Incorporated company. Measures Identified for Transparency Purposes: New Economic Policy National Development Policy National Development Plan Non Conforming Measures 14 12. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservations: National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of In the event where activities restricted to designated Reservations: enterprises or governmental entities are liberalized to those other than the designated enterprises or governmental entities, or in the event where such designated enterprises or governmental entities no longer operate on a non-commercial basis, Malaysia reserves the right to adopt or maintain any measures relating to those activities. Measures Identified for Transparency Purposes: Non Conforming Measures 15 13. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to appointment of persons of Malaysian nationality to senior management positions or board of directors of companies/enterprises. Measures Identified for Transparency Purposes: Industrial Coordination Act, 1975 New Economic Policy National Development Policy National Vision Policy Non Conforming Measures 16 14. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to special preference to Bumiputera, Bumiputera status companies, trust companies and institutions. Measures Identified for Transparency Purposes: Federal Constitution New Economic Policy National Development Policy National Vision Policy Foreign Investment Committee (FIC) Guidelines Non Conforming Measures 17 15. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to any sector that has not been established in Malaysia at the time of entry into force of this Agreement. Measures Identified for Transparency Purposes: May include but not limited to: Industrial Coordination Act, 1975 Foreign Investment Committee (FIC) Guidelines Non Conforming Measures 18 16. Sector: All services sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to investments in services sectors, on condition that such measures do not constitute a violation of its obligations under Chapter 8 (Services) including National Treatment, Most-Favoured-Nation Treatment and Market Access. Malaysia reserves the right to introduce or maintain any measure relating to any services sector that has not been established in Malaysia at the time of entry into force of this Agreement. Measures Identified for Transparency Purposes: Non Conforming Measures 19 17. Sector: - Sub-Sector: Manufacturing Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Malaysia reserves the right to adopt or maintain export Reservation: requirements on new projects or expansion or diversification of projects, consistent with national and social objectives and for the orderly development of manufacturing activities in Malaysia. Export requirements imposed on existing projects will continue to apply unless exempted. Note: 1. For avoidance of doubt, export requirements will apply to all companies located in Free Zones and Licensed Manufacturing Warehouses or companies granted International Procurement Centre or Regional Distribution Centre status: such facilities/status are granted only for export-oriented companies. 2. Diversification shall refer to the activities or production of products other than those granted in the existing approval. 3. Expansion shall refer to new investment in production capacity of existing activities or products either in existing or new location. Measures Identified for Transparency Purposes: Industrial Coordination Act, 1975, Section 4 Customs Act, 1967 Free Zone Act 1990 Non Conforming

Measures 20 18. Sector: Manufacturing Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Consistent with national and social objectives and for the Reservation: orderly development of manufacturing activities, Malaysia reserves the right to impose local equity requirements on new projects or on additional capital for expansion or diversification of projects. Local equity requirements imposed on existing projects will continue to apply unless exempted. Note: 1. Diversification shall refer to the activities or production of products other than those granted in the existing approval. 2. Expansion shall refer to new investment in production capacity of existing activities or products either in existing or new location. Measures Identified for Transparency Purposes: Industrial Coordination Act, 1975 Customs Act, 1967 Non Conforming Measures 21 19. Sector: Manufacturing Sub-Sector and Industry Classification: a) Pineapple Canning (ISIC 1513) b) Palm Oil Milling and Refining (ISIC 1514) c) Sugar Refining (ISIC 1542) d) Liquors and Alcoholic Beverages (ISIC 1551-3) e) Tobacco Processing and Cigarettes (ISIC 1600) f) Wood-based Products Utilising Local Logs (ISIC 2010, 2021, 2022) g) Petroleum Refining (ISIC 2320) h) Ordinary Portland Cement (ISIC 2694) i) Steel billets/blooms (ISIC 2710) j) Hot Rolled Steel Bars and wire Rods (ISIC 2710) k) Optical discs, including CD, CD-ROM, VCD, DVD (ISIC 2230) l) Fabrics and Apparels of Batik (ISIC 1711, ISIC 1712, ISIC 1810) m) Manufacture/Assembly of Motorcycles, Passenger Cars, and Commercial Vehicles (ISIC 3410) n) Arms, Weapons, Ammunitions, Explosives, Pyrotechnic Products, Propellant Powders, Detonating or Safety Fuses, and the like (ISIC 2429, ISIC 2927) o) Waste Recycling Activities p) Collection, Storage, Treatment and Disposal of Hazardous and Toxic Wastes (Note: Only investors engaged in at least treatment of hazardous and toxic wastes are in the scope of this reservation) q) Biodiesel Type of Reservations: National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure in these sub-sectors. Measures Identified for transparency purposes: Industrial Coordination Act, 1975 Forestry Act, 1984 Petroleum Development Act, 1974 Optical Discs Act, 2000 Arms Act, 1960 Explosives Act, 1967 Non Conforming Measures 22 Environmental Quality Act, 1974 National Automotive Policy 2006 National policies announced by the Cabinet Non Conforming Measures 23 20. Sector: Agriculture Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirement (Article 92) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measures with regard to approval for the following agricultural projects. All approvals are subject to National Land Code and other laws, regulations and policies of the Central and Regional Governments. Crops ?? Paddy ?? Horticulture (fruits and vegetables) ?? Floriculture (low land, high land and ornamental plants) ?? Herbs and spices ?? Coffee ?? Tea ?? Coconut ?? Oil palm ?? Rubber ?? Tobacco Fisheries ?? aquaculture ?? marine-captured fisheries ?? in-land captured fisheries ?? ornamental fish Livestock ?? Abattoirs ?? Livestock farming ?? Birds' nest Measures Identified for Transparency Purposes: Animal Act, 1953 (Revised-2006) Meat Inspection Rules, 1985 Abattoirs (Privatization) Act, 1993 Abattoirs (Fee) Rules, 1994 National Land Code Fisheries Act, 1985 Non Conforming Measures 24 Control of Padi and Rice Act 1994 Non Conforming Measures 25 21. Sector: Fisheries Sub-Sector: Aquaculture Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measures on: i) treatment for fiscal incentives provided under the Income Tax Act 1967 ii) approval for aquaculture projects which is subject to National Land Code and other laws, regulations and policies of the Central and Regional Governments. Measures Identified for Transparency Purposes: Income Tax Act, 1967 National Land Code Non Conforming Measures 26 22. Sector: Fisheries Sub-Sector: Capture Fisheries Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central Description of Malaysia reserves the right to adopt or maintain any Reservation: measure on approval for: i) licences for exploitation of resources activities in Malaysia's Exclusive Economic Zone (EEZ) and its seabed and subsoil ; ii) possession of vessels for fishing in Malaysia's EEZ. No vessel owned or operated by foreigner may be registered to carry out fishing activities without the permission of Department of Fisheries, Ministry of Agriculture and Agro-based Industry iii) fishing, landing, first landing of fish processed at sea, and access to Malaysian ports Foreign fishing vessels are required to obtain approval of the Department of Fisheries to enter Malaysia's EEZ and approval from Fisheries Development Authority to land their fish. iv) licenses for distribution of fish and fisheries products v) fisheries activities in coastal waters which is subject to National Land Code and other laws, regulations and policies of the Regional Governments. Measures Identified for Transparency Purposes: Fisheries Act, 1985 Fisheries Development Authority of Malaysia Act 1971 Exclusive Economic Zone Act, 1984 Continental Shelf Act, 1966 Industrial Coordination Act, 1975 Foreign Investment Committee (FIC) Guidelines Non Conforming Measures 27 Non Conforming Measures 28 23. Sector: Agriculture Sub-Sector: Paddy and Rice Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure in respect of: ?? planting, harvesting, collecting, post-harvest handling and processing of paddy and rice ?? production of paddy seeds (planting and processing) ?? Licensing for buying and selling of paddy, distribution (wholesale and retail), import and export of rice ?? treatment for loans, grants and incentives for rice farming ?? supporting infrastructure for rice farming ?? approval for rice farming activities which is subject to National Land Code and other laws, regulations and policies of the Federal and Regional Governments ?? collection and processing of paddy and rice ?? buying and selling of paddy, ?? distribution of rice (wholesale and retail) ?? price and grade control ?? import and export of rice ?? inter-state movement of paddy Measures Identified for Transparency Purposes: Control of Padi and Rice Act, 1994 National Land Code Malay Reserve Land Law Federal Constitution Land Acquisition Act, 1960 Sabah Land Ordinance Sarawak Land Ordinance National

Agricultural Policy Non Conforming Measures 29 24. Sector: Forestry Sub-Sector: Extraction and harvesting of timber Industry Classification: ISIC 0200 Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure in this sub-sector. Measures Identified for Transparency Purposes: National Forestry Act, 1984 Non Conforming Measures 30 25. Sector: Manufacturing, Forestry, Agriculture and Fisheries Sub-Sector: Biodiversity (Limitation for purpose of research and protection of state resources, for activities relating to pharmaceutical and biotechnological developments) Industry Classification: ISIC 0200 Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to biodiversity. Measures Identified for Transparency Purposes: Sarawak Biodiversity Centre Ordinance, 1997 National policies on Biodiversity as announced by the Cabinet Non Conforming Measures 31 26. Sector: Oil and Gas Sub-Sector: Upstream Industries Industry Classification: ISIC 1100 Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to the oil and gas upstream industries. Measures Identified for Transparency Purposes: Petroleum Development Act, 1974 Non Conforming Measures 32 27. Sector: Mining and Quarrying Sub-Sector: - Industry Classification: ISIC 10, ISIC 11, ISIC 12, ISIC 13, ISIC 14 Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to mining and quarrying. Measures Identified for Transparency Purposes: Federal Constitution Mineral Development Act, 1994 Petroleum Mining Act 1966 State Mineral Enactments National Mineral Policy Non Conforming Measures 33 28. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to statutory bodies. Measures Identified for Transparency Purposes: State Legislatures Competency Act, 1962 (Revised 1989) Employees Provident Fund Act, 1991 Inland Revenue Board of Malaysia Act, 1995 General Circular No. 3/1998 Non Conforming Measures 34 29. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Malaysia reserves the right to adopt or maintain any Reservation: measure relating to national and state unit trusts. Measures Identified for Transparency Purposes: Federal Constitution New Economic Policy National Development Policy National Vision Policy Financial Sector Master Plan Guidelines on Real Estate Investment Trusts Guidelines for Islamic Real Estate Investment Trusts Guidelines on Unit Trust Funds Non Conforming Measures

## Schedule of Pakistan

1. Sector: Export Processing Zones (EPZs) Sub-Sector: - Industry Classification: - Type of Reservation : Prohibition of Performance Requirements (Article 92) Level of Government: Central Description of Industries located in the Export Processing Zones may Reservation: export only up to twenty percent of their total production to tariff areas in Pakistan, while eighty percent shall be exported to foreign countries. Measures Identified for Transparency Purposes: SRO:561(I)/2004 dated 12.06.2004. (SRO means Statutory Regulatory Order) Non Conforming Measures 36 2. Sector: Maritime Transport Services Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirement (Article 92) Level of Government: Central Description of Pakistan reserves the right to adopt or maintain any Reservation: measure relating to the provisions of maritime transportation services and operation of Pakistan flag vessels including the following: (a) Requirements for investment in, ownership and control of and operation of vessels and other marine structures, drilling rigs, in the maritime cabotage services, including maritime cabotage services performed in the domestic trade, territorial waters, waters above the continental shelf and inland waterways. (b) Requirements for the investment in ownership or control of and operation of vessels engaged in fishing and related activities in Pakistan territorial waters and EEZ. (c) Incentives, including tax benefits, available for shipowners, operators and vessels meeting certain requirements. (d) Requirements related to registration and mortgages under Pakistan flag. (e) Licensing and citizenship requirements for crew members, including manning requirements on Pakistani flag vessels. (f) All matters under the jurisdiction of the Maritime Security Agency (MSA). (g) Negotiation and implementation of bilateral and other international maritime agreements and MOUs/Protocols. (h) Tonnage duties, light dues, etc for entering/leaving Pakistani waters/ports. (i) Licensing /certification and citizenship requirements for harbour pilots performing services in Pakistani waters. (j) Requirements for investment in container terminals, container freight stations, maritime commercial Non Conforming Measures 37 agencies, tallying, government surveying dock labour services. (k) Requirement for cargo sharing, contract of afreightment and preferences to the Pakistan flag vessels. (l) Licensing/certification of surveyors including Government survey and Port State Control measures for the safety of the vessels under Pakistan flag and the vessels entering/leaving ports of Pakistan. Measures Identified for Transparency Purposes: Territorial Water & Maritime Zones Act 1976 Non Conforming Measures 38 3. Sector: Air Services Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Only air carriers charter and aerial work operators with Reservation: controlling in Interests in local hands may operate aircraft in domestic air service and may provide international scheduled and non-scheduled air services as Pakistan operators. Measures Identified for Transparency Purposes: Civil Aviation Ordinance, 2001 Non Conforming Measures 39 4.

Sector: Radio-communications, Communications and Cable Television Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Satellite Televisions / FM radio broadcasting and Reservation: distribution services shall be supplied by Pakistani nationals. Moreover, a broadcast or distribution service license shall not be granted to a company the majority shares of which are owned or controlled by foreign nationals or companies whose management or control is vested in foreign nationals or companies. Senior management, members of the boards of directors of companies providing broadcasting or distribution services must be Pakistani nationals. Measures Identified for Transparency Purposes: Section 25 of Pakistan Electronic Media Regulatory Authority Ordinance, (PEMRA), 2002 Non Conforming Measures 40 5. Sector: Radio-communications and Communications Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central Description of Islamic Republic of Pakistan reserves the right to adopt or Reservation: maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home, broadcasting as well as direct broadcasting satellite (DBS) television services and digital audio services. Senior management, members of the boards of directors of companies providing broadcasting or distribution services must be Pakistani nationals. Measures Identified for Transparency Purposes: Telegraph and Telecommunication Act 1990 Non Conforming Measures 41 6. Sector: Fisheries Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of The following restrictions apply in Pakistan's territorial Reservation: water and Exclusive Economic Zone: Zone Nautical Miles Policy I. Coastal 0-12 Small scale fishing II. Beyond 12 to 35 Fishing through medium size vessels III. Beyond 35 to 200 Industrial fishing Fishing licenses in Exclusive Economic Zone (EEZ) The applicant should be a Pakistani national and the firm should be a registered company under the Companies Act of Pakistan having at least 51% of its stock owned by Pakistani nationals. A foreign company promising substantial investment in Pakistan may be made eligible for a license, as a special case, by the Ministry of Food, Agriculture and Livestock of the Federal Government in consultation with the National Fisheries Development Board. Measures Identified for Transparency Purposes: Exclusive Economic Zone Act, 1975 Deep Sea Fishing Policy 1995 as amended in 2001 Non Conforming Measures 42 7. Sector: Communications – Cable Television Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Level of Government: Central Description of Pakistan reserves the right to adopt or maintain any Reservation: measure that accords equivalent treatment to persons of any country that limits ownership by persons of the other Party in an enterprise engaged in the operation of cable televisions system in that country. Measures Identified for Transparency Purposes: Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002 Non Conforming Measures 43 8. Sector: All sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Work visas need to be obtained by foreign nationals Reservation: intending to work in Pakistan. A foreign person cannot hold real estate property in his/her own name unless permission in writing is given by the Federal or Provincial Government of Pakistan. The following requirements must be provided: • Copy of the contract agreement (Proposed to be registered) between the seller and the buyer. • Particulars of the seller i.e. I.D. Card copy, his complete address etc. • Proof of ownership i.e. certified copy of the registered document issued by the Sub-Registrar, a transfer letter duly attested by Notary Public. • Map/drawing/approved site plan of the house/building in case of constructed property. • Description of the Property duly issued by the concerned Revenue Officer of Tehsil (part of district) • Particulars of the Buyer firm/individual BOI letter of recommendation in case of foreign firm and passport copies in case of foreign individual and their addresses in Pakistan. • An Affidavit of the alienator in support of the applicant. Measures Identified for Transparency Purposes: Policy Decision by Cabinet Committee on Investment vide Decision No. CCOI-19/03/99 dated 1st March, 1999 Section – 3 of the Foreigners Act, 1946 (XXXI of 1946) vide Ministry of Interior Order No. 18/153/84-Poll.E (II) Non Conforming Measures 44 9. Sector: All Sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Regional Description of All existing non-conforming measures of all provinces of Reservation: Pakistan. Measures Identified for Transparency Purposes: Telegraph and Telecommunication Act 1990 Non Conforming Measures 45 10. Sector: Non-Manufacturing Sector Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of The payment of franchise, royalty or technical fees in Reservation: non-manufacturing sectors is allowed subject to the condition that in such cases of foreign investment, including in the food sector, the initial/lump sum fee should not exceed US\$ 100,000 irrespective of the number of outlets under a franchise. Measures Identified for Transparency Purposes: Investment Policy 2007 of the Board of Investment, Government of Pakistan (Non-Manufacturing Sector comprises of Agriculture, Infrastructure/Social Sector and Services Sector including Information Technology & Telecom Services) Non Conforming Measures 46 11. Sector: Social Sector (Education, Technical/Vocational Training, Human Resource Development, Hospitals, Medical and Diagnostic Services). Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of The amount of foreign equity investment in a company/ Reservation: project shall be at least US\$ 0.30 million. Measures Identified for Transparency Purposes: Investment Policy 2007 of the Board of Investment, Government of Pakistan Non Conforming Measures 47 12. Sector: Infrastructure Sector Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of The amount of foreign equity

investment in a company/ Reservation: project shall be at least US\$ 0.30 million. Measures Identified for Transparency Purposes: Investment Policy 2007 of the Board of Investment, Government of Pakistan Non Conforming Measures 48 13. Sector: All Sectors Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Central and Regional Description of Pakistan reserves the right to adopt or maintain any Reservation: measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Treaty. Pakistan reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral agreement in force or signed after the date of entry into force of this Treaty involving: (a) aviation (b) fisheries (c) maritime matters (d) telecommunications. Measures Identified for Transparency Purposes: Civil Aviation Ordinance, 2001, Territorial Water & Maritime Zones Act 1976 Exclusive Fishing Zone (Regulation of Fishing) Act, 1975 Pakistan Telecommunication Rules, 2000 Non Conforming Measures 49 14. Sector: Engineering Goods Sub-Sector: - Industry Classification: - Type of Reservation : Prohibition of Performance Requirements (Article 92) Level of Government: Central Description of In cases of procurement by the Government and other Reservation: public sector agencies, bidders tendering for engineering goods produced in Pakistan shall be accorded price preference in Rupees up to a specific percentage (in proportion to the value addition) of the lowest quoted landed cost of an item of foreign origin with similar specifications as mentioned in the tenders; (1) Provided that: (a) The saving in foreign exchange is not less than the amount of price preference; and (b) It is ensured that in each case of such preference, the total import requirements for producing the supplies tendered for locally manufactured items has been duly indicated by the bidders. (2) Price preference shall be allowed as follows: (a) Where minimum of 20% value addition through indigenous manufacturing price preference shall be 15%. (b) Where 20% to 30% value addition through indigenous manufacturing price preference shall be 20%. (c) Where 30% value addition through indigenous manufacturing price preference shall be 25%. The above SRO applies to procurement for government purposes as well as to commercial procurement by public sector entities/ agencies. Measures Identified for Transparency Purposes: SRO: 827(I)/2001 dated 3.12.2001 Non Conforming Measures 50 15. Sector: Print Media Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of No person who is not a citizen of Pakistan shall own or Reservation: hold any interest in any newspaper printed or published in a province except with the approval of the Government and no such person shall in any case own or hold more than 25% of propriety interest in any such paper, whether in the form of shares or by way of sole ownership, partnership or otherwise. Measures Identified for Transparency Purposes: Publications, Newspapers, News Agencies, Book Registration Ordinance, 2002 Non Conforming Measures 51 16. Sector: Print Media Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Pakistan reserves the right to adopt any policy regarding Reservation: the ownership or equity participation of foreign investors in newspapers, periodicals and news agencies. Measures Identified for Transparency Purposes: Publications, Newspapers, News Agencies, Book Registration Ordinance, 2002 Non Conforming Measures 52 17. Sector: Financial Services Sub-Sector: Banking and other Financial Services (excluding Insurance) Industry Classification: - Type of Reservation : Most-Favoured-Nation Treatment (Article 90) Level of Government: Central Description of Pakistan reserves the rights to grant licences, on the basis Reservation: of reciprocity, to any non-party to the Agreement, which have accorded equivalent market access concessions to Pakistan's banks. Measures Identified for Transparency Purposes: Policy Measures under SBP Act 1956 and Banking Companies Ordinance 1962 Guidelines and Criteria for setting up of a Commercial Bank Non Conforming Measures 53 18. Sector: Financial Services Sub-Sector: Banking and other Financial Services (excluding Insurance) Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Foreign banks having a global tier – paid up capita of Reservation: US\$5 billion or more are allowed to conduct banking business in branch mode as well as through a locally incorporated subsidiary with equity of up to 100%. Apart from the above, a foreign corporate entity/body desirous of conducting banking business in Pakistan must incorporate a company locally, with a maximum of 49% shareholding by the foreign strategic investor/entry/financial institution. Measures Identified for Transparency Purposes: Policy Measures under SBP Act 1956 and Banking Companies Ordinance 1962 Non Conforming Measures 54 19. Sector: Financial Services Sub-Sector: Insurance Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of In order to transact insurance business, a company Reservation: incorporated in a jurisdiction outside Pakistan is required to establish a branch in Pakistan, Section 5(2). Apart from the above, a foreign corporate entity/body desirous of conducting banking business in Pakistan must incorporate a company locally, with a maximum of 49% shareholding by the foreign strategic investor/entry/financial institution. Once registered as an insurer, a company incorporated in a jurisdiction outside Pakistan has to comply with the requirements of the Companies Ordinance, 1984 (the "Ordinance") and has to furnish copies of all accounts, documents, reports and returns filed under the Ordinance to the Securities and Exchange Commission of Pakistan. Section 47(2). A company incorporated in a jurisdiction outside Pakistan is also required to provide the Commission with copies of its annual accounts or any public document describing its business in Pakistan, which it submits to the regulatory authority in its country of incorporation or in a country where it has its corporate seat or principal place of business. Section 47(3). - Foreign insurance companies desirous of operating in Pakistan are entitled to hold upto 51% share; - Foreign companies are required to bring a minimum amount of US\$ 2 million in foreign exchange and raise an equivalent amount from the local market. Measures Identified for Transparency Purposes: Section 5(2), 28, 47 and 167 (i) of

the Insurance Ordinance, 2000 Non Conforming Measures 55 20. Sector: Financial Services Sub-Sector: Insurance Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of A foreign insurance broker registered in Pakistan is Reservation: required to have a minimum paid-up capital of at least 0.3 million US dollars, whilst a local broker is required to have a minimum paid-up capital of at least 10 million Rupees. Apart from the above, a foreign corporate entity/body desirous of conducting banking business in Pakistan must incorporate a company locally, with a maximum of 49% shareholding by the foreign strategic investor/entry/financial institution. Measures Identified for Transparency Purposes: Rule 13(a) of the Insurance Rules 2002 (framed under Section 167(1) of the Insurance Ordinance 2000) Non Conforming Measures 56 21. Sector: Corporate Agriculture Farming Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Foreign investors are allowed to hold 100% equity Reservation: in Corporate Agriculture Farming (CAF) Measures Identified for Transparency Purposes: Corporate Agriculture Farming Policy (As approved by the Prime Minister) Non Conforming Measures 57 22. Sector: Agriculture Farming including Corporate Farming and Fisheries Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central and Regional Description of Pakistan reserves the right to adopt or maintain any Reservation: measure that accords differential treatment to Pakistani investors. Measures Identified for Transparency Purposes: Corporate Agriculture Farming Policy Non Conforming Measures 58 23. Sector: - Sub-Sector: Atomic Energy Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Central Description of Pakistan reserves the right to adopt or maintain any Reservation: measure that accords differential treatment to countries or companies under the applicable policies or laws or rules or any investment agreement or international agreement signed after the date of entry into force of this Agreement. Measures Identified for Transparency Purposes: Pakistan Nuclear Regulatory Authority Ordinance, 2001 Non Conforming Measures 59 24. Sector: Mining Sub-Sector: Oil, Gas and Mineral Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Central and Regional Description of Pakistan reserves the right to adopt or maintain any Reservation: measure that accords differential treatment in any existing investment agreement or contract in force or signed prior to the signing of this Agreement. Measures Identified for Transparency Purposes: National Mineral Policy, 1995 Petroleum Exploration & Production Policy, 2001 Non Conforming Measures 60 25. Sector: Mining Sub-Sector: Oil, Gas and Mineral Industry Classification: - Type of Reservation : National Treatment (Article 89) Most-Favoured-Nation Treatment (Article 90) Prohibition of Performance Requirements (Article 92) Level of Government: Central and Regional Description of All the non-conforming measures contained in the Reservation: policies/procedures/laws/rules of Pakistan as may be in force from time to time. Measures Identified for Transparency Purposes: National Mineral Policy, 1995 Petroleum Exploration & Production Policy, 2001 Non Conforming Measures 61 26. Sector: Communications Sub-Sector: Postal Services Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of Wherever within Pakistan posts of Postal Communications Reservation: are established by the Federal Government, the Federal Government shall have the exclusive privilege of conveying by the Post, from one place to another all letters, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, dispatching and delivering all letters. The federal government by notification in the official gazette, fixes the rates of the postage and other sums to be charged in respect of postal articles sent by the inland post under this Act and makes rules to the scale of weights, terms and conditions to which the rates so fixed shall be changed. The federal Government shall also declare what packets may be sent by the inland post as printed papers and small packets within the meaning of the Act. Rule 19 – Transmission by post of anything injurious is prohibited. No person shall send by post any explosive, dangerous, filthy, noxious, deleterious, substance, and sharp instrument not properly protected or any living creature which is either noxious or likely to injure postal article in course of transmission. Rule 20 – No person shall send by post • any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article, or • any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character. Measures Identified for Non Conforming Measures 62 Transparency Purposes: Post Office Act 1898 Chapter II Rule 4, Chapter III Rule 7, Chapter V 19 & 20 Conditions of transmission of postal articles Non Conforming Measures 63 27. Sector: Communications Sub-Sector: Postal Services Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of All existing non confirming measures that are covered or Reservation: contained under the Post Office Act 1898 and to ensure effective implementation of all the provisions of the Act framing rules and regulations and designing mechanism for its enforcement. Measures Identified for Transparency Purposes: Post Office Act 1898 Non Conforming Measures 64 28. Sector: Construction and Engineering Works Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central, Regional and authorities created through Act of Parliament. Description of The domestic bidders either individual firms/joint ventures Reservation: are eligible for a specific percentage (e.g. 7.5%) margin of preference in the comparison of their bids with those bidders who do not qualify for the preference as mentioned in Clause 32.3 a & b of World Bank Bid documents. Measures Identified for Transparency Purposes: World Bank bidding documents (Relevant Clauses attached). 32 Evaluation of Bids 32.1 The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive. 32.2 To evaluate a Bid, the Purchaser shall only use all the factors, methodologies and criteria defined in ITB



Clause 32. No other criteria or methodology shall be permitted. 32.3 To evaluate a Bid, the Purchaser shall consider the following: (a) the Bid Price as quoted in accordance with clause 14; (b) price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 29.3; (c) price adjustment due to discounts offered in accordance with ITB Sub-Clause 14.4; (d) adjustments due to the application of the evaluation criteria specified in the BDS from amongst those set out in Section III, Evaluation and Qualification Criteria; 32.4 The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase Non Conforming Measures 65 of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITB Sub-Clause 32.3 (d). 32.5 If so specified in the Bidding Data Sheet (BDS), these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Purchaser to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the lowest-evaluated lot combinations, is specified in Section III, Evaluation and Qualification Criteria. Non Conforming Measures 66 29. Sector: Construction and Engineering Works Sub-Sector: - Industry Classification: - Type of Reservation : National Treatment (Article 89) Level of Government: Central Description of A foreign constructor or foreign operator wishing to Reservation: perform any construction or operation of engineering works in Pakistan shall obtain an appropriate license from the Council before initiating any activity which is a subject of these Bye-laws. The foreign constructor or foreign operator may be granted a license only for specific projects, which need expertise and specialized technology of construction or operation not available with Pakistani constructor or Pakistani operator. Any such foreign constructor or foreign operator shall enter into a joint venture agreement with the Pakistani constructor or Pakistani operator in which the share of a foreign constructor or foreign operator shall be limited to the expertise and technology not available with the Pakistani constructor or Pakistani operator. The establishment of a joint venture shall be subject to the condition that the share of the Pakistani constructor or Pakistani operator shall not be less than thirty percent. Measures Identified for Transparency Purposes: Section – 4, Clause. 11, Pakistan Engineering Council(PEC) Works Bye-Laws