Indonesia - Japan Economic Partnership Agreement

Japan and the Republic of Indonesia (hereinafter referred to as "Indonesia"),

Conscious of their longstanding friendship and strong political and economic ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

Believing that such bilateral relationship will be enhanced by forging mutually beneficial economic partnership through, inter alia, cooperation, trade and investment facilitation, and trade liberalization;

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

Recognizing that such partnership would create larger and new market, and enhance the competitiveness, attractiveness and vibrancy of their markets;

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

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

Bearing in mind the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations (hereinafter referred to as"ASEAN") signed in Bali, Indonesia on October 8, 2003;

Convinced that this Agreement would open a new era for the relationship between the Parties; and
Determined to establish a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

Chapter 1. General Provisions

Article 1. Objectives

The objectives of this Agreement are to:
(a) facilitate, promote and liberalize trade in goods and services between the Parties;
(b) increase investment opportunities and promote investment activities through strengthening protection for investments and investment activities in the Parties;
(c) ensure protection of intellectual property and promote cooperation in the field thereof; (d) enhance transparency of government procurement regimes of the Parties, and promote cooperation for mutual benefits of the Parties in the field of government procurement;
(e) promote competition by addressing anticompetitive activities, and cooperate on the promotion of competition;
(f) improve business environment in the Parties;
(g) establish a framework to enhance closer cooperation in the fields agreed in this Agreement; and
(h) create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

Article 2. General Definitions

1. For the purposes of this Agreement:

(a) the term “Area” means:

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

(ii) with respect to Indonesia, the land territories, territorial sea including sea- bed and subsoil thereof, archipelagic waters, internal waters, airspace over such territories, sea and waters, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982;

(b) the term “customs authority” means the authority that is responsible for the administration and enforcement of customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Indonesia, the Directorate General of Customs and Excise;

(c) the term “GATS” means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

(d) the term “GATT 1994” means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

For the purposes of this Agreement, references to articles in the GATT 1994 include the

interpretative notes;

(e) the term “Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;

(f) the term “Parties” means Japan and Indonesia and the term “Party” means either Japan or Indonesia; and

(g) the term “WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

2. Nothing in subparagraph 1(a) shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Article 3. Transparency

1. Each Party shall make publicly available its laws and regulations as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement.
2. Each Party shall make available to the public, the names and addresses of the competent authorities responsible for laws and regulations referred to in paragraph 1.
3. Each Party shall, upon the request by the other Party, within a reasonable period of time, provide information to the other Party with respect to matters referred to in paragraph 1.
4. When introducing or changing its laws and regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavor to take appropriate measures to enable interested persons to become acquainted with such introduction or change.

Article 4. Public Comment Procedures

The Government of each Party shall, in accordance withthe laws and regulations of the Party, endeavor to makepublic in advance regulations of general application thataffect any matter covered by this Agreement and to providea reasonable opportunity for comments by the public beforeadoption of such regulations.

Article 5. Administrative Procedures

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

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

time referred to in paragraph 3; and

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

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

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

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

(a) establish standard periods of time between the receipt of applications by the competent

authorities and the administrative decisions taken in response to submitted applications; and

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

4. The competent authorities of the Government of a Party shall, in accordance with the laws and regulations of the Party, prior to any final decision which imposes obligations on or restricts rights of a person, endeavor to provide that person with:

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

(b) a reasonable opportunity to present facts and arguments in support of position of such person, provided that time, nature of the measure and public interest permit.

Article 6. Review and Appeal

1. Each Party shall, in accordance with its laws and regulations, maintain judicial tribunals or procedures for the purpose of prompt review and, where warranted, correction of actions taken by its Government regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.
2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:
(a) a reasonable opportunity to support or defend their respective positions; and (b) a decision based on the evidence and submissions of record.
3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that such decision is implemented by the relevant authorities with respect to the action at issue which is taken by its Government.

Article 7. Administrative Guidance

1. For the purposes of this Article, the term “administrative guidance” means any guidance, recommendation or advice by a competent authority of the Government of a Party which requires a person to do or refrain from doing any act but does not create, impose limitations on or in any way affect rights and obligations of such person in order to pursue administrative objectives.

2. Where a competent authority of the Government of a Party renders administrative guidance with regard to any matter covered by this Agreement, such competent authority shall ensure that the administrative guidance does not exceed the scope of its competence and shall not require the person concerned to comply with the administrative guidance without voluntary cooperation of such person.

3. Such competent authority shall ensure, in accordance with the laws and regulations of its Party, that the person concerned not be treated unfavourably solely on account of non-compliance of such person with such administrative guidance.

4. Such competent authority shall, in accordance with the laws and regulations of its Party, provide to the person concerned in writing, upon the request of such person, the purposes and contents of the administrative guidance.

Article 8. Measures Against Corruption and Bribery

Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption and bribery regarding matters covered by this Agreement.

Article 9. Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

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

Article 10. Taxation

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

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention in force between the Parties. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 3 and 9 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 11. General and Security Exceptions

1. For the purposes of Chapters 2, 3, 4, 5 other than Article 66, and 8 of this Agreement, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, mutatis mutandis.

2. For the purposes of Chapters 5 other than Article 66, 6 and 7 of this Agreement, Articles XIV and XIV bis of the GATS are incorporated into and form part of this Agreement, mutatis mutandis.

3. In cases where a Party takes any measure pursuant to paragraph 1 or 2, that does not conform with the obligations under Chapter 5 other than Article 66, the Party shall make reasonable effort to notify the other Party of the description of such measure either before the measure is taken or as soon as possible thereafter.

4. For the purposes of Chapter 9 of this Agreement, Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as “the TRIPS Agreement”) is incorporated into and forms part of this Agreement, mutatis mutandis.

Article 12. Relation to other Agreements

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

2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

3. 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 13. Implementing Agreement

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

Article 14. Joint Committee

1. A joint committee (hereinafter referred to as "the Joint Committee") shall be hereby established.
2. The functions of the Joint Committee shall be:
(a) reviewing and monitoring the implementation and operation of this Agreement;
(b) considering and recommending to the Parties any amendments to this Agreement;
(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;
(d) adopting:
(i) the Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin, referred to in Article 27 and Article 50, respectively; and (ii) any necessary decisions; and
(e) carrying out other functions as the Parties may agree.
3. The Joint Committee:
(a) shall be composed of representatives of the Governments of the Parties; and
(b) may establish and delegate its responsibilities to Sub-Committees.
4. The Joint Committee shall establish its rules and procedures.
5. The Joint Committee shall meet as such times as may be agreed by the Parties. The venue of the meeting shall be alternately in Japan and Indonesia, unless the Parties agree otherwise.

Article 15. Sub-committees

1. The following sub-committees shall be hereby established:
(a) Sub-Committee on Trade in Goods;
(b) Sub-Committee on Rules of Origin;
(c) Sub-Committee on Customs Procedures;
(d) Sub-Committee on Investment;
(e) Sub-Committee on Trade in Services;
(f) Sub-Committee on Movement of Natural Persons;
(g) Sub-Committee on Energy and Mineral Resources;
(h) Sub-Committee on Intellectual Property;
(i) Sub-Committee on Government Procurement;
(j) Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence;and
(k) Sub-Committee on Cooperation.
2. A Sub-Committee shall:
(a) be composed of representatives of the Governments of the Parties and may, by mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed; and (b) be co-chaired by officials of the Governments of the Parties.
3. A Sub-Committee shall meet at such times and venues as may be agreed upon by the Parties.
4. A Sub-Committee may, as necessary, establish its rules and procedures.
5. A Sub-Committee may establish and delegate its responsibilities to Working Groups.

Article 16. Communications

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

Chapter 2. Trade In Goods

Article 17. Definitions

For the purposes of this Chapter:

(a) the term “bilateral safeguard measure” means a bilateral safeguard measure provided for in paragraph 1 of Article 24;

b) the term “customs value of goods” means the value of goods for the purposes of levying ad valorem customs duties on imported goods;

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

(d) the term “export subsidies” means export subsidies listed in subparagraphs 1(a) through

(f) of Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as "the Agreement on Agriculture");

(e) the term "originating goods" means goods which qualify as originating goods under the provisions of Chapter 3;

(f) the term "other duties or charges of any kind" means those provided for in subparagraph 1(b) of Article II of the GATT 1994;

(g) the term "provisional bilateral safeguard measure" means a provisional bilateral safeguard

measure provided for in subparagraph 9(a) of Article 24;

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

(i) the term "threat of serious injury" means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

Article 18. Classification of Goods

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

Article 19. National Treatment

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

Article 20. Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.
2. Upon the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.
3. Each Party shall eliminate other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party, if any. Neither Party shall introduce other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party.
4. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any good of the other Party:
(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2of Article III of the GATT 1994, in respect of the like domestic good or in respect of a good from which the imported good has been manufactured or produced in whole or in part;
(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; and (c) fees or other charges commensurate with the cost of services rendered.
5. If, as a result of the elimination or reduction of its customs duty applied on a particular good on a most-favoured-nation basis, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.
6. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

Article 21. Customs Valuation

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

Article 22. Export Subsidies

Neither Party shall introduce or maintain any export subsidies on any agricultural good which is listed in Annex1 to the Agreement on Agriculture.

Article 23. Non-tariff Measures

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

Article 24. Bilateral Safeguard Measures

1. Subject to the provisions of this Article, each Party may, as a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment:

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

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

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

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement, if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 20, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good

constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry of the former Party.

2. Each Party shall not apply a bilateral safeguard measure on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

3. (a) A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as “the Agreement on Safeguards”).

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

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

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

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

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

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

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

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

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a), exchanging

views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5.

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

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

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

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

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

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

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

(b) Article 5 of the Agreement on Agriculture.

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

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

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

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

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

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

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

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

Article 25. Restrictions to Safeguard the Balance of Payments

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

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

Article 26. Sub-committee on Trade In Goods

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 15 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 of the Sub-Committee to the Joint Committee;

(d) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on the Operational Procedures for Trade in Goods referred to in Article 27; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Article 27. Operational Procedures for Trade In Goods

Upon the date of entry into force of this Agreement,the Joint Committee shall adopt the Operational Procedures for Trade in Goods that provide detailed regulations pursuant to which the relevant authorities of the Parties shall implement their functions under this Chapter.

Chapter 3. Rules of Origin

Article 28. Definitions

For the purposes of this Chapter:

(a) the term "competent governmental authority" means the authority that, according to the legislation of each Party, is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry and in the case of Indonesia, the Ministry of Trade;

(b) the term "exporter" means a person located in an exporting Party who exports a good from the exporting Party in accordance with the applicable laws and regulations of the exporting Party;

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

(i) which are registered in the Party;

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

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

(iv) of which at least 75 percent of the total of the master, officers and crew are nationals

of the Parties;

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

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

(f) the term “importer” means a person who imports a good into the importing Party in accordance with the applicable laws and regulations of the importing Party;

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

(i) fuel and energy;

(ii) tools, dies and moulds;

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

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

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

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

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

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

(i) the term “originating material of a Party” means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to paragraph 1 of Article 30;

(j) the term “packing materials and containers for shipment” means goods that are normally used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 38;

(k) the term “preferential tariff treatment” means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 20; and

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

Article 29. Originating Goods

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

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

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

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

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

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

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

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

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

(e) minerals and other naturally occurring substances, not included in subparagraphs (a)

through (d), extracted or taken in the Party;

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

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

(h) goods taken from the sea-bed or subsoil beneath the sea-bed outside the Party, provided that the Party has rights to exploit such sea-bed or subsoil;

(i) articles collected in the Party which can no longer perform their original purpose in the

Party nor are capable of being restored or repaired and which are fit only for disposal or

for the recovery of parts or raw materials;

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

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

(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k).

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

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

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

F.O.B. – V.N.M.

Q.V.C. = ---------- x 100

F.O.B.

Where:

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

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

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

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

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

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

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

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

the producer of the good is located; or

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

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

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

Article 30. Accumulation

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

2. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of Article 29 in determining whether the good qualifies as an originating good of a Party, the value of a non-originating material produced in either Party and to be used in the production of the good may be limited to the value of non-originating materials used in the production of such non-originating material, provided that the good qualifies as an originating good of that Party under subparagraph 1(c) of Article 29.

Article 32. Non-qualifying Operations

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex2 merely by reason of:
(a) operations to ensure the preservation of products in good condition during transport and storage(such as drying, freezing, keeping in brine) and other similar operations;
(b) changes of packaging and breaking up and assembly of packages;
(c) disassembly;
(d) placing in bottles, cases, boxes and other simple packaging operations;
(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
(f) mere making-up of sets of articles; or
(g) any combination of operations referred to in subparagraphs (a) through (f).

Article 33. Consignment Criteria

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:
(a) transported directly from the other Party; or
(b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.
2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1,that good shall not be considered as an originating good of the other Party.

Article 34. Unassembled or Disassembled Goods

1. Where a good satisfies the requirements of the relevant provisions of Articles 29 through 32 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.
2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good pursuant to Rule 2(a)of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable

requirements of the relevant provisions of Articles 29 through 32 had each of the non-originating materials among the unassembled or disassembled materials been imported into the Party separately and not as an unassembled or disassembled form.

Article 35. Fungible Goods and Materials

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

Article 36. Indirect Materials

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

Article 37. Accessories, Spare Parts and Tools

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

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

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

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

Article 38. Packaging Materials and Containers for Retail Sale

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

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

Article 39. Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be:
(a) disregarded in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and
(b) without regard to where they are produced, considered to be originating materials of a Party where the good is produced, in calculating the qualifying value content of the good.

Article 40. Claim for Preferential Tariff Treatment

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

2. Notwithstanding paragraph 1, the importing Party shall not require a certificate of origin from importers for an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed 200 United States dollars or its equivalent amount in the Party's currency, or such higher amount as it may establish.

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

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

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

Article 41. Certificate of Origin

1. A certificate of origin referred to in paragraph 1 of Article 40 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorized agent. Such certificate of origin shall include minimum data specified in Annex 3.

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

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

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish a format of certificate of origin in the English language in the Operational Procedures for Rules of Origin referred to in Article 50.

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

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

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

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

(b) a declaration voluntarily provided by the producer of the good directly to the competent

governmental authority of the exporting Party or its designees by the request of the exporter in accordance with the applicable laws and regulations of the exporting Party.

8. A certificate of origin shall be issued only after the exporter who requests the certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b), proves to the competent governmental authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party.

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

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

Article 42. Obligations Regarding Exportations

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 41:

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

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

Article 43. Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of the certificate of origin.

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

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

3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party may request the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, to provide the former with the information requested.

Article 44. Verification Visit

1. If the customs authority of the importing Party is not satisfied with the outcome of the request for checking pursuant to Article 43, it may request the exporting Party:

(a) to collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority of the importing Party, which may be accompanied by other government officials with necessary expertise of the importing Party, to the premises of the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to i subparagraph 7(b) of Article 41; and

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

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1 or 6, the customs authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party, whose premises are to be visited.

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

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

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

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

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

(e) the names and titles of the officials of the customs authority and other government officials with necessary expertise of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1 or 6.

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

the importing Party the information obtained pursuant to paragraph 1 or 6.

6. (a) In cases where the customs authority of the importing Party considers as exceptional, that customs authority may, before or during the request for checking referred to in Article 43, put forward the exporting Party a request referred to in paragraph 1.

(b) Where the request referred to in subparagraph (a) is made, Article 43 shall not be applied.

Article 45. Determination of Origin and Preferential Tariff Treatment

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

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

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

(a) where the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 5 of Article 44;

(b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the

communication referred to in paragraph 2 of Article 44 within the period referred to in

paragraph 4 of Article 44; or

(c) where the information provided to the customs authority of the importing Party pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 44.

Article 46. Confidentiality

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

2. Information obtained by the customs authority of the importing Party pursuant to this Chapter:
(a) may only be used by such authority for the purposes of this Chapter; and
(b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the exporting Party and provided to the importing Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the exporting Party.

Article 47. Penalties and Measures Against False Declaration

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and the producers of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, for providing false declaration or documents to the competent governmental authority of the exporting Party or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and the producers of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

Article 48. Miscellaneous

1. Communications between the importing Party and the exporting Party shall be conducted in the English language.
2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

Article 49. Sub-committee on Rules of Origin

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Rules of Origin (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

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

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 or 3, proposed by

either Party; and

(b) discussing any issues related to this Chapter;

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

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Article 50. Operational Procedures for Rules of Origin

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

Chapter 4. Customs Procedures

Article 51. Scope

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

Article 52. Definition

For the purposes of this Chapter, the term “customs laws” means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authority of each Party, and any regulations made by the customs authority of each Party under its statutory power.

Article 53. Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is publicly available.

2. When information that has been made available must be amended due to changes in its customs laws, each Party shall endeavor to make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. Each Party shall, wherever appropriate, provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by any interested person of the Parties and pertaining to its customs laws. The Party shall endeavor to supply any other pertinent information which it considers the interested person should be made aware of.

Article 54. Customs Clearance

1. Both Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.

2. For the accomplishment of the purposes of paragraph 1, each Party shall:

(a) make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonize its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

(d) promote cooperation, wherever appropriate, between its customs authority and:

(i) other national authorities of the Party; and

(ii) the trading communities of the Party.

3. Each Party shall provide affected parties with accessible processes of administrative and judicial review in relation to the action concerning the customs matters taken by the Party.

Article 55. Cooperation and Exchange of Information

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

Article 56. Sub-committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Customs Procedures (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:
(a) reviewing the implementation and operation of this Chapter;
(b) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties;
(c) reporting the findings of the Sub-Committee to the Joint Committee; and
(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.
2. Further to paragraph 2 of Article 15, the composition of the Sub-Committee shall be specified in the Implementing Agreement.

Chapter 5. Investment

Article 57. Scope

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

(a) investors of the other Party; and

(b) investments of investors of the other Party in the Area of the former Party.

2. In the event of any inconsistency between this Chapter and Chapter 6:

(a) with respect to matters covered by Articles 59, 60 and 63, Chapter 6 shall prevail to the extent of inconsistency; and

(b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.

3. This Chapter shall not apply to measures affecting the movement of natural persons of a Party.

Article 58. Definitions

For the purposes of this Chapter:

(a) the term “enterprise” means any legal person or any other entity duly constituted or organized under applicable laws and regulations, whether for profit or otherwise, and whether privately- owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, organization or company;

(b) an enterprise is:

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

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

(c) the term “enterprise of the other Party” means an enterprise constituted or organized under the applicable laws and regulations of the other Party;

(d) the term “financial services” means financial services as defined in subparagraph 2(a)(i) of

Section 1 of Annex 7;

(e) the term “freely convertible currencies” means currencies which are, in fact, widely used to make payments for international transactions and are widely traded in the principal exchange markets;

(f) the term “investments” means every kind of asset invested by an investor, in accordance with applicable laws and regulations, including, though not exclusively:

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

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

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

(iv) rights under contracts, including turnkey, construction, management, production or

revenue-sharing contracts;

(v) claims to money and claims to any performance under contract having a financial value;

(vi) intellectual property rights, including copyrights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and

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

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

Note 2: For the purposes of subparagraphs (ii) and (iii), a Party may, on a non-discriminatory basis, exclude portfolio investments which are determined by the use of the non- discriminatory and objective criteria adopted by the Party.

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

(h) the term “investor of the other Party” means a national or an enterprise of the other Party;

(i) the term “national of the other Party” means a natural person having the nationality of the other Party in accordance with the applicable laws and regulations of the other Party;

(j) the term “New York Convention” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958; and

(k) the term “transfers” means transfers and international payments.

Article 59. National Treatment

1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to investment activities.
2. Notwithstanding paragraph 1, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, provided that such formalities do not materially impair the protection afforded by the former Party to investors of the other Party and to their investments pursuant to this Chapter.

Article 60. Most-favoured-nation Treatment

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

Article 61. General Treatment

Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security.

Article 62. Access to the Courts of Justice

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

Article 63. Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party:

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

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

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor;

(e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to appoint, as executives or members of board of directors, individuals of any particular

nationality;

(g) to locate the headquarters of the investor for a specific region or the world market in its Area;

(h) to achieve a given level or value of research and development in its Area; or

(i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides.

2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (g) through (i).

Article 64. Reservations and Exceptions

1. Articles 59, 60 and 63 shall not apply to:

(a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex 4:
(i) the central government of a Party; or
(ii) a prefecture of Japan or a province of Indonesia;
(b) any non-conforming measure that is maintained by a local government other than a prefecture and a province referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;
(c) the continuation or prompt renewal of any nonconforming measure referred to in subparagraphs (a) and (b); or
(d) an amendment or modification to any nonconforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 59, 60and 63.

2. Each Party shall, on the date of entry into force of this Agreement, notify the other Party of the following information on any non-conforming measure referred to in subparagraph 1(a):
(a) the sector or matter, with respect to which the measure is maintained;
(b) the domestic or international industry classification codes, where applicable, to which the measure relates;
(c) the level of the government which maintains the measure;
(d) the obligations under this Agreement with which the measure does not conform; (e) the legal source of the measure; and
(f) the succinct description of the measure.

3. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5.

4. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure:
(a) the sector or matter, with respect to which the measure is maintained;
(b) the domestic or international industry classification codes, where applicable, to which the measure relates;
(c) the obligations under this Agreement with which the measure does not conform; (d) the legal source of the measure; and
(e) the succinct description of the measure.

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

6. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 2 or 4, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, as soon as possible:
(a) notify the other Party of detailed information on such amendment, modification or new measure; and
(b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure.

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

8. Articles 59 and 60 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

9. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

Article 65. Expropriation and Compensation

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

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 61; and

(d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely convertible currencies.

4. Without prejudice to Article 69, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

Article 66. Protection from Strife

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

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

Article 67. Transfers

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

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interests, fees and other current incomes

accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including loan payments in connection with investments;

(e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;

(f) payments made in accordance with Articles 65 and 66; and

(g) payments arising out of the settlement of a dispute under Article 69.

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

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

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 68. Subrogation

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

(a) recognize the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and

(b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. Articles 65 through 67 shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

Article 69. Settlement of Investment Disputes between a Party and an Investor of the other Party

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

2. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between an investor who is a party to the investment dispute (hereinafter referred to in this Article as "disputing investor") and the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").

3. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the disputing Party in accordance with the laws and regulations of the disputing Party.

4. If the investment dispute cannot be settled through consultation or negotiation referred to in paragraph 2 within five months from the date on which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States(hereinafter referred to in this Article as "the ICSID Convention"), so long as the ICSID Convention is in force between the Parties;

(b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties;

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

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

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

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

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

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

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

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

(b) The consent given by subparagraph (a) and the submission by a disputing investor of an

investment dispute to conciliation or arbitration shall satisfy the requirements of:

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

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

8. Notwithstanding paragraph 7, no investment dispute may

be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

9. Notwithstanding paragraph 4, 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 agency or a court of justice under the law of the disputing Party.

10. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties") agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12.

11. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party,

nor have his or her usual place of residence in either

Party, nor be employed by either of the disputing parties,

nor have dealt with the investment dispute in any capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution. Costs may also be awarded in accordance with the applicable arbitration rules.

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

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

21. Annex 6 provides additional provisions with respect to the settlement of investment disputes.

Article 70. Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 59 relating to cross-border capital transactions and Article 67:
(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. Measures referred to in paragraph 1:
(a) shall be consistent with the Articles of Agreement of the International Monetary Fund;
(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1; (c) shall be temporary and eliminated as soon as conditions permit; and
(d) shall be promptly notified to the other Party.
3. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 71. Prudential Measures

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciaryduty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.
2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 72. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by Anil investor of a non-Party and the denying Party:

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

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

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

Article 73. Taxation Measures as Expropriation

1. Article 65 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 65.

2. Where Article 65 applies to taxation measures in accordance with paragraph 1, Articles 62 and 69 shall also apply in respect of taxation measures.

3. Notwithstanding paragraph 2, no investor may invoke Article 65 as the basis for an investment dispute under Article 69, where it has been determined pursuant to paragraph 4 that the taxation measure is not an expropriation.

4. The investor shall refer the issue, at the time that it gives a written notice of intent under paragraph 6 of Article 69, to the competent authorities of both Parties, through the contact points referred to in Article 16, to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of five months of such referral, the investor may submit the investment dispute to conciliation or arbitration under Article 69.

5. Paragraphs 2 through 4 shall apply only to taxation measure taken in the form of or in the applications of the laws and regulations which are enacted or amended after the entry into force of this Agreement.

Note: With respect to Indonesia, taxation measures referred to in this paragraph do not include those taken by tax administrative authorities in the applications of the relevant laws and regulations.

6. For the purposes of paragraph 4, the term “competent authorities” means:

(a) with respect to Japan, the Minister of Finance or his or her authorized representative, who shall consider the issue in consultation with the Minister of Foreign Affairs or his or her authorized representative; and

(b) with respect to Indonesia, the Minister of Finance or his or her authorized representative.

Article 74. Environmental Measures

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

Article 75. Sub-committee on Investment

For the purposes of the effective implementation and operation 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 15 shall be:
(a) reviewing and monitoring the implementation and operation of this Chapter;
(b) reviewing the specific reservations and exceptions under Article 64;
(c) discussing any issues related to this Chapter;
(d) reporting the findings of the Sub-Committee to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 6. Trade In Services

Article 76. Scope

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

2. This Chapter shall not apply to:

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

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(b) cabotage in maritime transport services;

(c) subsidies provided by a Party or a state enterprise thereof, including grants, government-

supported loans, guarantees and insurance;

(d) measures affecting the movement of natural persons of a Party, unless otherwise provided in a Schedule of Specific Commitments in Annex 8;

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

(f) government procurement.

3. Annex 7 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

Article 77. Definitions

For the purposes of this Chapter:

(a) the term “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) the term “commercial presence” means any type of business or professional establishment, including through:

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

(ii) the creation or maintenance of a branch or a representative office, within the Area of a Party for the purposes of supplying services;

(c) the term “computer reservation system services” means services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;

(d) the term “juridical person” means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(e) the term “juridical person of the other Party” means a juridical person which is either:

(i) constituted or otherwise organized under the law of the other Party; or

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

(A) natural persons of the other Party; or

(B) juridical persons of the other Party identified under subparagraph (i);

(f) a juridical person is:

(i) “owned” by persons of a Party or a non-Party if more than 50 percent of the equity

interests in it is beneficially owned by such persons;

(ii) “controlled” by persons of a Party or a non- 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;

(g) the term “measure” means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

Note: The term “measure” shall include taxation measures to the extent covered by the GATS.

(h) the term “measure by a Party” means any measure taken by:

(i) central or local governments and authorities of a Party; and

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

(i) the term “measures by a Party affecting trade in services” includes measures by a Party in respect of:

(i) the purchase, payment or use of services;

(ii) the access to and use of, in connection with the supply of services, services which are

required by the Party to be offered to the public generally; and

(iii) the presence, including commercial presence, of persons of the other Party for the supply of services in the Area of the former Party;

(j) the term “monopoly supplier of a service” means any person, public or private, which in the relevant market of a Party is authorized or established formally or in effect by that Party

as the sole supplier of that service;

(k) the term “natural person of a Party” means a natural person who resides in a Party or

elsewhere and who is a national of the Party under the law of the Party;

(l) the term “person” means either a natural person or a juridical person;

(m) the term “service” includes any service in any sector except a service supplied in the exercise of governmental authority;

(n) the term “service consumer” means any person that receives or uses services;

(o) the term “services of the other Party” means services which are supplied:

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

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

(p) the term “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) the term “service supplier” means any person that seeks to supply or supplies a service;

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

(r) the term “state enterprise” means an enterprise owned or controlled by the Government of a Party;

(s) the term “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

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

(u) the term “trade in services” means the supply of services:

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

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

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

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

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

Article 78. Market Access

1. With respect to market access through the modes of supply defined in subparagraph (u) of Article 77, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 8.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (u)(i) of Article 77 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (u)(iii) of Article 77, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of Specific Commitments in Annex 8, are defined as:

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

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

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

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

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

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

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

Article 79. National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services,treatment no less favourable than that it accords to its own like services and service suppliers. Note: Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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

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

4. A Party shall not invoke the preceding paragraphs under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

Article 80. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 78 and 79, including those regarding qualifications, standards or licensing matters.Such commitments shall be inscribed in a Party's Scheduleof Specific Commitments in Annex 8.

Article 81. Schedule of Specific Commitments

1. With respect to sectors or sub-sectors where specific commitments are undertaken by each Party, its Schedule of Specific Commitments in Annex 8 shall specify:
(a) terms, limitations and conditions on market access;
(b) conditions and qualifications on national treatment;
(c) undertakings relating to additional commitments;and
(d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 78 and 79 shall be inscribed in the column relating to Article 78. In this case the inscription will be considered to provide a condition or qualification to Article 79 as well.

3. With respect to sectors or sub-sectors where specific commitments are undertaken in Annex 8 and which are indicated with "SS", any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and (b), shall be limited to those based on non-conforming measures,which are in effect on the date of entry into force of this Agreement.

4. With respect to sectors or sub-sectors where specific commitments are undertaken by a Party in Annex 8 and which are indicated with "S", any terms, limitations, conditions and qualifications on market access or national treatment, applied to a service supplier of the other Party on the date of entry into force of this Agreement, shall not be changed or modified so as to become more restrictive to such a service supplier.

Note: With regard to the rights given to the service supplier under the above mentioned terms,limitations, conditions and qualifications, this paragraph shall apply to the same extent as the rights that the service supplier has already exercised.

Article 82. Most-favoured-nation Treatment

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

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 9.

Article 83. Authorization, Licensing or Qualification

With a view to ensuring that any measure by a Party relating to the authorization, licensing or qualification of service suppliers of the other Party does not constitute Anil unnecessary barrier to trade in services, each Party shall endeavor to ensure that such measure:

(a) is based on objective and transparent criteria, such as the competence and ability to supply services;
(b) is not more burdensome than necessary to ensure the quality of services; and
(c) does not constitute a disguised restriction on the supply of services.

Article 84. Mutual Recognition

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party.

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

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

(a) nothing in Article 82 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licenses 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 licenses or certifications granted in the other Party should also be recognized.

Article 85. Transparency

The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3 through the contact points referred to in Article 16. Note: The information provided by the Parties under this Article will be supplied solely for the purposes of transparency and shall not be construed to affect any rights and obligations of the Parties under this Chapter.

Article 86. Monopolies and Exclusive Service Suppliers

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

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

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect: (a) authorizes or establishes a small number of service suppliers; and (b) substantially prevents competition among those suppliers in its Area.

Article 87. Payments and Transfers

1. Except under the circumstances envisaged in Article 88, 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 under the Articles of Agreement of the International Monetary Fund, 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 88, or at the request of the International Monetary Fund.

Article 88. Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.

2. The restrictions referred to in paragraph 1:
(a) shall ensure that the other Party is treated as favourably as any non-Party;
(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

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

Article 89. Emergency Safeguard Measures

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

results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector prior to the conclusion of the multilateral negotiations referred to in paragraph 1, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. The Parties shall take into account the circumstances of the particular case in such consultations.

Article 90. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party, and the denying Party:

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

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

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

Article 91. Sub-committee on Trade In Services

For the purposes of 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 15 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 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 14.

Section 7. Movement of Natural Persons

Article 92. Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the other Party and fall under one of the categories referred to in Annex 10.

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of specific commitments set out in Annex 10. Note: The sole fact of requiring a visa or its equivalent for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under specific commitments set out in Annex 10.

Article 93. Definition

For the purposes of this Chapter, the term "natural persons of a Party" means natural persons who reside in a Party or elsewhere and who under the law of the Party are nationals of the Party.

Article 94. Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter

including the terms of the categories in Annex 10,provided that the natural persons comply with the laws and regulations related to movement of natural persons of the former Party applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.

2. Each Party shall, in accordance with its laws and regulations, issue proper travel documents necessary for immediate return to the Party, to the natural persons of the Party who stay in the other Party based on the grant of entry and temporary stay under paragraph 1, where such persons are required to leave the other Party in accordance with the laws and regulations of the other Party which are not inconsistent with the provisions of this Chapter.

3. Each Party may require a natural person of the other Party to obtain an appropriate visa or its equivalent prior to entry and temporary stay under paragraph 1.

4. Neither Party shall impose or maintain any limitations on the number of granting entry and temporary stay under paragraph 1, unless otherwise specified in Annex 10.

Article 95. Requirements and Procedures

1. Each Party shall establish and 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 under paragraph 1 of Article 94.

2. Each Party shall endeavor to provide, upon request by a natural person of the other Party, information on requirements and procedures referred to in paragraph 1.

3. Each Party shall, in accordance with its laws and regulations, ensure that fees charged by its competent authorities on application referred to in paragraph 1 do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

Article 96. Sub-committee on Movement of Natural Persons

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Article as "the Sub-Committee")established in accordance with Article 15 shall be:
(a) reviewing and monitoring the implementation and operation of this Chapter;
(b) discussing any issues related to this Chapter;
(c) adopting guidelines referred to in Annex 10;
(d) reporting the findings of the Sub-Committee to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 8. Energy and Mineral Resources

Article 97. Definitions

For the purposes of this Chapter:

(a) the term “energy and mineral resource good” means any good listed in Annex 11;

(b) the term “energy and mineral resource regulatory bodies” means the governmental bodies that regulate and control the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of an energy and mineral resource good;

(c) the term “energy and mineral resource regulatory measure” means any measure by energy and mineral resource regulatory bodies that directly affects the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of an energy and mineral resource good;

(d) the term “energy and mineral resource sector” means the sector relating to the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of energy and mineral resource goods;

(e) the term “export licensing procedures” means administrative procedures, whether or not referred to as “licensing”, used by a Party for the operation of export licensing regimes requiring the submission of an application or other documentation,

other than that required for customs procedures, to the relevant administrative body as a prior condition for exportation from that Party; and

(f) the term “person of the other Party” means either a natural person or an enterprise of the other Party.

Article 98. Promotion and Facilitation of Investment

1. (a) Both Parties shall cooperate in promoting and facilitating investments between the Parties in the energy and mineral resource sector through ways such as:
(i) discussing effective ways on investment promotion activities and capacity building;
(ii) facilitating the provision and exchange of investment information including information on the laws, regulations and policies of the Parties;
(iii) encouraging and supporting investment promotion activities of each Party or the business sectors of the Parties, relating to, in particular, the exploration, exploitation and production of energy and mineral resource goods and the infrastructural facilities in the energy and mineral resources sector; and
(iv) discussing effective ways of creating stable, equitable, favourable and transparent conditions for investors.
(b) The implementation and operation of this paragraph shall be subject to the availability of funds and the applicable laws and regulations of each Party.

2. Annex 12 provides additional provisions with respect to the promotion and facilitation of investment in the energy and mineral resource sector.

Article 99. Import and Export Restrictions

1. The Parties reaffirm their obligation to comply with the relevant provisions of the GATT 1994, with respect to prohibitions or restrictions on the importation or exportation of energy and mineral resource goods.

2. Each Party, when introducing a prohibition or restriction otherwise justified under the relevant provisions of the GATT 1994, with respect to the exportation to or importation from the other Party of an energy and mineral resource good, shall provide relevant information concerning such prohibition or restriction as early as possible to the other Party and reply, upon the request of the other Party, to specific questions on such prohibition or restriction from the other Party, with a view to avoiding disruption of ordinary business activities in the Parties.

Article 100. Export Licensing Procedures and Administrations

If a Party adopts or maintains export licensing procedures with respect to an energy and mineral resource good:

(a) the rules for export licensing procedures shall be neutral in application and administered in a fair and equitable manner;

(b) the rules and all information concerning procedures for the submission of applications, including the eligibility of persons of the other Party to make such applications, the administrative bodies to be approached, and the lists of products subject to the licensing requirement shall be published, as soon as possible, in such a manner as to enable the other Party and traders of the other Party to become acquainted with them. Any exceptions, derogations or changes in or from the rules concerning export licensing procedures or the list of products subject to export licensing shall also be published in the same manner as specified above;

(c) in the case of licensing requirements for purposes other than the implementation of quantitative restrictions, the Party shall publish sufficient information for the other Party and traders of the other Party to know the basis for granting and/or allocating licenses;

(d) where the Party provides the possibility for persons of the other Party to request exceptions or derogations from a licensing requirement, the former Party shall include this fact in the information published under paragraph (b) as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which such a request would be considered;

(e) the Party shall provide, upon the request of the other Party, all relevant information concerning the administration of the restrictions in accordance with its laws and regulations;

(f) when administering quotas by means of export licensing, the Party shall inform the other Party of the overall amount of quotas to be applied and any change thereof;

(g) the Party shall hold consultations upon the request of the other Party, on the rules for such procedures with the other Party; and

(h) any person of the other Party which fulfils the legal and administrative requirements of the former Party shall be equally eligible to apply and to be considered for a license. If the license application is not approved, the applicant of the other Party shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the former Party.

Article 101. Energy and Mineral Resource Regulatory Measures

1. Each Party shall seek to ensure that, in the application of any energy and mineral resource regulatory measure, the energy and mineral resource regulatory bodies of the Party shall avoid disruption of contractual relationships which exist at the time of the application of the energy and mineral resource regulatory measure to the maximum extent practicable and implement the energy and mineral resource regulatory measure in an orderly and equitable manner.

2. If the energy and mineral resource regulatory bodies of a Party adopt any new energy and mineral resource regulatory measure, the Party shall, as soon as possible, notify the other Party or publish the energy and mineral resource regulatory measure, and respond, upon the request of the other Party, to specific questions on the energy and mineral resource regulatory measure from the other Party.

Article 102. Environmental Aspects

1. Each Party, in pursuit of sustainable development and taking into account its obligations under those international agreements concerning environment to which it is a party, confirms the importance of avoiding or minimizing, in an economically efficient manner, harmful environmental impacts of all activities related to energy and mineral resources in its Area.

2. Each Party shall:
(a) take account of environmental considerations, in accordance with its laws and regulations, throughout the process of formulation and implementation of its policy on energy and mineral resources;
(b) encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights; and
(c) promote public awareness of environmental impacts of activities related to energy and mineral resources and of the scope for and the costs associated with the prevention or abatement of such impacts.

Article 103. Community Development

Each Party welcomes any contribution by investors of the other Party to the development of its community when such investors make investments in the energy and mineral resource sector in its Area.

Article 104. Cooperation

1. Both Parties shall cooperate in the energy and mineral resource sector of Indonesia.

2. (a) The Parties shall endeavor to make available the necessary funds and other resources for the implementation of cooperation under this Article in accordance with their respective laws and regulations.
(b) Costs of cooperation under this Article shall be borne in an equitable manner to be mutually agreed upon by the Parties.
3. (a) Areas of cooperation under this Article shall include policy development, capacity building, and technology transfer.
(b) Forms of cooperation under this Article shall beset forth in the Implementing Agreement.

Article 105. Sub-committee on Energy and Mineral Resources

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Energy and Mineral Resources (hereinafter referred to in this Article as "the Sub-Committee")established in accordance with Article 15 shall be:
(a) exchanging information on any matters related to this Chapter;
(b) reviewing and monitoring the implementation and operation of this Chapter;
(c) discussing any issues related to this Chapter, including issues related to business environment,cooperation, energy security, and the development of an open and competitive market;

(d) reporting the findings of the Sub-Committee and, where appropriate, making recommendations, to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 9. Intellectual Property

Article 106. General Provisions

1. The Parties, aiming at further promoting trade and investment, shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for the enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties.

3. Each Party shall endeavor to become a party, if it is not a party, to the following international agreements in accordance with its necessary procedures:
(a) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989, as amended;
(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961;and
(c) the 1991 Act of International Convention for the Protection of New Varieties of Plants (hereinafter referred to in this Chapter as "the1991 UPOV Convention").

Article 107. Definitions

For the purposes of this Chapter:
(a) the term "intellectual property" means all categories of intellectual property:
(i) that are subject of Articles 112 through118; and/or
(ii) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement; and
(b) the term "Nice Classification" means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended.

Article 108. National Treatment and Most-favoured-nation Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5of the TRIPS Agreement.

2. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and5 of the TRIPS Agreement.

3. For the purposes of this Article: (a) the term "nationals" shall have the same meaning as in the TRIPS Agreement; and (b) the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article 109. Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to improve its administrative procedures concerning intellectual property rights in line with international standards.

2. Neither Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or

trademarks.

3. Notwithstanding paragraph 2, a Party may require:

(a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and

(b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for requiring the submission.

4. Neither Party may require the certification of translation of an earlier application whose priority is claimed.

5. Each Party shall introduce and implement a system in which a power of attorney for application procedures or other administrative procedures on patents, utility models, industrial designs, or trademarks before the competent authority of the Party may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

6. Neither Party shall require that the submission of a power of attorney be completed together with the filing of the application as a condition for according a filing date to the application.

7. Each Party shall endeavor to improve patent attorney or registered intellectual property rights consultant system with a view to further facilitating acquisition and utilization of industrial property rights.

8. The applications for and the grants of patents and the publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended. The applications for registration of, and the registrations of, trademarks for goods and services and the publications thereof shall be classified in accordance with the Nice Classification.

Article 110. Transparency

For the purposes of further promoting transparency in administration of intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:
(a) publish information on at least the applications for and the grants of patents, the registrations of utility models and industrial designs, and the applications for registration of, and the registrations of, trademarks and new varieties of plants, and make available to the public in formation contained in the dossiers thereof;
(b) make available to the public information on the applications for the suspension by the customs authority of the release of counterfeit trademark or pirated copyright goods as a border measure;and
(c) make available to the public information(including statistical information) on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property protection system (including standards or guidelines on examination of the applications for patents and the applications for registration of industrial designs and trademarks).

Article 111. Promotion of Public Awareness of Protection of Intellectual Property

The Parties shall endeavor to promote public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 112. Patents

1. Each Party shall ensure that any patent application is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program.

2. Each Party shall ensure that an applicant may, on its own initiative, divide a patent application containing more than one invention into a certain number of divisional patent applications within the time limit provided for in the laws and regulations of the Party.

3. Each Party shall ensure that an application for a patent is examined upon the request of the applicant, where appropriate, in preference to other applications, if the applicant has filed an application for a patent of the same or substantially the same invention in the other Party or in any non-Party. Each Party may require the applicant to furnish, together with the request, a result of relevant prior art search, or a copy of the final decision by the administrative authority for patents of the

other Party or of a non-Party (hereinafter referred to in this Article as “the final decision”) on the application filed in the other Party or in the non-Party.

4. Notwithstanding paragraph 3, a Party which requires, pursuant to relevant provisions of its laws and regulations, the applicant who filed an application for a patent in that Party to furnish a copy of the final decision on an application for a patent of the same or substantially the same invention which the applicant filed in the other Party or in any non-Party, shall examine the application in preference to other applications, if the applicant furnishes the aforementioned copy.

5. Each Party shall ensure that any person may provide the administrative authority for patents with information in writing that could deny novelty or inventive step of inventions claimed in patent applications during the pendency of those applications. Each Party shall take the information, as appropriate, into consideration for examining those applications.

6. Each Party shall ensure that an applicant may make amendments to its patent application within a certain period, in accordance with the laws and regulations of the Party, after the filing of its appeal petition with respect to the refusal of such application by the administrative authority for patents.

7. Each Party shall provide that at least the following acts shall be deemed as an infringement of a patent right if performed without the consent of the patent owner:

(a) in the case of a patent for an invention of product, acts of manufacturing, assigning, leasing, importing, or offering for assignment or lease, for commercial purposes, things to be used exclusively for the manufacture of the product;

and

(b) in the case of a patent for an invention of process, acts of manufacturing, assigning, leasing, importing, or offering for assignment or lease, for commercial purposes, things to be used exclusively for the working of such invention.

Article 113. Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. Each Party shall provide that designs are not new or original if they do not significantly differ from known designs.

2. Each Party shall ensure that where more than one application for registration of industrial design relating to the same or similar industrial designs is filed on different dates, only the applicant who filed first may obtain a registration of the industrial design concerned.

3. Each Party shall ensure adequate and effective protection of industrial designs of a part of an article as well as an article as a whole.

4. Each Party shall ensure that an owner of protected industrial design has the right to prevent third parties not having the owner’s consent from making, selling or importing articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.

5. Each Party shall endeavor to establish appeal system in which an appeal may be filed with the administrative authority for industrial designs against its decision of refusal of an application for registration of industrial design.

Article 114. Trademarks

1. Each Party shall ensure that an owner of registered trademark has the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

2. Each Party shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in either Party as indicating goods or services of another person, if the use of that trademark is for unfair intentions, inter alia, intentions to gain an unfair profit or intentions to cause damage to such person whether or not such use would result in a likelihood of confusion.

3. Each Party shall ensure that, where more than one application for registration of trademark relating to identical or similar trademarks which are to be used on identical or similar goods or services is filed on different dates, only the applicant who filed first may

obtain a registration for the trademark concerned.

4. Each Party shall ensure that one and the same application for registration of trademark may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.

5. Each Party shall ensure that the period during which the request for renewal of registration of a trademark may be presented and the renewal fee may be paid shall start at least six months before the date on which the renewal is due and shall end at the earliest six months after that date.

Article 115. Copyright and Related Rights

1. Each Party shall provide to authors all exclusive rights protected under the Berne Convention for the Protection of Literary and Artistic Works of September 9,1886, as amended and the WIPO Copyright Treaty of December20, 1996 (hereinafter referred to in this Article as "the WIPO Copyright Treaty").

2. Each Party shall provide to performers and producers of phonograms all exclusive rights protected under the WIPO Performances and Phonograms Treaty of December 20, 1996,(hereinafter referred to in this Article as "the WIPO Performances and Phonograms Treaty").

3. Each Party shall provide to broadcasting and cablecasting organizations the right to authorize or prohibit the fixation of their broadcasts and cablecasts, respectively, in accordance with its laws and regulations.

4. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyright or related rights:
(a) to remove or alter any electronic rights management information without authority; and (b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

5. Each Party shall take necessary measures to promote the development of collective management organizations for copyright and related rights in the Party. 6. For the purposes of this Article:
(a) with respect to the rights of authors, the term"rights management information" shall have the same meaning as in Article 12 of the WIPO Copyright Treaty; and
(b) with respect to the rights of performers and producers of phonogram, the term "rights management information" shall have the same meaning as in Article 19 of the WIPO Performances and Phonograms Treaty.

Article 116. New Varieties of Plants

Each Party shall provide for the protection of all plant genera and species by an effective plant varieties protection system which is consistent with the 1991 UPOV Convention.

Article 117. Acts of Unfair Competition

1. Each Party shall provide for effective protection against acts of unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following acts, in particular, shall be prohibited as acts of unfair competition:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the goods or services, or the manufacturing process of the goods; and

(d) acts by an agent or representative of an owner of right relating to a trademark, without a legitimate reason and the consent of the owner of such right, of using a trademark identical or similar to the trademark relating to such right in

respect of goods or services identical or similar to those relating to such right; of assigning, delivering, displaying for the purposes of assignment or delivery, exporting, importing, or providing through a telecommunication line, goods using such identical or similar trademark which are identical or similar to the goods relating to such right; or of providing services by using such identical or similar trademark which are identical or similar to the services relating to such right.

4. The following acts may also be prohibited as acts of unfair competition:

(a) acts of using an indication of goods or other indication as one’s own which is identical or similar to another person's indication of goods or other indication which is famous; or acts of assigning, delivering, displaying for the purposes of assignment or delivery, exporting, importing, or providing through a telecommunication line, goods using such indication;

(b) acts of assigning, leasing, displaying for the purposes of assignment or lease, exporting or importing, goods which imitate the configuration of another person's goods except as provided for in the laws and regulations of each Party; and

(c) acts of acquiring or holding right to use domain names identical or similar to a specific indication of goods or services of another person, or using such domain names, with intention to gain unfair profit or intention of causing damage to such person.

5. Each Party shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Party shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request injunction against the act, destruction of the goods which constitute the act, removal of facilities used for the act, or any damages which result from the act, except as provided for in the laws and regulations of the Party.

Article 118. Protection of Undisclosed Information

Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article 119. Enforcement – Border Measures

1. Each Party shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation or exportation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authority of the release into free circulation of such goods.

2. In the case of the suspension with respect to importation pursuant to paragraph 1, the importer and the right holder shall be promptly notified of the suspension. In the case of the suspension with respect to exportation pursuant to paragraph 1, the exporter and the right holder shall be promptly notified of the suspension.

3. Each Party shall ensure that its competent authorities do not allow the re-exportation of counterfeit trademark or pirated copyright goods other than in exceptional circumstances.

Article 120. Enforcement – Civil Remedies

1. Each Party shall ensure that a right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. 2. Each Party shall endeavor, as necessary, to improve its judicial system with a view to providing effective civil remedies against infringement of intellectual property rights.

Article 121. Enforcement – Criminal Remedies

Each Party shall provide for criminal procedures and penalties to be applied in cases of the infringement of patent rights, rights relating to utility models, industrial designs, trademarks or layout-designs of integrated circuits, copyrights or related rights, or plant breeder's rights, committed willfully and on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

Article 122. Cooperation

1. The Parties, recognizing the growing importance of protection of intellectual property in pursuing further promotion of trade and investment between the Parties, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property. Costs of cooperation under this Article shall be borne in as an equitable manner as possible.

2. Areas and forms of cooperation under this Article shall be set forth in the Implementing Agreement.

Article 123. Sub-committee on Intellectual Property

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:
(a) reviewing and monitoring the implementation and operation of this Chapter;
(b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system;
(c) exchanging views on the following issues:
(i) protection of genetic resources, traditional knowledge and folklore; and
(ii) liability of internet service providers;
(d) reporting the findings of the Sub-Committee to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 10. Government Procurement

Article 124. Exchange of Information

1. Each Party shall, subject to its laws and regulations, respond in a timely manner to reasonable requests from the other Party for information on its laws and regulations,policies and practices on government procurement, as well as any reforms to its existing government procurement regimes.

2. The exchange of information under paragraph 1 shall be facilitated through the following governmental authorities:
(a) for Japan, the Ministry of Foreign Affairs; and
(b) for Indonesia, the State Ministry of National Development Planning (BAPPENAS).

Article 125. Sub-committee on Government Procurement

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Government Procurement (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:
(a) reviewing and monitoring the implementation and operation of this Chapter;
(b) exchanging views on laws and regulations, policies and practices, and other mutually agreed issues regarding government procurement;
(c) discussing ways to facilitate cooperations between relevant entities of the Parties in the field of government procurement;
(d) reporting the findings of the Sub-Committee to the Joint Committee; and
(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. The decision by each Party on the composition ofrepresentatives of the Government of the Party to theSub-Committee, shall be facilitated by itsgovernmental authority referred to in paragraph 2 ofArticle 124.

Chapter 11. Competition

Article 126. Promotion of Competition by Addressing Anti-competitive Activities

Each Party shall, in accordance with its laws and regulations, promote competition by addressing anticompetitive activities, in order to facilitate the efficient functioning of its market. Note: For the purposes of this Chapter, the term"anti-competitive activities" means any conductor transaction that may be subject to penalties or relief under the competition laws and regulations of either Party.

Article 127. Cooperation on the Promotion of Competition

1. The Parties shall, in accordance with their respective laws and regulations, cooperate on the promotion of competition by addressing anti-competitive activities, and on the capacity building for strengthening competition policy and implementation of competition laws and regulations, subject to their respective available resources.

2. The details and procedures of cooperation under this Article shall be specified in the Implementing Agreement.

Article 128. Non-discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

Article 129. Procedural Fairness

Each Party shall implement administrative and judicial procedures in a fair manner to address anti-competitive activities, pursuant to its relevant laws and regulations.

Article 130. Non-application of Paragraph 2 of Article 9

Paragraph 2 of Article 9 shall not apply to this Chapter.

Chapter 12. Improvement of Business Environment and Promotion of Business Confidence

Article 131. Basic Principles

1. The Parties, confirming their interest in creating a more favourable business environment with a view to promoting trade and investment activities by enterprises of the Parties, shall from time to time have consultations in order to address issues concerning the improvement of the business environment in the Parties and to facilitate the promotion of the business confidence among enterprises of the Parties.

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

3. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in their respective Parties and take necessary measures including establishing such mechanisms as provided for in subparagraph 1(j) of Article 15 and Article 133.

Article 132. Sub-committee on Improvement of Business Environment and Promotion of Business Confidence

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence(hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) addressing issues in relation to the improvement of business environment and the promotion of the business confidence that the Sub-Committee considers appropriate, taking into account, as necessary, the findings reported by a Liaison Office on Improvement of Business Environment established in accordance with Article 133, and in cooperation with other relevant Sub-Committees or existing mechanisms with a view to avoiding unnecessary overlap with the works of such Sub- Committees or mechanisms;

(b) reporting the findings and making recommendations to the Parties, including the measures to be taken by the Parties, regarding such functions as referred to in subparagraph (a). The Parties shall take into consideration such recommendations. The Sub-Committee may consult with the Joint Committee prior to the submission of recommendations to the Parties;

(c) where appropriate, reviewing the implementation of the recommendations referred to in subparagraph (b);

Article 133. Liaison Office on Improvement of Business Environment

1. Each Party shall designate and maintain a Liaison Office on Improvement of Business Environment for the purposes of this Chapter.

2. The functions and other details of the Liaison Office on Improvement of Business Environment may be set forth in the Implementing Agreement.

Chapter 13. Cooperation

Article 134. Basic Principles

The Parties shall promote cooperation under this Agreement for their mutual benefits in order to liberalize and facilitate trade and investment between the Parties and to promote the well-being of the peoples of the Parties. For this purpose, the Parties shall cooperate between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between the parties other than the Governments of the Parties, in the following fields:
(a) manufacturing industries;
(b) agriculture, forestry and fisheries;
(c) trade and investment promotion;
(d) human resource development;
(e) tourism;
(f) information and communications technology;
(g) financial services;
(h) government procurement;
(i) environment; and
(j) other fields to be mutually agreed upon by the Parties.
Note: Cooperation in the fields of customs procedures,energy and mineral resources, intellectual property and competition is provided for in Chapters 4, 8, 9and 11, respectively.

Article 135. Areas and Forms of Cooperation

Areas and forms of cooperation under this Chapter maybe set forth in the Implementing Agreement.

Article 136. Costs of Cooperation

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

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

Article 137. Sub-committee on Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Cooperation (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:
(a) exchanging information on cooperation;
(b) reviewing, monitoring and giving guidance on the implementation and operation of this Chapter;
(c) identifying ways for further cooperation;
(d) discussing any issues related to this Chapter;
(e) reporting the findings of the Sub-Committee to the Joint Committee; and
(f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. The Sub-Committee shall respect consultation mechanisms for Official Development Assistance and other cooperation schemes between the Parties and, as appropriate, share information and coordinate with such mechanisms and schemes to ensure effective and efficient implementation of cooperative activities and projects.

Chapter 14. Dispute Settlement

Article 138. Scope

1. This Chapter shall apply with respect to the settlement of disputes between the Parties arising out of the interpretation and/or application of this Agreement.

2. Notwithstanding paragraph 1, this Chapter except Article 139 shall not apply to Articles 104 and 122, and Chapters 10 through 13.

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

4. Notwithstanding paragraph 3, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute.

Article 139. General Principle

Any dispute between the Parties arising out of the interpretation and/or application of this Agreement shall, as far as possible, be settled peacefully and amicably.

Article 140. Consultations

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

2. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply to the request and enter into consultations in good faith within 60 days after the date of receipt of the request. In a case of consultations regarding perishable goods, the other Party shall enter into consultations within 20 days after the date of receipt of the request.

3. Unless otherwise agreed by the Parties, consultations shall be treated as confidential. Consultations shall be without prejudice to the rights of either Party in any further proceedings.

Article 141. Good Offices, Conciliation or Mediation

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

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

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

Article 142. Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 140 may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into such consultations within 60 days, or within 20 days in a case of consultations regarding perishable goods, after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through such consultations within 90 days, or

within 50 days in a case of consultations regarding perishable goods, after the date of receipt of the request for such consultations, provided that the complaining Party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

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

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

(b) the factual basis for the complaint.

3. The arbitral tribunal shall comprise three arbitrators, who should have relevant technical or legal expertise.

4. Each Party shall, within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

5. The Parties shall agree on and appoint the third arbitrator within 60 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 4.

6. If a Party has not appointed an arbitrator pursuant to paragraph 4 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 5, the arbitrator or arbitrators not yet appointed shall be chosen within 15 days by lot from the candidates proposed pursuant to paragraph 4.

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

Article 143. Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 142:
(a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;
(b) shall make its award in accordance with this Agreement and applicable rules of international law; and (c) shall set out, in its award, its findings of law and fact, together with the reasons therefor.

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

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts.

4. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

Article 144. Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

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

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

4. Notwithstanding paragraph 3, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

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

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

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

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

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

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

Article 145. Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not to exceed 12months. In the event of such a suspension, the time-frames set out in paragraphs 7 and 8 of Article 144 and paragraph8 of Article 146 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time upon the request of either Party. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties by jointly so notifying the chair of the arbitral tribunal.

Article 146. Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 144.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may request to the Party complained against consultations with a view to reaching a mutually satisfactory implementation period. If no satisfactory implementation period has been agreed within 30 days after the date of receipt of the request, the complaining Party may refer the matter to an arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory resolution through compensation or any alternative arrangement. If no satisfactory resolution has been agreed within 30 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

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

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

6. The suspension of the application of concessions or other obligations under paragraphs 3 and 5 may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

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

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

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

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

7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 5 or 6 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 4 through 6 of Article 142. The arbitral tribunal established for the purposes of this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 147. Modification of Time Periods

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

Article 148. Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

Chapter 15. Final Provisions

Article 149. 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 150. Annexes and Notes

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

Article 151. General Review

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

Article 152. 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 the date to be agreed upon by the Parties.

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

Article 153. Entry Into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this

Agreement have been completed. It shall remain in force unless terminated as provided for in Article 154.

Article 154. Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement. DONE at Jakarta on this twentieth day of August in the year 2007 in duplicate in the English language.

For Japan:
For the Republic ofIndonesia: S.B.Yudhoyono