

# **AGREEMENT BETWEEN SINGAPORE AND THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU ON ECONOMIC PARTNERSHIP**

Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as "Chinese Taipei"), hereinafter collectively referred to as "the Parties" and individually as "a Party";

*Conscious* of their bonds of longstanding friendship and strong trade and investment relationship;

*Reaffirming* their commitment to securing trade liberalisation and an outward-looking approach to trade and investment;

*Convinced* that their economic integration would generate larger economies of scale, provide greater work opportunities, and enhance transparency for economic activities for their businesses as well as for other businesses in the Asia-Pacific region;

*Sharing* the belief that an Economic Partnership Agreement between the Parties would improve their attractiveness to capital and human resources, and create larger and new markets, to expand trade and investment not only between them but also in the region;

*Affirming* their commitment to fostering the development of open market economy in the Asia-Pacific region, and to encouraging economic integration of Asian economies in order to further the liberalisation of trade and investment in the region;

*Reaffirming* that this Agreement shall contribute to the expansion and development of world trade under the multilateral trading system embodied in the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement");

*Building* on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral instruments of cooperation; and

*Resolved* to promote reciprocal trade and investment, and to avoid circumvention of benefits of regional trade integration, through the establishment of clear and mutually advantageous trade rules, and industry as well as regulatory cooperation;

HAVE AGREED as follows:

## **Chapter 1. GENERAL PROVISIONS**

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

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

### **Article 1.2. ENFORCEMENT**

1. Each Party is fully responsible for the observance of all the provisions of this Agreement.
2. In fulfilling its obligations and commitments under this Agreement, each Party shall ensure their observance by all levels of its government and by non-governmental bodies in the exercise of governmental powers delegated by the government or authorities within its territory.

### **Article 1.3. OBJECTIVES**

The objectives of this Agreement as elaborated more specifically through its principles and rules are to:

- (a) liberalise and facilitate trade in goods and services and expand investment between the Parties;
- (b) establish a cooperative framework for strengthening the economic relations between the Parties;
- (c) establish a framework conducive for a more favourable environment for their businesses and promote conditions of fair competition in the free trade area;
- (d) establish a framework of transparent rules to govern trade and investment between the Parties; and
- (e) create effective procedures for the implementation and application of this Agreement.

## **Article 1.4. RELATION TO OTHER AGREEMENTS**

1. The Parties reaffirm their existing rights and obligations with respect to each other under existing bilateral and multilateral agreements to which the Parties are party, including the WTO Agreement.
2. In the event of any inconsistency between this Agreement and other agreements to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration customary rules of public international law.
3. Notwithstanding paragraph 2, if this Agreement explicitly contains provisions regarding such inconsistency as indicated in paragraph 2, those provisions shall apply.

## **Article 1.5. REFERENCE TO OTHER AGREEMENTS**

1. For the purposes of this Agreement, any reference to articles in GATT 1994 or GATS includes the interpretative notes, where applicable.
2. Any reference in this Agreement to any other treaty or international agreement shall be made in the same terms to its successor treaty or international agreement to which the Parties are party.

## **Chapter 2. GENERAL DEFINITIONS**

For the purposes of this Agreement, unless otherwise specified:

**Agreement** means the Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership; APEC means the Asia-Pacific Economic Cooperation;

**citizen** means:

- (a) with respect to Singapore, any natural person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; and
- (b) with respect to Chinese Taipei, any natural person who has the citizenship of Chinese Taipei with personal identification registration with the authorities of Chinese Taipei in accordance with its domestic laws;

**Customs Valuation Agreement** means the Agreement on Implementation of Article VII of the General Agreement on Tariff and Trade 1994, which is part of the WTO Agreement;

**days** means calendar days including weekends and holidays;

**enterprise** means any corporation, company, association, partnership, trust, joint venture, sole-proprietorship or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised under the law of a Party, including branches, regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;

**existing** means in effect at the time of entry into force of this Agreement;

**GATS** means the General Agreement on Trade in Services, which is a part of the WTO Agreement;

**GATT 1994** means the General Agreement on Tariffs and Trade 1994, which is a part of the WTO Agreement;

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

**Harmonized System (HS)** means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes and amendments thereto;

**measure** means any law, regulation, procedure or administrative action, requirement or practice;

**natural person of a Party** means a citizen or permanent resident of a Party;

**permanent resident** means any person who has the right of permanent residence in the territory of a Party;

**person** means a natural person or an enterprise;

**person of a Party** means a citizen, permanent resident or an enterprise of a Party;

**territory** means:

(a) with respect to Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources; and

(b) with respect to Chinese Taipei, in the context of this Agreement and consistent with Article XXIV of GATT 1994 and Article V of GATS the land and sea constituting the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu as applied in the WTO;

**central level of government** means:

(a) for Singapore, the national level of government; and

(b) for Chinese Taipei, the central level of government;

**local level of government** means:

(a) for Singapore, entities with sub-national legislative or executive powers under domestic law, including Town Councils and Community Development Councils; and

(b) for Chinese Taipei, a special municipality, county or city, and any other local governments in accordance with the provisions of its Local Government Act; and

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

## Chapter 3. TRADE IN GOODS

### Article 3.1. DEFINITIONS

For the purposes of this Chapter:

**consular transactions** means requirements that goods of a Party intended for export to the territory of the other Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for commercial invoices, certificates of origin, manifests, shippers' export declarations, or any other customs documentation required on or in connection with importation;

**customs duties** includes any customs or import duty and a charge of any kind imposed in connection with the import of a good, including any form of surtax or surcharge in connection with such import, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, including excise duties and goods and services tax or sales tax;

(b) anti-dumping or countervailing duty applied consistently with the provisions of GATT 1994, the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "the Anti-Dumping Agreement"), and the WTO Agreement on Subsidies and Countervailing Measures; and

(c) fee or other charge in connection with importing commensurate with the cost of services rendered and do not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes;

**duty-free** means free of customs duty; and

**goods originating in the territories of the Parties** means goods of the Parties that are treated as originating goods in accordance with Chapter 4 (Rules of Origin).

## **Article 3.2. Scope and Coverage**

Except as otherwise provided, this Chapter applies to the trade in goods between the Parties.

## **Article 3.3. National Treatment**

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

## **Article 3.4. Elimination of Customs Duties**

1. The provisions of this Chapter concerning the elimination of customs duties on imports shall apply to goods originating in the territories of the Parties.
2. Each Party shall eliminate its customs duties on originating goods of the other Party in accordance with the tariff schedules set out in Annexes 3A and 3B.
3. Each Party shall not increase an existing customs duty, introduce a new customs duty or impose an additional customs duty to that determined under paragraph 2, on the importation of originating goods.
4. Each Party shall refrain from applying any measure that reduces or nullifies the commitment of this Chapter. 5. The classification of goods in trade between the Parties shall be governed by each Party's respective tariff nomenclature in conformity with the Harmonized System.

## **Article 3.5. Export Duties**

Each Party shall not adopt or maintain any duty, tax or other charge on the exportation of goods to the territory of the other Party.

## **Article 3.6. Administrative Fees and Formalities**

Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, that all fees and charges of whatever character (other than customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

## **Article 3.7. Consular Fees**

1. No Party shall require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party. 2. Each Party shall make available and maintain through the Internet a current list of the fees and charges it imposes in connection with importation or exportation.

## **Article 3.8. Goods Re-entered after Repair and Alteration**

1. A Party may not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in its own territory.

2. A Party may not apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration. 3. For the purposes of this Article, repair and alteration does not include an operation or process that: (a) destroys a good's essential characteristics or creates a new or commercially different good; or (b) transforms an unfinished good into a finished good.

### **Article 3.9. Non-tariff Measures**

1. Neither Party shall adopt or maintain any non-tariff measures that prohibit or restrict the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations, or in accordance with other provisions of this Agreement.

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

### **Article 3.10. Publication**

1. Each Party shall promptly publish the following information in the English language, in a non-discriminatory and convenient manner, in order to enable interested persons and the other Party to become acquainted with them:

- (a) importation, exportation or transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- (b) applied rates of duties, taxes or charges of any kind imposed on or in connection with importation or exportation;
- (c) rules for the classification or the valuation of products for customs purposes;
- (d) laws, regulations and administrative rulings of general application relating to rules of origin;
- (e) import, export or transit restrictions or prohibitions;
- (f) relevant trade-related legislation;
- (g) all fees and charges imposed on or in connection with importation, exportation or transit formalities;
- (h) penalty provisions against breaches of import, export or transit formalities;
- (i) appeal procedures;
- (j) agreements or parts thereof with any non-Parties relating to the importation, exportation or transit of goods; and
- (k) administrative procedures relating to the imposition of tariff quotas including quota size, in and out of quota rates, opening dates, allocation methods, licensing procedures and requirements, levels of utilisation, and additional terms and conditions, including any requirements imposed by government bodies or importing authorities.

### **Article 3.11. Import and Export Restrictions**

Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretive notes are incorporated into and made a part of this Agreement, *mutatis mutandis*. (1)

(1) For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

### **Article 3.12. Subsidies and Countervailing Measures**

1. The Parties reaffirm their commitment to abide by the provisions of Article VI and XVI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, and the WTO Agreement on Agriculture.

2. Notwithstanding paragraph 1, the Parties agree to prohibit export subsidies on all goods, including agriculture goods.

### **Article 3.13. Anti-dumping**

The Parties maintain their rights and obligations under Article VI of GATT 1994 and the Anti-Dumping Agreement, contained in Annex 1A to the WTO Agreement. For greater certainty, this paragraph applies, *inter alia*, to prohibitions or restrictions on the importation of remanufactured goods.

### **Article 3.14. Safeguard Measures**

## **Bilateral Safeguard Measures**

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, originating goods of a Party are being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury (2) to a domestic industry producing like or directly competitive goods, the importing Party may:
  - (a) suspend further reduction of the rate of customs duty on the good concerned provided for under this Agreement; or
  - (b) increase the rate of customs duty on the good to a level which does not exceed the lesser of the most-favoured nation (hereinafter referred to as "MFN") applied rate of customs duty on the good in effect:
    - (i) at the time the measure is taken; or
    - (ii) on the day immediately preceding the date of entry into force of this Agreement.
2. A Party shall notify the other Party in writing of the initiation of an investigation described in paragraph 3 and consult with the other Party as far in advance of applying a bilateral safeguard measure as practicable, with a view to reviewing the information arising from the investigation and exchanging views on the measure.
3. A Party shall apply a bilateral safeguard measure only following an investigation by its competent authorities in accordance with Articles 3 and 4.2(c) of the Agreement on Safeguards and to this end, Articles 3 and 4.2(c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, mutatis mutandis.
4. In the investigation described in paragraph 3, the Party shall comply with the requirements of Article 4.2(a) of the Agreement on Safeguards and to this end, Article 4.2(a) of the Agreement on Safeguards is incorporated into and made part of this Agreement, mutatis mutandis.
5. Each Party shall ensure that its competent authorities complete any such investigation within one year following the date of initiation.
6. Neither Party may apply a bilateral safeguard measure:
  - (a) except to the extent, and for such period of time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment; or Serious injury and threat of serious injury shall be understood in accordance with Article 4.1(a) and (b) of the Agreement on Safeguards contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Safeguards"). To this end, Article 4.1(a) and (b) of the Agreement on Safeguards is incorporated into and made part of this Agreement, mutatis mutandis.
  - (b) for a period exceeding three (3) years, except that the period may be extended by up to two (2) years if the competent authorities of the importing Party determine, in conformity with the procedures specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting.
7. Upon the termination of the measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.
8. Provisional Measure:
  - (a) In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports cause serious injury, or threat thereof, to the domestic industry.
  - (b) The duration of any provisional measure shall not exceed two hundred (200) days, during which time the Party shall comply with the requirements of paragraphs 3 and 4. The Party shall promptly refund any tariff increased if the investigation described in paragraph 3 does not result in a finding that the requirements of paragraph 1 are met. The duration of any provisional measure shall be counted as part of the period prescribed by subparagraph 6(b).
9. Compensation:
  - (a) A Party applying a bilateral safeguard measure shall consult with the other Party in order to mutually agree on appropriate trade liberalising compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the safeguard measure. The Party shall provide an opportunity for such consultations no later than thirty (30) days after the application of the bilateral safeguard measure.
  - (b) If the consultations under subparagraph (a) do not result in an agreement on trade liberalising compensation within thirty (30) days after the consultations begin, the Party whose goods are subject to the safeguard measure may take action with respect to goods of the other Party that has trade effects substantially equivalent to the safeguard measure. The Party taking such action shall apply the action only for the minimum period necessary to achieve the substantially equivalent

effects, and in any event, only while the measure under paragraph 1 is being applied.

### **Global Safeguard Measures**

10. The Parties maintain their rights and obligations under Article XIX of GATT 1994 and the Agreement on Safeguards.

11. At the request of the other Party, the Party intending to take safeguard measures shall immediately provide written notification of all pertinent information on the initiation of a safeguard investigation, the provisional findings, and the final findings of the investigation.

12. No Party shall apply, with respect to the same good, at the same time:

(a) a bilateral safeguard measure; and

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

(2) **Serious injury and threat of serious injury** shall be understood in accordance with Article 4.1(a) and (b) of the Agreement on Safeguards contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "Agreement on Safeguards"). To this end, Article 4.1(a) and (b) of the Agreement on Safeguards is incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 3.15. Standstill**

1. Between the time of the signing of the Agreement and the time when the Agreement comes into force, each Party shall not increase an existing customs duty or introduce a new customs duty on the importation of originating goods.

2. Paragraph 1 does not apply to automatic restoration of customs duty to its previous normal level in the context of the temporary tariff adjustments as provided for in the domestic customs regulations of the Parties.

## **Article 3.16. Committee on Trade In Goods**

1. Parties hereby establish a Committee on Trade in Goods, comprising government representatives of the Parties. The Committee shall meet on the request of a Party to consider any matter arising under this Chapter and the Chapter on Rules of Origin.

2. The Committee's functions shall include:

(a) monitoring the implementation of this Chapter and Chapter 4 (Rules of Origin) and their Annexes;

(b) promoting trade in goods between the Parties, including through consultations on modifications to the rules of origin<sup>3</sup>, and other issues as appropriate; and

(c) such other activities as the Parties may agree.

3. As a result of the consultations under subparagraph 2(b), the Committee may, by decision, amend this Chapter, Chapter 4 (Rules of Origin) and the Annexes to the two aforementioned Chapters, as required. Such amendments shall be deemed to be made under paragraph 1 of Article 17.4 (Amendments) and shall enter into force in accordance with paragraph 2 of Article 17.4 (Amendments). For example, to take into account developments in production processes, lack of supply of originating materials, or other relevant factors.

# **Chapter 4. Rules of Origin**

## **Section A. GENERAL RULES OF ORIGIN**

### **Article 4.1. Definitions**

For the purposes of this Chapter:

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

**CIF** means the value of the good imported and includes the cost of insurance and freight up to the port or place of entry in the country or customs territory of importation. The valuation shall be made in accordance with the Customs Valuation Agreement;

**customs value** means:

(a) the price actually paid or payable for a good or material with respect to a transaction of the seller of the good, pursuant to the principles of Article 1 of the Customs Valuation Agreement, adjusted in accordance with Article 8 of the Customs Valuation Agreement; or

(b) in the event that there is no such value or such value of the good is unascertainable, the value determined in accordance with Articles 2 through 7 of the Customs Valuation Agreement;

**FOB** means the value of the good free on board, independent of the means of transportation, at the port or site of final shipment abroad. The valuation shall be made in accordance with the Customs Valuation Agreement; fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

**goods wholly obtained or produced entirely in a Party** means:

(a) mineral goods extracted from the soil or seabed in the territory of a Party;

(b) agricultural and plant products grown and harvested, picked or gathered in the territory of a Party;

(c) live animals, born and raised in the territory of a Party;

(d) goods obtained from live animals in the territory of a Party;

(e) goods obtained from hunting, trapping, fishing, farming, gathering, capturing or aquaculture in the territory of a Party;

(f) goods (fish, shellfish, plant and other marine life) taken from the sea by a vessel registered or recorded with a Party;

(g) goods obtained or produced on board a factory ship registered or recorded with that Party, exclusively from products referred to in subparagraph (f);

(h) waste and scrap derived from production in the territory of a Party or used articles or goods collected in the territory of a Party, provided that such goods can no longer perform their original purposes nor are capable of being restored or repaired and are fit only for the recovery of raw materials;

(i) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed outside its territory, provided that the Party has rights under international law to exploit such seabed;

(j) recovered goods derived in the territory of a Party from used goods and utilised in the territory of the Party in the production of remanufactured goods; and

(k) goods produced entirely in the territory of a Party exclusively from goods referred to in subparagraphs (a) to (j) or from their derivatives, at any stage of production;

**heading** means the first four digits in the tariff classification under the Harmonized System; indirect material means a good used in the production, testing or inspection of another good but not physically incorporated into the good, or a good used in the maintenance of buildings, or the operation of equipment associated with the production of a good, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices, and supplies used for testing or inspecting the goods;

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

(d) tools, dies and moulds;

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

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

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

**material** means a good or any matter or substance that is used or consumed in the production of goods or transformation of another good;

**minimal operations or processes** means operations or processes which contribute minimally to the essential characteristics of the goods and which by themselves, or in combination, do not confer origin as provided for in Article 4.4 (Operations that do not Confer Origin);

**packing materials and containers for shipment** means goods used to protect a good during its transportation, other than containers and packaging materials used for retail sale;

**production** means methods of obtaining goods including, but not limited to growing, raising, mining, harvesting, fishing, farming, trapping, hunting, capturing, aquaculture, gathering, collecting, breeding, extracting, manufacturing, processing, assembling or disassembling a good; recovered goods means materials in the form of individual parts that result from:

(a) the complete disassembly of used goods into individual parts; and

(b) the cleaning, inspecting, or testing or other processing of those parts, and as necessary for improvement to sound working condition one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good, as listed within Annex 4A; **remanufactured goods** means an industrial good, listed within Annex 4A assembled in the territory of a Party, that:

(a) is entirely or partially composed of recovered goods;

(b) has the same life expectancy and meets the same performance standards as a new good; and

(c) enjoys the same factory warranty as such a new good; subheading means the first six digits in the tariff classification under the Harmonized System;



**transaction value** means the price paid or payable for a good as determined by the provisions of the Customs Valuation Agreement;

**used** means used or consumed in the production of goods; and

**value** means the value of a good or material, pursuant to the provisions of the Customs Valuation Agreement.

## Article 4.2. Originating Goods

Unless otherwise indicated in this Chapter, a good shall be considered as originating in a Party when:

- (a) the good is wholly obtained or produced entirely in the territory of one Party, pursuant to the definition in Article 4.1 (Definitions);
- (b) the good is produced entirely in the territory of one or both Parties, exclusively from materials whose origin conforms to the provisions of this Chapter;
- (c) the good is produced in the territory of one or both Parties, using non-originating materials that conform to a change in tariff classification, a regional value content, or other requirements specified in Annex 4B, and the good meets the other applicable provisions of this Chapter; or
- (d) otherwise provided as an originating good under this Chapter.

## Article 4.3. Regional Value Content

1. Where Annex 4B refers to a regional value content, each Party shall provide that the regional value content of a good shall be calculated on the basis of the following method:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where: RVC is the regional value content expressed as a percentage; TV is the transaction value of the good, adjusted on an FOB basis, except as provided in paragraph 3. If no such value exists or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to the principles of Articles 2 to 7 of that Agreement; and VNM is the transaction value of the non-originating materials, when they were first acquired or supplied to the producer of the goods, adjusted on a CIF basis, except as provided in paragraph 4. If such value does not exist or cannot be determined, pursuant to the principles of Article 1 of the Customs Valuation Agreement, it shall be calculated pursuant to that Agreement.

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

3. When the producer of a good does not export it directly, the value shall be adjusted up to the point at which the purchaser receives the good within the territory of a Party where the producer is located.

4. When the producer of the good acquires a non-originating material in the territory of the Party where it is located, the value of such material shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

## Article 4.4. Operations That Do Not Confer Origin

1. A good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, ventilation, chilling, keeping in brine and like operations);
- (b) simple operations consisting of sifting, classifying, washing, cutting, slitting, bending, coiling, or uncoiling, peeling, grinding, unshelling or unflaking, dehusking, deboning, crushing or squeezing, macerating; (4)
- (c) changes of packing and breaking up and assembly of consignments;
- (d) packing, unpacking or repacking operations;
- (e) affixing of marks, labels or other like distinguishing signs on products or their packaging;
- (f) simple assembly or disassembly of parts or products to constitute a complete product unless it is for the production of a remanufactured good as listed within Annex 4A;
- (g) simple mixing;

(h) simple making-up of sets of articles;

(i) slaughtering of animals;

(j) salifying or sweetening; (5) and

(k) simple dilution with water or with any other aqueous, ionised or salted solution.

2. For the purposes of this Article, the word "simple" generally refers to relevant activities which need neither professional skills nor specialised machines, apparatus or equipment particularly produced or installed for carrying out the activity.

(4) This is applicable to products in HS Chapters 7 and 8. 5 This is applicable to products in HS Chapters 7 and 8.

(5) This is applicable to products in HS Chapters 7 and 8.

## **Article 4.5. Accumulation**

1. Originating materials from the territory of a Party incorporated in the production of a good in the territory of the other Party, shall be considered to originate in the territory of the other Party.

2. For the purpose of establishing that a good is originating, the producer of a good may accumulate one's production with the production, in the territory of one or both of the Parties by one or more producers, of materials incorporated in the production of the good, so that the production of those materials is considered as done by that producer, provided that the good complies with the criteria set out in Article 4.2 (Originating Goods).

## **Article 4.6. De Minimis**

A good that does not conform to a change in tariff classification, pursuant to the provisions of Annex 4B, shall be considered to be originating if the value of all non-originating materials used in its production not meeting the change in tariff classification requirement does not exceed ten (10) percent of the transaction value of the given good pursuant to Article 4.3 (Regional Value Content), and the good meets all the other applicable criteria of this Chapter.

## **Article 4.7. Accessories, Spare Parts, and Tools**

1. Accessories, spare parts, or tools provided with the good as part of the standard accessories, spare parts, or tools shall be regarded as originating goods and shall be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, or tools are not invoiced separately from the good; and

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

2. If the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.

## **Article 4.8. Packaging Materials and Containers for Retail Sale**

Packaging materials and containers in which goods are packaged for retail sale, if classified with the goods, shall be disregarded in determining whether all the non-originating materials used in the production of those goods have undergone the applicable change in tariff classification set out in Annex 4B. However, if the goods are subject to a regional value content requirement, the value of the packaging used for retail sale will be counted as originating or non-originating, as the case may be, in calculating the regional value content of the goods.

## **Article 4.9. Packing Materials and Containers for Shipment**

Packing materials and containers in which a good is packed exclusively for transport shall not be taken into account for the purposes of establishing whether the good is originating.

## **Article 4.10. Indirect Materials**

Indirect materials shall be considered to be originating materials without regard to where they are produced and its value

shall be the cost registered in the accounting records of the producer of the good.

## **Article 4.11. Transit Through Non-parties**

1. Preferential tariff treatment provided for in this Agreement shall be applied to goods that satisfy the requirements of this Chapter and which are directly transported among the Parties.
2. Notwithstanding paragraph 1, goods shall be authorised to transit through the territory of one or more non-Parties, and to remain stored for a reasonable period of time, which in no case shall be more than three (3) months from the date of entry of the goods into the territory of a non-Party respectively.
3. Goods shall be eligible for preferential tariff treatment in accordance with this Agreement if they are transported through the territory of one or more non-Parties, provided that the goods:
  - (a) did not undergo operations other than unloading, reloading, or any other operation necessary to preserve them in good condition; and
  - (b) did not enter the commerce of such non-Parties after the shipment from the Party and before the importation into the other Party.
4. Compliance with the provisions set out in paragraphs 2 and 3 shall be proved by means of supplying to the customs administration of the importing Party either customs documents of the non-Party or documents of the competent authorities, including commercial shipping or freight documents.

## **Article 4.12. Outward Processing**

1. Notwithstanding the relevant provisions of Article 4.2 (Originating Goods) and the product specific requirements set out in Annex 4B, a good listed in Annex 4C shall be considered as originating even if it has undergone processes of production or operation outside the territory of a Party on a material exported from the Party and subsequently re-imported to the Party, provided that:
  - (a) the total value of non-originating inputs as set out in paragraph 2 does not exceed fifty-five (55) percent of the customs value of the final good for which originating status is claimed;
  - (b) the value of originating materials is not less than forty-five (45) percent of the customs value of the final good for which originating status is claimed;
  - (c) the materials exported from a Party shall have been wholly obtained or produced in the Party or have undergone therein, processes of production or operation going beyond the minimal operations or processes in Article 4.4 (Operations that do not Confer Origin), prior to being exported outside the territory of the Party;
  - (d) the producer of the exported material is the same producer of the final good for which originating status is claimed;
  - (e) the re-imported good has been obtained through processes of production or operation of the exported material; and
  - (f) the last process of production or operation (6) takes place in the territory of the Party.
2. For the purposes of subparagraph 1(a), the total value of non-originating inputs shall be the value of any non-originating materials added in a Party as well as the value of any materials added and all other costs accumulated outside the territory of the Party, including transportation costs.
3. For greater certainty, the verification procedures referred to in Article 4.18 (Verification of Origin) shall apply in order to ensure the proper application of this Article. Such procedures include the provision of information and supporting documentation, including that relating to the export of originating materials and the subsequent re-import of the goods subsequently exported as originating goods, by the exporting customs administration or exporter upon receipt of a written request from the customs administration of the importing Party through the customs administration of the exporting Party.
4. Upon the request of a Party, the list of products in Annex 4C may be modified by the Committee on Trade in Goods.

(6) The last process of production or operation does not exclude the minimal operations that do not confer origin stipulated in Article 4.4 (Operations that do not Confer Origin).

## **Article 4.13. Fungible Goods and Materials**

1. Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material, or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first-out, recognised in the generally accepted accounting principles of the

Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

2. Once a particular inventory management method is selected under paragraph 1, that method shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

## **Section B. CUSTOMS PROCEDURES RELATING TO ORIGIN**

### **Article 4.14. Definitions**

For the purposes of this Chapter: competent government authority means the government authority in each Party that is responsible for the verification of origin, as specified in Annex 4D. day means calendar days, including weekends and holidays, but for the calculation of time periods, where the last day falls on a non-working day, the last day will be extended to the next working day.

### **Article 4.15. Claims for Preferential Treatment**

1. For the purpose of obtaining preferential tariff treatment in the other Party, a proof of origin in the form of a Declaration of Origin shall be completed in English and signed by an exporter or producer of a Party, certifying that a good qualifies as an originating good for which an importer may claim preferential treatment upon the importation of the good into the territory of the other Party.

2. The Declaration of Origin shall be in the template set out in Annex 4E, which may thereafter be revised by mutual consent of the Parties.

3. Each Party shall:

- (a) require an exporter in its territory to complete and sign a Declaration of Origin for any exportation of good for which an importer may claim preferential tariff treatment upon importation of the good into the territory of the other Party; and
- (b) provide that where an exporter in its territory is not the producer of the good, the exporter may complete and sign a Declaration of Origin on the basis of:
  - (i) his knowledge of whether the good qualifies as an originating good;
  - (ii) his reasonable reliance on the producer's written representation that the good qualifies as an originating good; or
  - (iii) a completed and signed certification for the good voluntarily provided to the exporter by the producer.

4. Nothing in paragraph 3 shall be construed to require a producer to provide a Declaration of Origin to an exporter.

5. Each Party shall provide that a Declaration of Origin that has been completed and signed by an exporter or producer in the territory of the other Party that is applicable to a single importation of one or more goods into the Party's territory shall be accepted by its customs administration for one (1) year from the date on which the Declaration of Origin was signed.

### **Article 4.16. Waiver of Declaration of Origin**

Each Party shall provide that a Declaration of Origin shall not be required for the importation of any good whose custom value does not exceed US\$1,000 or its equivalent amount in the Party's currency; or such higher amount as may be established by a Party which is importing, provided that the importation does not form part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the declaration requirements.

### **Article 4.17. Record Keeping Requirement**

1. Each Party shall provide that an exporter or a producer in its territory that completes and signs a Declaration of Origin shall maintain in its territory, for a period at least three (3) years after the date on which the Declaration of Origin was issued or signed, all records relating to the origin of a good for which preferential tariff treatment was claimed in the territory of the other Party, including records associated with:
- (a) the purchase of, cost of, value of, shipping of, and payment for, the good that is exported from its territory;
  - (b) the sourcing of, purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory; and
  - (c) the production of the good in the form in which the good is exported from its territory.

2. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the Party's territory shall maintain in that territory, for a period of at least three (3) years after the date of importation of the good, such documentation, including a copy of the Declaration of Origin, as the Party may require relating to the importation of the good.

3. The records to be maintained may include electronic records and shall be maintained in accordance with the domestic laws and practices of each Party.

## **Article 4.18. Verification of Origin**

1. For the purposes of determining whether a good imported into its territory from the territory of the other Party qualifies as an originating good, the importing Party may conduct verification by means of:

- (a) request for information from the importer;
- (b) written questionnaires or request for information to the exporter or producer of the good(s) in the territory of the other Party through the competent government authority of the exporting Party;
- (c) request for assistance from the competent government authority of the exporting Party as provided for in paragraph 3 below; or
- (d) verification visits to the premises of an exporter or a producer in the territory of the other Party, to observe the facilities and the production processes of the good and to review the records referring to origin including accounting files.

2. For the purpose of subparagraphs 1(a) and 1(b), the importer, exporter or producer:

- (a) shall answer and return the request within a period of thirty (30) days from the date on which it was received;
- (b) may have one opportunity, during the period established in subparagraph (a), to make a written request to the competent government authority of the importing Party for an extension of the answering period, for a period not exceeding thirty (30) days. For the exporter or producer, this written request will be made through the competent government authority of the exporting Party. In the case where the importer, exporter, or producer does not return the written request for the information made by the competent government authority of the importing Party within the given period or its extension, the importing Party may deny the preferential tariff treatment.

3. For the purpose of subparagraph 1(c), the customs administration of the importing Party:

- (a) may request the competent government authority of the exporting Party to assist it in verifying:
  - (i) whether the goods declared in the Declaration of Origin qualify as originating goods; and/or
  - (ii) the accuracy of any information contained in the Declaration of Origin;
- (b) shall provide the competent government authority of the other Party with:
  - (i) the reasons why such assistance is sought; (ii) the Declaration of Origin, or a copy thereof; and (iii) any information and documents as may be necessary for the purpose of providing such assistance.

4. To the extent allowed by its domestic law and practices, the competent government authority of the exporting Party shall fully cooperate in any action to verify the origin as established under subparagraph 1(b) and paragraph 3 above. In the absence of such cooperation, the importing Party shall determine the accuracy of the information contained in the Declaration of Origin with the best information available at that moment.

5. For the purpose of subparagraph 1(d), the competent government authority of the importing Party shall: (a) deliver, at least thirty (30) days prior to conducting a verification visit, a written notification of its intention to conduct the visit to the exporter or producer and to the competent government authority of the exporting Party; and (b) obtain the written consent of the exporter or producer.

6. Pursuant to paragraph 5, the exporter or producer may within fifteen (15) days of receiving the notification, request to the competent government authority of the importing Party for a postponement of the proposed verification visit, for a period not exceeding sixty (60) days. This extension shall be notified to the competent government authorities of the importing and exporting Parties.

7. A Party shall not deny preferential tariff treatment to a good solely because a verification visit was postponed pursuant to paragraph 6.

8. In the case, where an exporter or producer does not give its written consent to a proposed verification visit within thirty (30) days from the receipt of notification, the importing Party may deny preferential treatment to the good that is subject to verification.

9. After concluding the actions related to subparagraphs 1(a), 1(b), 1(c) or 1(d), and no later than fifteen (15) days after the outcome of the actions taken, the competent government authority of the importing Party shall provide a written determination of whether the good is originating and therefore eligible for preferential tariff treatment based on the relevant law and findings of fact. In respect of subparagraphs 1(a) or 1(b), the maximum time to be taken from the start of the verification to its conclusion should not exceed one hundred and twenty (120) days. In respect of subparagraphs 1(c) or 1(d), the maximum time to be taken from the start of the verification to its conclusion should not exceed one hundred and fifty (150) days.

10. When the customs administration has a reasonable doubt on the origin of the goods at the time of importation, the goods may be released by the customs administration of the importing Party on a security or upon payment of duties, pending the outcome of the origin verification, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud. The relevant duties paid shall be refunded once the outcome of the origin verification confirmed that the good qualifies as an originating good.

11. The importing Party may deny preferential treatment to an importer on any subsequent import of a good when its competent government authority had already determined that an identical good was not eligible for that treatment, provided that such good is exported by the same exporter or produced by the same producer subject to verification, until the importing Party determines that the importer, exporter, or producer is in compliance with this Chapter.

### **Article 4.19. Obligations Relating to Importations**

1. Any good that meets all the applicable requirements in this Chapter is eligible for preferential tariff treatment.

2. A Party may deny preferential tariff treatment under this Agreement to imported good(s) if the importer fails to comply with any requirement of this Chapter. Slight discrepancies as between the wording and details stated in the Declaration of Origin produced to the customs administration of the importing Party shall not, of itself, cause any claim for preferential tariff treatment to be denied.

3. Except as otherwise provided in this Chapter, each Party shall require an importer in its territory that claims preferential tariff treatment for a good imported into its territory from the territory of the other Party to:

- (a) declare in the importation document that the good qualifies as an originating good, based on a Declaration of Origin;
- (b) have the Declaration of Origin in its possession at the time the declaration is made;
- (c) provide, on the request of that Party's customs administration, a copy of the Declaration of Origin; and
- (d) promptly submit a corrected declaration in a manner required by the customs administration of the importing Party and pay any owed duties where the importer has reason to believe that a Declaration of Origin on which a declaration was based contains information that is not correct.

4. Each Party shall provide that, where a good qualified as originating when it was imported into the territory of that Party but no claim for preferential tariff treatment was made at that time, the importer of the good may, no later than one (1) year after the date on which the good was imported, apply for a refund of any excess duties paid as the result of the good not having been granted preferential tariff treatment, on presentation of:

- (a) a written declaration that the good qualified as originating;
- (b) a copy of the Declaration of Origin; and
- (c) such other documentation relating to the importation of the good as the importing Party may require.

### **Article 4.20. Obligations Relating to Exportations**

1. Each Party shall provide that an exporter or a producer in its territory shall submit a copy of the Declaration of Origin to its competent government authority upon request.

2. When an exporter or a producer in its territory has provided a Declaration of Origin and has reason to believe that such declaration contains or is based on incorrect information, the exporter or producer shall promptly notify in writing every person to whom the exporter or producer provided the declaration of any change that could affect the accuracy or validity of the declaration, provided that such notification is made before the initiation of audit procedures. Any penalty, if applicable, for providing an incorrect Declaration of Origin for preferential tariff treatment shall be subject to the domestic law of each Party that is dealing with the offence under its jurisdiction.

### **Article 4.21. Customs Focal Point**

1. Each Party shall designate a customs focal point for all matters relating to this Chapter, one (1) month prior to the entry into force of this Agreement.
2. When the customs focal point of a Party raises any matter arising from this Chapter to the focal point of the other Party, the customs administration of the latter Party shall assign its own experts to look into the matter and to respond with its findings and proposed solution for resolving the matter within a reasonable period of time.
3. The customs focal point shall endeavour to resolve any matter raised under this Chapter through consultations.

## **Chapter 5. Customs Procedures**

### **Article 5.1. Scope**

This Chapter shall apply in accordance with the Parties' respective domestic laws and regulations, to customs procedures required for clearance of goods traded between the Parties.

### **Article 5.2. General Provisions**

1. The Parties recognise that the objectives of this Agreement may be promoted by the simplification of customs procedures for their bilateral trade.
2. Customs procedures of the Parties shall conform, where possible, with the standards and recommended practices of the World Customs Organisation.
3. The customs administrations of the Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate bilateral trade.

### **Article 5.3. Publication and Availability of Information**

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application governing customs matters are promptly published on the Internet.
2. To the extent possible, each Party shall publish in advance any regulations of general application governing customs matters that it proposes to adopt and provide interested persons within its territory with the opportunity to comment before adopting them.
3. Each Party shall establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall make available on the Internet information on such inquiry points.
4. For greater certainty, nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

### **Article 5.4. Paperless Trading**

1. The Parties shall endeavour to provide an electronic environment that supports business transactions between their respective customs administrations and their trading communities.
2. The Parties shall exchange views and information on realising and promoting paperless trading between their respective customs administrations and their trading communities.

### **Article 5.5. Risk Management**

1. Each Party shall adopt a risk management approach in its customs activities based on its identified risk of goods in order to facilitate the clearance of low-risk consignments, while focusing its inspection activities on high-risk goods.
2. The Parties shall exchange information on risk management techniques adopted by their customs administrations.

### **Article 5.6. Sharing of Best Practices**

The Parties shall facilitate initiatives for the exchange of information on best practices in relation to customs procedures.

## **Article 5.7. Review and Appeal**

1. Each Party shall ensure that the importers and exporters in its territory have access to:

- (a) administrative review by an authority supervising the customs administration; and
- (b) judicial review of the determination taken at the final level of administrative review, in accordance with the Party's domestic laws.

2. Notice of the decision on appeal, together with the reasons for such decision, shall be given to the appellant in writing.

## **Article 5.8. Single Window**

1. To avoid repeated submissions of documentation and/or data requirements for exportation, importation and transit to different authorities or agencies, each Party shall maintain or establish a single window (7) through which the aforementioned documentation and/or data requirements only have to be submitted online once in electronic form. The single window shall undertake onward distribution of the aforementioned documentation and/or data requirements to the relevant authorities or agencies which require them. After the examination by the relevant authorities or agencies of the documentation and/or data, the single window shall notify the results to the applicants in a timely manner. A single window is defined as an electronic online facility that allows parties involved in trade and transport to lodge standardised documentation and/or data with a single entry point to fulfil all import, export, and transit-related regulatory requirements.

2. In cases where documentation and/or data requirements have already been received by the single window, the same documentation and/or data requirements shall not be requested by other authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

3. The Parties shall use information and communication technology to support the single window.

(7) A single window is defined as an electronic online facility that allows parties involved in trade and transport to lodge standardised documentation and/or data with a single entry point to fulfil all import, export, and transit-related regulatory requirements.

## **Article 5.9. Advance Rulings**

1. Each Party shall provide, through its customs administration and in accordance with provisions laid down by its domestic laws and regulations, for the issuance of written advance rulings to an importer in its territory or to an exporter or producer in the other Party's territory concerning tariff classification, questions arising from the application of the Customs Valuation Agreement, and the qualification of a good as an originating good under this Agreement.

2. Each Party shall adopt or maintain procedures for advance rulings, which shall:

- (a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may apply for an advance ruling before the importation of goods in question;
- (b) require that an applicant for an advance ruling provide a detailed description of the goods and all relevant information needed to issue an advance ruling;
- (c) provide that its customs administration or the relevant governmental authority may, within a specified period, request for the additional information required in order to have all the relevant information needed; (d) provide that any advance ruling be based on the facts and circumstances presented by the applicant, and any other relevant information in the possession of the decision-maker; and
- (e) provide that its customs administration shall issue the advance ruling expeditiously, and in any case within ninety (90) days of the receipt of all necessary information.

3. A Party may reject requests for an advance ruling where the:

- (a) additional information requested by it in accordance with subparagraph 2(c) is not provided within a specified time; or
- (b) facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review.

4. Each Party shall provide that advance rulings shall be in force from their date of issuance, or another date specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged.



5. A Party may modify or revoke an advance ruling upon a decision or administrative act that the ruling was based on an error of fact or law, the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact, or circumstances on which the ruling is based.

6. Where an importer claims that the treatment accorded to an imported good should be governed by an advance ruling, the customs administration or the relevant governmental authority may evaluate whether the facts and circumstances of the importation are consistent with the facts and circumstances upon which an advance ruling was based.

7. If a requester provides false information or omits relevant facts or circumstances relating to the advance ruling, or does not act in accordance with the ruling's terms and conditions, the importing Party may apply the appropriate measures.

### **Article 5.10. Customs Valuation**

The Parties shall determine the customs value of goods traded between them in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement.

### **Article 5.11. Temporary Admission of Goods**

1. Each Party shall allow goods, as specified in its domestic laws and regulations, to be brought into its customs territory conditionally relieved from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

2. Each Party shall, at the request of the person concerned and for reasons deemed valid by its customs administration, extend the time limit for temporary admission beyond the period initially fixed.

3. Each Party shall permit temporarily admitted goods to be exported through a customs office other than the one through which they were imported.

### **Article 5.12. Cooperation**

1. To the extent permitted by their domestic law, the customs administrations of the Parties should assist each other to ensure the smooth implementation and operation of this Chapter.

2. Subject to available resources, the customs administrations of the Parties may, as deemed appropriate, explore cooperation projects to:

- (a) further simplify and expedite customs procedures; and
- (b) share advance technical skills and experiences in usage of technology.

3. The Parties shall endeavour to establish mutual recognition of their Authorised Economic Operator programmes based on the World Customs Organization Framework of Standards to Secure and Facilitate Global Trade. 4. The Parties shall designate a contact point to carry out the above activities.

### **Article 5.13. Confidentiality**

Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information pursuant to this Chapter the disclosure of which it considers would:

- (a) be contrary to the public interest as determined by its legislation;
- (b) be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) impede law enforcement; or
- (d) prejudice the competitive position of the person providing the information.

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

### **Article 6.1. Objectives**

The objectives of this Chapter are to protect human, animal, or plant life or health in the territories of the Parties, and to provide a framework to address any bilateral sanitary and phytosanitary (hereinafter referred to as "SPS") matters so as to facilitate trade between the Parties.

## **Article 6.2. General Principles**

1. When implementing this Chapter, the Parties shall:

- (a) not apply their SPS measures in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade; and
- (b) ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence.

2. The principles set out in paragraph 1 shall be applied in accordance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 6.3. Consultation and Cooperation**

1. Each Party shall give favourable consideration to any reasonable request by the other Party about the SPS measures and shall provide relevant documentation within a reasonable time.

2. The Parties shall explore opportunities for further cooperation and collaboration on SPS matters of mutual interest consistent with the provisions of this Chapter.

3. The Parties shall give favourable consideration to accepting the equivalence of each other's SPS measures consistent with the purpose of this Chapter.

## **Article 6.4. Coordinators**

1. To facilitate the implementation of this Chapter and cooperation between the Parties, each Party shall designate a Coordinator, who shall be responsible for coordinating with competent SPS authorities in the Party's territory and communicating with the other Party's Coordinator in all matters pertaining to this Chapter. The Coordinator may also facilitate the establishment of Technical Working Groups, as mutually agreed by the Parties.

2. Upon entry into force of this Agreement, the Parties shall exchange information on the Coordinators and the competent SPS authorities. The Parties shall notify each other of any significant change on the structures, organisations and divisions of the competent SPS authorities and Coordinators.

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

## **Article 7.1. Objectives**

The objectives of this Chapter are to increase and facilitate trade between the Parties through collaborative efforts and ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade.

## **Article 7.2. Definitions**

Standards, technical regulations and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as "TBT Agreement").

## **Article 7.3. Scope and Coverage**

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

2. This Chapter does not apply to sanitary and phytosanitary measures as defined in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures which are covered by Chapter 6 (Sanitary and Phytosanitary Measures) and purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental

bodies which are covered by Chapter 12 (Government Procurement).

3. This Chapter applies to all goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties, regardless of the origin of those goods.

## **Article 7.4. International Standards**

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement (G/TBT/1/Rev.10), as revised from time to time, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies to ensure that international standards developed within such bodies that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.

## **Article 7.5. Trade Facilitation**

1. The Parties shall cooperate and jointly identify work in the field of standards, technical regulations, and conformity assessment procedures, with a view to facilitating market access. In particular, the Parties shall seek to identify initiatives that are appropriate for the particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as the harmonisation of technical regulations and standards, alignment to international standards, reliance on a supplier's declaration of conformity, and use of accreditations to qualify conformity assessment bodies.

2. At the request of the other Party, each Party shall encourage non-governmental bodies in its territory to cooperate with the non-governmental bodies in the territory of the other Party with respect to particular standards or conformity assessment procedures.

## **Article 7.6. Conformity Assessment Procedures**

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results, including:

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) voluntary arrangements between conformity assessment bodies from each Party's territory;
- (c) agreements on mutual acceptance of the results or certification of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
- (d) accreditation procedures for qualifying conformity assessment bodies;
- (e) government designation of conformity assessment bodies; and (f) recognition by one Party of the results of conformity assessment procedures performed in the other Party's territory on a unilateral basis for a sector nominated by that Party.

2. To this end, the Parties shall intensify their exchange of information on the variety of mechanisms to facilitate the acceptance of conformity assessment results or certification.

3. The Parties shall seek to ensure that conformity assessment procedures applied between the Parties facilitate trade by ensuring that they are no more restrictive than necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

4. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.

5. A Party shall, on the request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure performed in the territory of that other Party.

6. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.

## **Article 7.7. Information Exchange**

1. Each Party shall respond expeditiously to any enquiry from the other Party on standards, technical regulations or conformity assessment procedures relating to any goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties. The explanation provided shall be given in print or electronically in English.

2. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

## **Article 7.8. Confidentiality**

1. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

- (a) be contrary to its essential security interests;
- (b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;
- (c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (d) impede law enforcement; or
- (e) prejudice legitimate commercial interests of particular public or private enterprises.

2. In pursuance to Articles 7.6 (Conformity Assessment Procedures), Article 7.7 (Information Exchange), and Article 7.9 (Coordinators), a Party shall, in accordance with its applicable laws, protect the confidentiality of any proprietary information disclosed to it.

## **Article 7.9. Coordinators**

1. To facilitate the implementation of this Chapter and cooperation between the Parties, each Party shall designate a Coordinator as specified in Annex 7, who shall be responsible for coordinating with interested persons in the Party's territory and communicating with the other Party's Coordinator in all matters pertaining to this Chapter. The Coordinators' functions shall include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
- (d) exchanging information on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
- (e) considering and facilitating any sector-specific proposal a Party makes for further cooperation among governmental and non-governmental conformity assessment bodies;
- (f) facilitating the consideration of a request by a Party for the recognition of the results of conformity assessment procedures, including a request for the negotiation of an agreement, in a sector nominated by that Party;
- (g) facilitating cooperation in the areas of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
- (h) promptly consulting on any matter arising under this Chapter upon request by a Party; and
- (i) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments.

2. The Coordinators shall normally carry out their functions through agreed communication channels such as telephone, facsimile, emails, whichever is most expedient in the discharge of their functions.

## **Article 7.10. Sectoral Annexes**

The provisions of the Mutual Recognition Arrangement on Conformity Assessment between the Bureau of Standards, Metrology and Inspection and the Standards, Productivity and Innovation Board, (8) done on 28 November 2005, the Agreement between the Taipei Representative Office in Singapore and the Singapore Trade Office in Taipei on Information Relating to Consumer Product Safety, done on 19 October 2010, and the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment, as amended from time to time shall, mutatis mutandis, be incorporated into and form an integral part of this Agreement.

(8) For the avoidance of doubt, the relevant decisions of the Joint Committee established under Article 6 of the Mutual Recognition Arrangement on Conformity Assessment between the Bureau of Standards, Metrology and Inspection and the Standards, Productivity and Innovation Board made before such incorporation into the Agreement shall continue to have effect.

## Article 7.11. Final Provisions

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

# Chapter 8. Cross-border Trade In Services

## Article 8.1. Definitions

For the purposes of this Chapter:

**cross-border trade in services or cross-border supply of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party; but does not include the supply of a service in the territory of a Party by an investor of the other Party or a covered investment as defined in Article 9.1 (Definition).

**enterprise of a Party** means an enterprise organised or constituted under the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there; and

**service supplier** means a person of a Party that seeks to supply or supplies a service. (9)

(9) The Parties understand that seeks to supply or supplies a service has the same meaning as supplies a service as used in Article XXVIII(g) of GATS. The Parties understand that for the purposes of Articles 8.3 (National Treatment) and 8.4 (Market Access) of this Agreement, service suppliers has the same meaning as services and service suppliers as used in Articles XVII and XVI of GATS.

## Article 8.2. Scope and Coverage

1. (a) This Chapter applies to measures by a Party affecting cross-border trade in services by service suppliers of the other Party.

(b) Measures covered by subparagraph (a) include measures affecting:

- (i) the production, distribution, marketing, sale and delivery of a service;
- (ii) the purchase or use of, or payment for, a service;
- (iii) the access to and use of distribution, transport, or telecommunications networks and services in connection with the supply of a service;
- (iv) the presence in its territory of a service supplier of the other Party; and
- (v) the provision of a bond or other form of financial security as a The Parties understand that seeks to supply or supplies a service has the same meaning as supplies a service as used in Article XXVIII(g) of GATS. The Parties understand that for the purposes of Articles 8.3 (National Treatment) and 8.4 (Market Access) of this Agreement, service suppliers has the same meaning as services and service suppliers as used in Articles XVII and XVI of GATS. condition for the supply of a service.

(c) For the purposes of this Chapter, measures by a Party mean measures taken by:

- (i) central or local governments and authorities; and

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

2. Articles 8.4 (Market Access) and 8.7 (Domestic Regulation) also apply to measures by a Party affecting the supply of a service in its territory by an investor of the other Party or a covered investment as defined in Article 9.1 (Definition). (10)

3. This Chapter does not apply to:

(a) measures affecting the supply of financial services (11) as defined in paragraph 5(a) of the GATS Annex on Financial Services. The obligations of each Party with respect to measures affecting the supply of financial services shall be in accordance with its obligations under GATS, the GATS Annex on Financial Services and the GATS Second Annex on Financial Services, and subject to any reservations thereto. The said obligations are hereby incorporated into this Agreement;

(b) government procurement;

(c) air services, (12) including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services; and

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers.

4. This Chapter does not impose any obligation on a Party with respect to a natural person of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, and does not confer any right on that natural person with respect to that access or employment nor shall it apply to measures regarding citizenship or residence on a permanent basis.

5. (a) This Chapter does not apply to services supplied in the exercise of governmental authority within the territory of each respective Party.

(b) For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. (13)

(10) The parties understand that nothing in this paragraph, including this paragraph, is subject to Article 9.16 (Settlement of Disputes between a Party and an Investor of the other Party).

(11) For greater certainty, "the supply of services" shall mean the supply of services as defined in Article I:2 of GATS.

(12) For greater certainty, the term "air services" includes traffic rights.

(13) The sole fact of requiring a visa for natural person of the other Party shall not be regarded as nullifying or impairing benefits under a specific commitment.

### **Article 8.3. National Treatment**

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.

### **Article 8.4. Market Access**

A Party shall not adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) limit the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or

the requirement of an economic needs test;

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

(c) limit the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (14)

(d) limit 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; and

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

(14) This paragraph does not cover measures of a Party which limit inputs for the supply of services.

## **Article 8.5. Local Presence**

A Party shall not require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

## **Article 8.6. Non-conforming Measures**

1. Articles 8.3 (National Treatment), 8.4 (Market Access) and 8.5 (Local Presence) do not apply to:

(a) any existing non-conforming measure that is maintained by Singapore as set out in its Schedule to Annex 8B:I;

(b) any existing non-conforming measure that is maintained by Chinese Taipei at:

(i) the central level of government as set out in its Schedule to Annex 8B:I; or

(ii) a local level of government on the administration of self-governing matters under its Local Government Act;

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

(d) an amendment to any non-conforming measure referred to in subparagraphs (a) and (b) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.3 (National Treatment), 8.4 (Market Access) and 8.5 (Local Presence).

2. Articles 8.3 (National Treatment), 8.4 (Market Access), and 8.5 (Local Presence) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities as set out in its Schedule to Annex 8B:II.

## **Article 8.7. Domestic Regulation**

1. Where a Party requires authorisation for the supply of a service, the Party's competent authorities shall, within a reasonable period of time after the submission of an application is considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application. This obligation shall not apply to authorisation requirements that are within the scope of paragraph 2 of Article 8.6 (Non-Conforming Measures).

2. With a view to ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties shall endeavour to ensure, as appropriate, for individual sectors, that such measures are:

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

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

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

3. If the results of the negotiations related to Article VI:4 of the GATS (or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate) enter into effect for the Parties, this Article shall be amended, as appropriate, after consultations between the Parties, to bring those results into effect under this Agreement. The Parties agree to coordinate on such negotiations, as appropriate.

## **Article 8.8. Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of services suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country or customs territory,

including the other Party and non-Parties. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country or customs territory concerned or may be accorded autonomously.

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

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Party, if the other Party is interested, to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries or customs territories in the application of its standards or criteria for the authorisation, licensing or certification of services suppliers, or a disguised restriction on trade in services.

## **Article 8.9. Transfers and Payments**

1. Each Party shall permit all transfers and payments relating to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit such transfers and payments relating to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options, or derivatives;
- (c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, (15) public retirement or compulsory savings schemes.

4. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are consistent with such Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 16.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund.

(15) For greater certainty, social security schemes include compulsory health insurance schemes.

## **Article 8.10. Denial of Benefits**

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party if the service is being supplied by an enterprise that has no substantive business operations in the territory of the other Party and that is owned or controlled by persons of a non-Party or the denying Party. For greater certainty, social security schemes include compulsory health insurance schemes.

# **Chapter 9. Investment**

## **Article 9.1. Definition**

For the purposes of this Chapter:

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



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

**disputing parties** means the claimant and the respondent; disputing party means either the claimant or the respondent;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

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

**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement of the International Monetary Fund and any amendments thereto;

**ICC Arbitration Rules** means the Rules of Arbitration of the International Chamber of Commerce, in force as from 1 January 2012;

**investment** means every kind of asset, owned or controlled, directly or indirectly, by an investor, that has the characteristics of an investment. (16) Forms that an investment may take include but are not limited to: (a) an enterprise; (b) shares, stock, and other forms of equity participation in an enterprise, including rights derived therefrom; Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk. (c) bonds, debentures, and loans and other debt instruments, (17) including rights derived therefrom; (d) futures, options, and other derivatives; (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; (f) claims to money or to any contractual performance related to a business and having an economic value; (g) intellectual property rights and goodwill; (h) licences, authorisations, permits, and similar rights conferred pursuant to applicable domestic laws, including any concession to search for, cultivate, extract or exploit natural resources<sup>18</sup>; and (i) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

**investor of a Party** means:

(a) a Party;

(b) an enterprise of a Party; or

(c) a natural person who resides in the territory of a Party or elsewhere and who under the law of that Party: (i) is a citizen of that Party; or (ii) has the right of permanent residence in that Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

**Local Government Act** means the Local Government Act, amended and promulgated by the authorities of Chinese Taipei on 3 February 2010;

**New York Convention** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at the United Nations in New York on 10 June 1958;

**respondent** means the Party that is a party to an investment dispute;

**return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income. For the purposes of the definition of "investment", returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

(15) For greater certainty, social security schemes include compulsory health insurance schemes.

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

(17) For the purpose of this Chapter, loans and other debt instruments described in (c) and claims to money or to any contractual performance described in (f) of this Article refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

(18) The term investment does not include an order or judgment entered in a judicial or administrative action

## **Article 92. Scope and Coverage**

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

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Article 9.9 (Performance Requirements), all investments in the territory of the Party.

2. This Chapter shall not apply to services supplied in the exercise of governmental authority within the territory of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

3. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail over this Chapter to the extent of the inconsistency.

4. The requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

5. For greater certainty, the provisions of this Chapter do not impose any obligation on either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

## **Article 9.3. Financial Services (19)**

1. This Chapter shall not apply to measures adopted or maintained by a Party in respect of investors of the other Party, and investments of such investors in financial institutions (20) in the former Party's territory, except for the following provisions:

(a) Article 9.6 (Special Formalities and Information Requirements);

(b) Article 9.7 (Minimum Standard of Treatment);

(c) Article 9.8 (Compensation for Losses);

(d) Article 9.12 (Expropriation);

(e) Article 9.13 (Transfers);

(f) Article 16.5 (Restrictions to Safeguard the Balance of Payments);

(g) Article 9.14 (Denial of Benefits);

(h) Article 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party); (i) Article 9.17 (Savings Clause); and

(j) Annex 9. The Parties reaffirm their commitments under the GATS with respect to financial services, which shall be incorporated into this Chapter.

2. For the purposes of paragraph 1, Article 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party) shall apply solely for claims that a Party has breached Articles 9.12 (Expropriation), 9.13 (Transfers), and 9.14 (Denial of Benefits).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security;

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities; or

(c) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

except that the provisions referred to in paragraph 1 shall apply if a Party allows any of the activities or services referred to in subparagraphs (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. Notwithstanding Article 9.13 (Transfers), a Party may prevent or limit transfers by a financial institution or financial services supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory, and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or financial services suppliers. This paragraph does not prejudice

any other provision of this Agreement that permits a Party to restrict transfers.

5. Nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions. 6. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

(19) For the purposes of this Article, financial services is as defined in subparagraph 5(a) of the Annex on Financial Services in the GATS.

(20) Financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located.

## **Article 9.4. Prudential Measures**

Notwithstanding any other provisions of this Chapter, each Party may adopt or maintain measures for prudential reasons, such as: the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial institution or financial services supplier; the maintenance of the safety, soundness, integrity or financial responsibility of financial services suppliers; and ensuring the integrity and stability of a Party's financial system. Such measures shall not be used as a means of avoiding a Party's obligations under the provisions referred to in Article 9.3 (Financial Services).

## **Article 9.5. National Treatment**

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

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

## **Article 9.6. Special Formalities and Information Requirements**

1. Nothing in Article 9.5 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as residency requirements or requirements for covered investments to be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 9.5 (National Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law within its territory.

## **Article 97. Minimum Standard of Treatment**

1. Each Party shall accord to covered investments treatment in accordance with customary international law minimum standard of treatment of aliens, (21) including fair and equitable treatment and full protection and security.

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond what is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights.

(a) The obligation to provide "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or

administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

(b) The obligation to provide "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article. Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

(21) Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

## **Article 9.8. Compensation for Losses**

1. Notwithstanding subparagraph 4(b) of Article 9.11 (Non-Conforming Measures), investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolt, insurrection, riot, or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 9.13 (Transfers).

2. Paragraph 1 does not apply to existing measures relating to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party, that would be inconsistent with Article 9.5 (National Treatment) but for Article 9.11 (Non-Conforming Measures).

## **Article 9.9. Performance Requirements**

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking: (22)

(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 in its territory, or to purchase goods from persons in its territory;

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

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

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

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

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

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

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

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

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

3. (a) For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party from, in connection with the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, imposing or enforcing a requirement or enforcing a commitment or undertaking to employ or train workers in its territory, provided that such employment or training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

(b) For greater certainty, nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, employ or train workers, construct or expand particular facilities, or carry out research and development, in its territory.

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

(i) when a Party authorizes use of an intellectual property right in accordance with Article 31 (23) of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "TRIPS Agreement"), or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to The reference to "Article 31" includes footnote 7 to Article 31. remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws. (24)

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

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

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

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

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

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

(23) The reference to "Article 31" includes footnote 7 to Article 31.

(24) The Parties note that a patent does not necessarily confer market power.

## **Article 9.10. Senior Management and Boards of Directors**

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

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality/citizenship, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor of the other Party to exercise control over its investment.

## **Article 9.11. Non-conforming Measures**

1. Articles 9.5 (National Treatment), 9.9 (Performance Requirements) and 9.10 (Senior Management and Board of Directors) do not apply to:

(a) any existing non-conforming measure that is maintained by Singapore as set out in its Schedule to Annex 8B:I;

(b) any existing non-conforming measure that is maintained by Chinese Taipei at:

(i) the central level of government as set out in its Schedule to Annex 8B:I; or  
(ii) a local level of government on the administration of self-governing matters under its Local Government Act;  
(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or  
(d) an amendment to any non-conforming measure referred to in subparagraphs The Parties note that a patent does not necessarily confer market power. (a) and (b) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 9.5 (National Treatment), 9.9 (Performance Requirements) and 9.10 (Senior Management and Board of Directors).

2. Articles 9.5 (National Treatment), 9.9 (Performance Requirements) and 9.10 (Senior Management and Board of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex 8B:II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex 8B:II, require an investor of the other Party, by reason of its nationality/citizenship, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 9.5 (National Treatment) and 9.10 (Senior Management and Boards of Directors) do not apply to: (a) government procurement; or  
(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party.

5. Articles 9.5 (National Treatment) do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that agreement. (25)

(25) Article 9.12 (Expropriation) is to be interpreted in accordance with Annex 9.

## **Article 9.12. Expropriation**

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") a covered investment unless such a measure is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the Article 9.12 (Expropriation) is to be interpreted in accordance with Annex 9. expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 9.13 (Transfers) and made without delay.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land shall be for a purpose and upon payment of compensation in accordance with the applicable domestic legislation of the expropriating Party. (26)

4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

(26) In the case of Singapore, the applicable legislation is the Land Acquisition Act (Cap. 152), and any amendments thereto.

## **Article 9.13. Transfers**

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

Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or

complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Article 9.12 (Expropriation) and Article 9.8 (Compensation for Losses); and

(f) payments arising under Article 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party).

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

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

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

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

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, (27) public retirement or compulsory savings schemes.

5. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are consistent with such Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 16.5 (Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund. 26 In the case of Singapore, the applicable legislation is the Land Acquisition Act (Cap. 152), and any amendments thereto.

(27) For greater certainty, social security schemes include compulsory health insurance schemes.

## **Article 9.14. Denial of Benefits**

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 such Party and to investments of such an investor where the Party establishes that the enterprise is owned or controlled by persons of a non-Party, or of the denying Party, and has no substantive business operations in the territory of the other Party.

## **Article 9.15. Subrogation**

1. If a Party (or any agency, institution, statutory body or corporation designated by it) makes a payment to any of its investors under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party. For greater certainty, social security schemes include compulsory health insurance schemes.

## **Article 9.16. Settlement of Disputes between a Party and an Investor of the other Party**

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment.

2. The disputing parties shall initially seek to resolve the dispute by consultations and negotiations. Such consultations and

negotiations shall be initiated by a written request for consultations and negotiations delivered by the claimant to the respondent.

3. Where the dispute cannot be resolved as provided for under paragraph 2 within six (6) months from the date of a written request for consultations and negotiations, unless the disputing parties agree otherwise, the claimant may submit the dispute:

(a) under the ICC Arbitration Rules;

(b) under the UNCITRAL Arbitration Rules; or

(c) to any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree. For the avoidance of doubt, the claimant may submit the claim on its own behalf, or on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly.

4. Each Party hereby consents to the submission of a dispute to arbitration under paragraph 3 in accordance with the provisions of this Article, conditional upon:

(a) the submission of the dispute to such arbitration taking place within three years of the time at which the claimant became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the claimant or its investment;

(b) the claimant not being an enterprise of the respondent until the claimant refers the dispute for arbitration pursuant to paragraph 3;

(c) the claimant providing written notice, which shall be submitted at least thirty (30) days before the claim is submitted, to the respondent of its intent to submit the dispute to such arbitration and which:

(i) states the name and address of the claimant and, where a dispute is submitted on behalf of an enterprise, the name, address, and place of constitution of the enterprise;

(ii) nominates either subparagraph 3(a), 3(b) or 3(c) as the forum for dispute settlement; (iii) waives its right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 9) before any of the other dispute settlement fora referred to in paragraph 3, or before any administrative tribunal or court under the law of either Party, in relation to the matter under dispute; and (iv) briefly summarises the alleged breach of the respondent under this Chapter (including the provisions alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the claimant or its investment by reason of that breach; and

(d) the claimant consenting to the submission of the dispute in accordance with the provisions of this Article.

5. The consent under paragraph 4 and the submission of a claim to arbitration under this Article shall satisfy the requirements of Article II of the New York Convention for an "agreement in writing".

6. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. If an arbitral tribunal has not been established within ninety (90) days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of the Permanent Court of Arbitration, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. Nevertheless, the Secretary-General of the Permanent Court of Arbitration, when appointing the chairman, shall ensure that he or she is a citizen or permanent resident of neither of the Parties.

7. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of either Party or a State that is a party to the New York Convention.

8. The tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of customary international law.

9. Neither Party shall prevent the claimant from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the respondent, prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 3, for the preservation of its rights and interests.

10. Neither Party shall espouse a claim or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. The espousal of a claim, for the purposes of this paragraph, shall not include informal exchanges between the Parties for the sole purpose of facilitating a settlement of the



dispute.

11. A claim that is submitted for arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

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

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

13. Any arbitral award shall be final and binding upon the disputing parties. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

## **Article 9.17. Savings Clause**

1. For fifteen (15) years from the date of termination of this Agreement, the following provisions (including the relevant Annexes and Appendices) shall continue to apply to covered investments in existence at the date of termination, and without prejudice to the application thereafter of the rules of general international law:

- (a) the provisions of this Chapter;
- (b) the provisions of Chapter 15 (Dispute Settlement);
- (c) the provisions of Chapter 16 (General Exceptions); and (d) such other provisions in the Agreement as may be necessary for or consequential to the application or interpretation of this Chapter.

2. For the avoidance of doubt, paragraph 1 shall not apply to the establishment, acquisition or expansion of investments after the date of termination.

## **Chapter 10. Competition**

### **Article 10.1. Purpose and Definitions**

1. The purpose of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices.

2. For the purposes of this Chapter, anti-competitive practices means business conduct or transactions that adversely affect competition, such as:

- (a) abuse of market power;
- (b) anti-competitive mergers and acquisitions; and
- (c) anti-competitive horizontal arrangements between competitors.

### **Article 10.2. Cooperation**

1. The Parties recognise the importance of cooperation and coordination to further effective competition law and policy development and agree to cooperate on these matters in accordance with the provisions of this Chapter.

2. The Parties will seek to enhance a better understanding, communication and cooperation between their competition authorities responsible for the enforcement of their generic competition laws in relation to the issues to which this Chapter refers.

### **Article 10.3. Notifications**

1. Each Party shall notify the other Party of an enforcement activity regarding an anticompetitive practice if it: (a) considers that the enforcement activity is liable to substantially affect the other Party's trade interests; (b) relates to restrictions on competition which are liable to have a direct and substantial effect in the territory of the other Party; or (c) concerns anti-competitive acts taking place principally in the territory of the other Party.

2. Notification shall take place at an early stage of the procedure, provided that this is not contrary to the Parties'

competition laws and does not affect any investigation being carried out.

## **Article 10.4. Transparency and Information Requests**

1. The Parties recognise the value of transparency of their competition policies.
2. Each Party, at the request of the other Party, shall make available public information concerning the enforcement of its measures proscribing anti-competitive business conduct.
3. On request, each Party shall make available to the other Party public information concerning exemptions provided under its competition laws. Such a request shall specify the particular goods and markets of interest, and indicate whether the exemption restricts trade or investment between the Parties.
4. Information or documents exchanged between the Parties in relation to any consultation conducted pursuant to the provisions of this Chapter shall be kept confidential. No Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party that provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made. The Parties may agree to the public release of information that they do not consider confidential.

## **Article 10.5. Consultations**

To foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, at the request of the other Party, enter into consultations regarding representations made by the other Party. In its request, the Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the other Party.

## **Article 10.6. Public Enterprises and Designated Monopolies**

1. Nothing in this Chapter prevents a Party from designating or maintaining public or private monopolies according to its respective laws.
2. With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Parties shall ensure that, following the date of entry into force of this Agreement, no measure is adopted or maintained that distorts trade in goods or services among the Parties, which is contrary to this Agreement and contrary to the Parties' interests, and that such enterprises shall be subject to the rules of competition insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

## **Article 10.7. Dispute Settlement**

1. Nothing in this Chapter permits a Party to challenge any decision made by a competition authority of the other Party in enforcing the applicable competition laws and regulations.
2. No Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

# **Chapter 11. Electronic Commerce**

## **Article 11.1. General**

The Parties recognise the economic growth and opportunity that electronic commerce provides, and the importance of avoiding barriers to its use and development.

## **Article 11.2. Electronic Supply of Services**

For greater certainty, the Parties affirm that measures affecting the supply of a service using electronic means fall within the scope of the obligations contained in the relevant provisions of Chapters 8 (Cross-Border Trade in Services) and 9 (Investment) subject to any exceptions or non-conforming measures set out in this Agreement, which are applicable to such

obligations.

### **Article 11.3. Customs Duties and Internal Taxes**

1. Neither Party may impose customs duties on electronic transmission between the Parties.
2. For the purposes of determining applicable customs duties, each Party shall determine the customs value of an imported carrier medium bearing a digital product based on the cost or value of the carrier medium alone, without regard to the cost or value of the digital product stored on the carrier medium.
3. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from imposing internal taxes, directly or indirectly, on digital products, provided they are imposed in a manner consistent with this Agreement.

### **Article 11.4. Non-discriminatory Treatment**

1. Neither Party may accord less favourable treatment to some digital products transmitted electronically than it accords to other like digital products transmitted electronically:

(a) on the basis that:

- (i) the digital products receiving less favourable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms outside its territory; or
- (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or non-Party; or

(b) so as otherwise to afford protection to the other like digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in its territory.

2. Neither Party may accord less favourable treatment to digital products transmitted electronically:

- (a) that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party than it accords to like digital products transmitted electronically that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or
- (b) whose author, performer, producer, developer, or distributor is a person of the other Party than it accords to like digital products transmitted electronically whose author, performer, producer, developer, or distributor is a person of a non-Party.

3. Paragraphs 1 and 2 do not apply to any non-conforming measure adopted or maintained in accordance with Articles 8.6 (Non-Conforming Measures) and 9.11 (Non-Conforming Measures).

### **Article 11.5. Authentication and Electronic Signatures**

1. Neither Party may:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction;
- (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication; or
- (c) deny a signature legal validity solely on the basis that it is an electronic signature.

2. Notwithstanding paragraph 1, the authorities represented by a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's laws and regulations, provided the requirement:

- (a) serves a legitimate governmental objective; and
- (b) is substantially related to achieving that objective.

### **Article 11.6. Paperless Trade Administration**

1. Each Party shall endeavour to make all trade administration documents available to the public in electronic form.

2. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents.

## Article 11.7. Cooperation

Recognising the global nature of electronic commerce, the Parties affirm the importance of:

- (a) working together to promote the use of electronic commerce by small and medium enterprises;
- (b) sharing information and experiences on laws, regulations, and programs in the sphere of electronic commerce, including those related to data privacy, consumer protection and promoting confidence in electronic commerce and electronic signatures;
- (c) encouraging the private sector to adopt self-regulation, including through codes of conduct, model contracts, guidelines, and enforcement mechanisms that foster electronic commerce; and
- (d) actively participating in bilateral and multilateral fora to promote the development of electronic commerce.

## Article 11.8. Definitions

For the purposes of this Chapter:

**carrier medium** means any physical object capable of storing the digital codes that form a digital product by any method now known or later developed, and from which a digital product can be perceived, reproduced, or communicated, directly or indirectly, and includes, but not limited to, an optical medium, a floppy disk, and a magnetic tape;

**digital products** means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, regardless of whether they are fixed on a carrier medium or transmitted electronically; (28)

**electronic authentication** means the process of testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

**electronic signature** means the meaning set out in its domestic laws and regulations by each Party;

**electronic** means means employing computer processing; and electronic transmission or transmitted electronically means the transfer of digital products using any electromagnetic or photonic means.

(28) For greater certainty, digital products do not include digitised representation of financial instruments, including money.

# Chapter 12. Government Procurement

## Article 12.1. General

1. The Parties reaffirm their rights and obligations under the WTO Agreement on Government Procurement, as amended by the Decision on the Outcomes of the Negotiations Under Article XXIV:7 of the Agreement on Government Procurement, made on 30 March 2012 (hereinafter referred to as "GPA"), and their interest in further expanding bilateral trading opportunities in each Party's government procurement market.
2. The Parties recognise their shared interest in promoting international liberalisation of government procurement markets in the context of the rules-based international trading system. The Parties shall continue to cooperate in the review under Article XXII:6-10 of the GPA and on procurement matters in the APEC and other appropriate international fora.
3. Nothing in this Chapter shall be construed to derogate from either Party's rights or obligations under the GPA.
4. In accordance with Article IV:7 of the GPA, the provisions of this Chapter do not affect the rights and obligations provided for in Chapter 3 (Trade in Goods), Chapter 8 (Cross-Border Trade in Services), and Chapter 9 (Investment).

## Article 12.2. Incorporation of Gpa Provisions

1. The Parties shall apply the provisions of Articles I:(a), (c), (e)-(u), II-III, IV:1(a), 2-7, VI:1-2(b), 3, VII-XV, XVI:1-3, XVII-XVIII, the Agreement Notes, and Appendices II-IV of the GPA to all covered procurement. To that end, these GPA Articles, Notes and Appendices are incorporated into and made part of this Chapter, mutatis mutandis.
2. For the purposes of the incorporation of the GPA under paragraph 1, the term:
  - (a) Agreement in the GPA means Chapter;
  - (b) Appendix I in the GPA means Annex 12A;
  - (c) Appendix II, III or IV in GPA means Annex 12B; (d) Annex 1 in the GPA means Schedule A of Annex 12A;
  - (e) Annex 2 in the GPA means Schedule B of Annex 12A;

(f) Annex 3 in the GPA means Schedule C of Annex 12A;  
(g) Annex 4 in the GPA means Schedule D of Annex 12A;  
(h) Annex 5 in the GPA means Schedule E of Annex 12A;  
(i) Annex 6 in the GPA means Schedule F of Annex 12A;  
(j) Annex 7 in the GPA means Schedule G of Annex 12A;  
(k) any other Party, any Party, Committee or another Party means the other Party; and (l) one of the WTO languages in Article VII:3 means the English language.

3. If the GPA is amended or is superseded by another agreement, the Parties shall amend this Chapter, as appropriate, after consultations.

### **Article 12.3. Modifications and Rectifications to Coverage**

1. Where a Party proposes to make minor amendments, rectifications or other modifications of a purely formal or minor nature to its Schedules to Annex 12A, it shall notify the other Party. Such amendments, rectifications or modifications shall become effective thirty (30) days from the date of notification. The other Party shall not be entitled to compensatory adjustments.

2. Where a Party proposes to make a modification to its Schedules to Annex 12A when the business or commercial operations or functions of any of its entities or part thereof is constituted or established as an enterprise with a legal entity separate and distinct from the government of a Party, regardless of whether or not the government holds any shares or interest in such a legal entity, it shall notify the other Party. The proposed removal of such entity or modification shall become effective thirty (30) days from the date of notification. The other Party shall not be entitled to compensatory adjustments.

3. Where a Party proposes to make a modification for reasons other than those stated in paragraphs 1 and 2, it shall notify the other Party and provide appropriate compensatory adjustments in order to maintain a level of coverage comparable to that existing prior to the modification. The proposed modification shall become effective thirty (30) days from the date of notification.

### **Article 12.4. Contact Points**

Each Party shall designate a contact point as specified in Annex 12C to facilitate communications between the Parties on any matter covered by this Chapter.

## **Chapter 13. Intellectual Property Cooperation**

### **Article 13.1. General Objectives and Principles**

1. The Parties, recognising the importance of intellectual property as a factor of each Party's economic competitiveness in the global economy, undertake to develop and promote mutually beneficial cooperation between the Parties in this area.

2. Recalling the contributions achieved in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, the areas of the cooperation may include:

- (a) copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information, and control of anti-competitive practices in contractual licences;
- (b) endeavouring to facilitate industrial property exploitation with each Party's private sector industries, in particular small and medium enterprises; and
- (c) the development of professional skills of the intellectual property industry in each Party through information sharing and exchange.

### **Article 13.2. Forms of Cooperation**

The forms of the cooperation pursuant to Article 13.1 (General Objectives and Principles) may include:

- (a) exchanging publicly available published documents and information by each Party's respective intellectual property office;
- (b) exchanging experience and information on areas such as intellectual property education and awareness, collective management organisations and e-filing systems;

- (c) jointly collaborating in the organisation of seminars, symposia or meetings related to intellectual property subjects under the framework of the WTO or APEC;
- (d) exchanging information on intellectual property conferences, seminars and workshops organised by each respective Party. Each Party may, as appropriate, invite the other Party to participate;
- (e) endeavouring to facilitate linkages and dialogue between IP Academy (Singapore) and Taiwan Intellectual Property Training Academy to carry out cooperation activities as appropriate; and
- (f) such other activities and initiatives as may be mutually determined by the Parties from time to time.

### **Article 13.3. Terms of Cooperation**

All cooperation referred to in Article 13.1 (General Objectives and Principles) shall be carried out on terms to be agreed by the Parties.

### **Article 13.4. Resources and Financing**

1. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources.
2. Expenses incurred as a result by any Party to undertake cooperation activities in this Chapter shall be borne by the Party concerned, unless otherwise agreed.

## **Chapter 14. Transparency**

### **Article 14.1. Definitions**

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

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (b) a ruling that adjudicates with respect to a particular act or practice.

### **Article 14.2. Publication**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall in accordance with its domestic laws, regulations and procedures: (a) publish in advance any such laws, regulations, procedures, and administrative rulings that it proposes to adopt; and (b) provide interested persons and the other Party a reasonable opportunity to comment on such measures.

### **Article 14.3. Notification and Provision of Information**

1. To the maximum extent possible, each Party shall notify the other Party of any measure that, the Party considers, may materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement.
2. Upon request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any measure, whether or not the other Party has been previously notified of that measure.
3. Any notification, or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.
4. Any notification, request, or information under this Article shall be provided to the other Party through the relevant contact points.

### **Article 14.4. Administrative Proceedings**

With a view to administering in a consistent, impartial and reasonable manner all measures referred to in Article 14.2 (Publication), each Party shall ensure that in its administrative proceedings applying such measures to particular persons, goods or services of the other Party in specific cases that:

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

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

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

## **Article 14.5. Review and Appeal**

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

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

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

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

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

## **Chapter 15. Dispute Settlement**

### **Article 15.1. Cooperation**

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

### **Article 15.2. Scope and Coverage**

1. Except as otherwise provided in this Agreement or as the Parties otherwise agree in writing, the provisions of this Chapter shall apply with respect to the avoidance and settlement of all disputes between the Parties regarding the implementation, interpretation or application of this Agreement or wherever a Party considers that:

(a) a measure of the other Party is inconsistent with the obligations of this Agreement;

(b) the other Party has otherwise failed to carry out its obligations under this Agreement; or

(c) a measure of the other Party causes nullification or impairment of any benefit accruing to it directly or indirectly under Chapters 3 (Trade in Goods), 4 (Rules of Origin), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade), and 8 (Cross-Border Trade in Services).

2. Unless otherwise agreed by the Parties, the time frames and procedural rules set out in this Chapter and its Annex shall apply to all disputes governed by this Chapter.

3. Findings, determinations and recommendations of an arbitral panel cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by the relevant authorities within the territory of a Party. When an arbitral panel has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance within its territory.

5. The Parties and the arbitral panel appointed under this Chapter shall interpret and apply the provisions of this Agreement in the light of the objectives of this Agreement and in accordance with customary rules of public international law.

6. Notwithstanding paragraph 1, any disputes arising from Chapters 10 (Competition) and 13 (Intellectual Property Cooperation) shall not be subject to the provisions of this Chapter save that where there are provisions on consultations elsewhere in this Agreement, Articles 15.4 (Consultations) and 15.5 (Good Offices, Conciliation or Mediation) shall apply, mutatis mutandis.

### **Article 15.3. Choice of Forum**

1. Disputes regarding any matter arising under both this Agreement and the WTO Agreement, any agreement negotiated thereunder, or any successor agreement, may be settled in the forum selected by the complaining Party.

2. Once dispute settlement procedures have been initiated under Article 15.6 (Request for an Arbitral Panel) or dispute settlement proceedings have been initiated under the WTO Agreement, the forum selected shall be used to the exclusion of the other, unless substantially separate and distinct rights or obligations under different international agreements are in dispute.

3. For the purposes of this Article, dispute settlement proceedings under the WTO Agreement are deemed to be initiated upon a request for a panel by a Party.

### **Article 15.4. Consultations**

1. A Party may request in writing consultations with the other Party on any matter falling under Article 15.2 (Scope and Coverage) of this Chapter.

2. If a request for consultation is made, the Party to which the request is made shall reply to the request within ten (10) days after the date of its receipt and shall enter into consultations within a period of no more than twenty (20) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

3. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

- (a) unless otherwise agreed by the Parties, keep consultations confidential;
- (b) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and
- (c) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

### **Article 15.5. Good Offices, Conciliation or Mediation**

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

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the Parties during these proceedings, shall be confidential, and without prejudice to the rights of either Party in any further proceedings under the provisions of this Chapter or any other proceedings before a forum selected by the Parties.

3. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral panel established under Article 15.6 (Request for an Arbitral Panel).

### **Article 15.6. Request for an Arbitral Panel**

1. A Party may request in writing for the establishment of an arbitral panel if the matter has not been resolved pursuant to Article 15.4 (Consultations), within sixty (60) days after the date of receipt of the request for consultations.

2. A request for arbitration shall give the reason for the complaint including the identification of the measure at issue and an indication of the legal basis of the complaint.



3. Upon delivery of the request, an arbitral panel shall be established.

4. Unless otherwise agreed by the Parties, an arbitral panel shall be established and perform its functions in accordance with the provisions of this Chapter.

## **Article 15.7. Composition of Arbitral Panels**

1. The arbitral panel referred to in Article 15.6 (Request for an Arbitral Panel) shall consist of three (3) members.

2. Each Party shall appoint a member within thirty (30) days of the receipt of the request under Article 15.6 (Request for an Arbitral Panel).

3. If a Party fails to make such an appointment (hereinafter referred to as "the defaulting Party") within such period:

(a) the defaulting Party shall, within fifteen (15) days from the expiry of the time referred to in paragraph 2, select a member from the roster established under subparagraph (b) of Article 15.8 (Establishment of Roster) to serve as the member appointed by the defaulting Party;

(b) if the defaulting Party fails to select a member under subparagraph (a), a member shall be selected by lot drawn by the other Party from the individuals nominated by the defaulting Party pursuant to subparagraph (b) of Article 15.8 (Establishment of Roster), to serve as the member appointed by the defaulting Party.

4. The Parties shall jointly appoint the third member, who shall serve as the chair of the arbitral panel. If the Parties are unable to agree on the chair of the arbitral panel within thirty (30) days after the date on which the second member has been appointed, the chair shall be selected by lot from the roster established under subparagraph (a) of Article 15.8 (Establishment of Roster).

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

6. If a member of the arbitral panel appointed under this Article becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original member and the successor shall have all the powers and duties of the original member. In such a case, any time period applicable to the arbitral panel proceedings shall be suspended for a period beginning on the date when the original member becomes unable to act and ending on the date when the new member is appointed.

7. Any person appointed as a member of the arbitral panel shall have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising from international trade agreements. A member shall be chosen strictly on the bases of objectivity, integrity, reliability, sound judgment and independence, and shall not accept instructions from any Party. He or she shall conduct himself or herself on the same bases throughout the course of the arbitration proceedings. All members of the arbitral panel shall comply with the Rule of Conduct for panellists established under the Understanding of Rules and Procedures Governing the Settlement of Disputes, which is part of the WTO Agreement. If a Party believes that a member is in violation of the bases stated above, the Parties shall consult and if they agree, the member shall be removed and a new member shall be appointed in accordance with this Article. Additionally, the chair shall not be a citizen of, have his or her usual place of residence in the territory of, or be employed by, either Party.

## **Article 15.8. Establishment of Roster**

The Parties shall establish within one (1) year of the date of entry into force of this Agreement and maintain: (a) a roster of five (5) individuals, by mutual agreement of the Parties, who are willing and able to serve as the chair of the arbitral panel referred to in paragraph 4 of Article 15.7 (Composition of Arbitral Panels); and (b) a roster of at least ten (10) individuals, with each Party nominating at least five (5) individuals, who are willing and able to serve as members of the arbitral panel referred to in paragraph 3 of Article 15.7 (Composition of Arbitral Panels), who shall meet the criteria set out in paragraph 7 of Article 15.7 (Composition of Arbitral Panels). The Parties may, by mutual agreement, change or include new individuals on the roster established pursuant to subparagraph (a), whenever they consider it necessary to do so. Either Party may change or include new individuals on the roster established pursuant to subparagraph (b), whenever the Party considers it necessary to do so.

## **Article 15.9. Suspension and Termination of Proceedings**

The Parties may agree to suspend, subject to such terms as the Parties may consider appropriate, or terminate the

proceedings before an arbitral panel at any time by jointly notifying the chair to this effect.

### **Article 15.10. Proceedings of Arbitral Panels**

1. Unless the Parties agree otherwise, the arbitral panel shall follow the model rules of procedure in Annex 15, which shall ensure:

- (a) that an arbitral panel shall meet in closed session;
  - (b) a right to at least one hearing before the arbitral panel;
  - (c) an opportunity for each Party to provide initial and rebuttal submissions;
  - (d) that each Party's written submissions, written versions of its oral statement, and written response to a request or question from the arbitral panel may be made public after they are submitted, subject to subparagraph (f);
  - (e) a reasonable opportunity for each Party to submit comments on the initial report presented pursuant to paragraph 3 of Article 15.12 (Initial Report); and
  - (f) the protection of confidential information.
2. The arbitral panel may, after consulting the Parties, adopt additional rules of procedure not inconsistent with the model rules of procedure in Annex 15.

### **Article 15.11. Information and Technical Advice**

1. Upon request of a Party, or on its own initiative, the arbitral panel may seek information and technical advice from any person or body that it deems appropriate. Any information and technical advice so obtained shall be made available to the Parties.

2. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral panel may request advisory reports in writing from an expert or experts. The arbitral panel may, at the request of a Party or on its own initiative, select, in consultation with the Parties, scientific or technical experts who shall assist the arbitral panel during its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral panel.

### **Article 15.12. Initial Report**

1. Unless the Parties otherwise agree, the arbitral panel shall base its report on the relevant provisions of this Agreement, on the submissions and arguments of the Parties, and on any information before it pursuant to Article 15.11 (Information and Technical Advice).

2. Unless the Parties otherwise agree, the arbitral panel shall, within ninety (90) days after the last member is selected, present to the Parties an initial report containing:

- (a) findings of law and/or fact together with reasons;
- (b) its determination as to the implementation, interpretation or application of this Agreement or whether the measure at issue is inconsistent with the obligations of this Agreement or whether a Party has otherwise failed to carry its obligations under this Agreement or whether the measure at issue causes nullification or impairment of any benefit accruing to a Party under Chapters 3 (Trade in Goods), 4 (Rules of Origin), 6 (Sanitary and Phytosanitary Measures), 7 (Technical Barriers to Trade) and 8 (Cross-Border Trade in Services) of this Agreement, or any other determination requested in the terms of reference; and (c) its recommendations for the resolution of the dispute.

3. The Parties may submit written comments on the initial report within fourteen (14) days of its presentation or such other period as the Parties may agree.

4. In case that such written comments by the Parties are received as provided for in paragraph 3, the arbitral panel, on its own initiative or at the request of a Party, may reconsider its report and make any further examination that it considers appropriate after considering such written comments.

### **Article 15.13. Final Report**

1. The arbitral panel shall present to the Parties a final report covering the matters set out in paragraph 2 of Article 15.12 (Initial Report), within thirty (30) days of presentation of the initial report, unless the Parties otherwise agree.

2. The final report of the arbitral panel shall be made publicly available by the Parties within fifteen (15) days of its delivery, except that opinions expressed in such final report by any member of the arbitral panel shall be anonymous.

### **Article 15.14. Implementation of Final Report**

1. The final report of an arbitral panel shall be binding on the Parties and shall not be subject to appeal.
2. On receipt of the final report of an arbitral panel, the Parties shall agree on:
  - (a) the means to resolve the dispute, which normally shall conform with the determinations or recommendations, if any, of the arbitral panel; and
  - (b) the reasonable period of time which is necessary in order to implement the means to resolve the dispute. If the Parties fail to agree on the reasonable period of time, a Party may request the original arbitral panel to determine the length of the reasonable period of time, in the light of the particular circumstances of the case. The determination of the arbitral panel shall be presented within fifteen (15) days from that request.
3. If, in its final report, the arbitral panel determines that a Party has not conformed with its obligations under this Agreement or that a Party's measure has caused nullification or impairment, the means to resolve the dispute shall, whenever possible, be to eliminate the non-conformity or the nullification or impairment.

## **Article 15.15. Non-implementation –compensation and Suspension of Benefits**

1. If the Parties:
  - (a) are unable to agree on the means to resolve the dispute pursuant to subparagraph 2(a) of Article 15.14 (Implementation of Final Report) within thirty (30) days of issuance of the final report; or
  - (b) have agreed on the means to resolve the dispute pursuant to subparagraph 2(a) of Article 15.14 (Implementation of Final Report) and the Party complained against fails to implement the aforesaid means within thirty (30) days following the expiration of the reasonable period of time determined in accordance with subparagraph 2(b) of Article 15.14 (Implementation of Final Report), the Party complained against shall enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.
2. If no mutually satisfactory agreement on compensatory adjustment has been reached within twenty (20) days after the Parties have entered into negotiations on compensatory adjustment, or having agreed on compensatory adjustment, the complaining Party considers that the other Party has failed to observe the terms of such agreement, the complaining Party may at any time thereafter provide written notice to the Party complained against that it intends to suspend the application to that Party of benefits of equivalent effect. The notice shall specify the level of benefits that the complaining Party proposes to suspend. The complaining Party may begin suspending benefits thirty (30) days after the date when it provides notice to the Party complained against under this paragraph, or the date when the arbitral panel issues the report under paragraph 6, whichever is later.
3. Any suspension of benefits shall be restricted to benefits granted to the Party complained against under this Agreement.
4. In considering what benefits to suspend under paragraph 2:
  - (a) the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral panel has found to be inconsistent with this Agreement or to have caused nullification or impairment; and
  - (b) the complaining Party may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.
5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement, or to have caused nullification or impairment has been removed, or a mutually satisfactory solution is reached.
6. If the Party complained against considers that:
  - (a) the level of benefits that the complaining Party has proposed to be suspended is manifestly excessive; or (b) it has eliminated the non-conformity, nullification or impairment that the arbitral panel has found, it may request the original arbitral panel to determine the matter. The original arbitral panel shall present its determination to the Parties within thirty (30) days after it reconvenes. If the arbitral panel determines that the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.
7. If the arbitral panel cannot be reconvened with its original members, the procedures for appointment for the arbitral panel set out in Article 15.7 (Composition of Arbitral Panels) shall be applied.

## **Article 15.16. Official Language**

1. All proceedings and all documents submitted to the arbitral panel shall be in the English language.
2. When an original document submitted to the arbitral panel by a Party is not in the English language, that Party shall translate the whole or such parts of the document that may be relevant or as requested by the panel or the other Party into the English language, and submit it with the original document at the same time.

## **Article 15.17. Expenses**

1. Unless the Parties otherwise agree, the costs of the arbitral panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties.
2. Each Party shall bear its own expenses and legal costs in the arbitral proceedings.

# **Chapter 16. Exceptions**

## **Article 16.1. Definitions**

For the purposes of this Chapter: tax agreement means a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

## **Article 16.2. General Exceptions**

1. Article XX of GATT 1994 and its interpretive notes are incorporated into and made part of this Agreement, mutatis mutandis, for the purposes of Chapters 3 (Trade in Goods), 5 (Customs Procedures), 6 (Sanitary and Phytosanitary Measures), and 7 (Technical Barriers to Trade), 11 (Electronic Commerce) and 13 (Intellectual Property Cooperation). The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal, or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.
2. Subparagraphs (a), (b) and (c) of Article XIV of GATS (including its footnotes) are incorporated into and made part of this Agreement, mutatis mutandis, for the purposes of Chapters 8 (Cross-Border Trade in Services), 9 (Investment), 11 (Electronic Commerce) and 13 (Intellectual Property Cooperation). The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal, or plant life or health.

## **Article 16.3. Essential Security**

Nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow to have access to any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance of international peace or security, or the protection of its own essential security interests. (29)

(29) For greater certainty, nothing in this Agreement shall prevent a Party from taking any action which it considers necessary for the protection of critical public infrastructure, including but not limited to communications, power, water, and transportation infrastructure, from deliberate attempts intended to disable or degrade such infrastructure.

## **Article 16.4. Taxation**

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax agreement in force between the competent authorities of the Parties. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of such tax agreement in force between the competent authorities of the Parties, the competent authorities under that agreement shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that agreement.

3. Notwithstanding paragraph 2, Article 3.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994.

4. For greater certainty, subject to paragraph 2, Article 8.3 (National Treatment) and Article 9.5 (National Treatment) shall not be applied to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes permitted by Article XIV(d) of GATS.

5. Articles 9.12 (Expropriation) and 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party) shall apply to taxation measures to the extent that such taxation measures constitute expropriation as provided for therein<sup>30</sup>. An investor that seeks to invoke Article 9.12 (Expropriation) with respect to a taxation measure must first refer to the relevant authorities specified in Annex 16, at the time that it gives notice under Article 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party), the issue of whether that taxation measure involves an expropriation. If the relevant authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six (6) months of such referral, the investor may submit its claim to arbitration under Article 9.16 (Settlement of Disputes between a Party and an Investor of the Other Party).

(30) With reference to Article 9.12 (Expropriation) in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

(i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment does not in and of itself constitute expropriation;

(ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and

(iii) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality/citizenship or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.

## **Article 16.5. Restrictions to Safeguard the Balance of Payments**

1. For the purposes of Chapter 3 (Trade in Goods), the Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. Any such measure taken for trade in goods must be in accordance with Article XII of GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, which shall be incorporated into and made a part of this Agreement.

3. For the purposes of Chapters 8 (Cross-Border Trade in Services) and 9 (Investment), in the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on:

(a) payments or transfers related to investments; or (b) trade in services in respect of which it has obligations under Articles 8.3 (National Treatment) and 8.4 (Market Access), including on payments or transfers for transactions relating to such obligations. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

4. The restrictions referred to in paragraph 3 shall:

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

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

(c) not exceed those necessary to deal with the circumstances described in paragraph 3;

(d) be temporary and be phased out progressively as the situation specified in paragraph 3 improves; and

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

5. Any restrictions adopted or maintained under paragraph 3, or any changes therein, shall be promptly notified to the other Party.

6. The Party adopting any restrictions under paragraph 3 shall commence consultations with the other Party in order to review the restrictions adopted by it.

## **Chapter 17. Administration and Final Provisions**

### **Article 17.1. Review on the Implementation of the Agreement**

1. In addition to the provisions for consultations elsewhere in this Agreement, the Parties shall meet within a year of the date of entry into force of this Agreement to review the implementation of this Agreement; thereafter, subject to mutual agreement, the Parties may meet biennially or otherwise as appropriate.

2. Pursuant to paragraph 1, the Parties may:

- (a) review the implementation and application of the provisions of this Agreement including the work of any committees and working groups established under this Agreement;
- (b) establish and delegate responsibilities to any ad hoc or standing committees, working groups or expert groups to:
  - (i) assign them with tasks on specific matters;
  - (ii) study and recommend to the Parties any appropriate measures to resolve any issues arising from the implementation or application of any part of this Agreement; or
  - (iii) to consider, upon either Party's request, new issues not already dealt with by this Agreement; and
- (c) consider any other matter that may affect the operation of this Agreement.

### **Article 17.2. Contact Points**

1. Each Party shall designate a lead agency as specified in Annex 17 to serve as the contact point to facilitate communications between the Parties on any matter covered by this Agreement.

2. For the purposes of this Agreement, all communications or notifications to or by a Party shall be made through its contact point.

### **Article 17.3. Annexes and Appendices**

The Annexes and Appendices to this Agreement shall constitute integral parts of this Agreement.

### **Article 17.4. Amendments**

1. The Parties may agree on any amendment to this Agreement.

2. When so agreed, such an amendment under paragraph 1 shall enter into force and constitute an integral part of this Agreement after the Parties have exchanged written notification certifying that they have completed necessary internal legal procedures and on such date or dates as may be agreed between the Parties.

### **Article 17.5. Entry Into Force**

This Agreement shall enter into force thirty (30) days after an exchange of written notifications, certifying the completion of the necessary legal procedures of each Party.

### **Article 17.6. Termination**

Either Party may terminate this Agreement by written notification to the other Party and such termination shall take effect six (6) months after the date of the notification.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement DONE in duplicate in the English language, on the 7th day of November 2013, at Singapore.

FOR SINGAPORE FOR THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU MR CALVIN EU MR FA-DAH HSIEH TRADE REPRESENTATIVE REPRESENTATIVE SINGAPORE TRADE OFFICE IN TAIPEI REPRESENTATIVE OFFICE IN TAIPEI SINGAPORE