COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA

The Government of Malaysia and the Government of the Republic of India, hereinafter referred to as "the Parties":

RECOGNISING their long-standing friendship, strong economic ties and close cultural links;

RECALLING the Joint Communiqué issued in 23 January 2010 in New Delhi, India by the Prime Ministers of the Republic of India and Malaysia and the Agreement Towards Implementing Comprehensive Economic Cooperation Agreement between the Government of Malaysia and the Government of Republic of India signed on 27 October 2010 in Kuala Lumpur, Malaysia;

RECALLING FURTHER the recommendations in the Joint Study Group Report which served as the framework for negotiations on the Comprehensive Economic Cooperation Agreement ("the Agreement") between the two countries;

CONSIDERING that the expansion of the domestic markets of the two countries, through economic integration, is vital for accelerating their economic development;

AIMING to enhance economic and social benefits, improve living standards and ensure high and steady growth in real incomes in their respective territories through the expansion of trade and investment flows;

DESIRING to promote mutually beneficial economic relations;

BUILDING on their respective rights, obligations and undertakings as developing country members of the World Trade Organization, and under other multilateral, regional and bilateral agreements and arrangements;

REAFFIRMING their right to pursue economic philosophies suited to their respective development goals and their right to regulate activities to realise their national policy objectives;

CONSCIOUS that this Agreement would contribute to the promotion of closer links with other economies in the Southeast Asian region;

DESIRING to promote greater regional economic integration and believing that their cooperative framework could serve as a basis for future integration with other countries in the Southeast Asian region;

HAVE AGREED AS FOLLOWS:

Chapter 1. INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1. Objectives

The Objectives of this Agreement Are:

(a) to strengthen and enhance the economic, trade and investment cooperation between the Parties;

(b) to liberalise and promote trade in goods in accordance with Article XXIV of the WTO General Agreement on Trade and Tariffs 1994;

(c) to liberalise and promote trade in services in accordance with Article V of the WTO General Agreement on Trade in Services, including promotion of mutual recognition of professions;

(d) to establish a transparent, predictable and facilitative investment regime;

(e) to improve the efficiency and competitiveness of their manufacturing and services sectors and to expand trade and

investment between the Parties;

(f) to explore new areas of economic cooperation and develop appropriate measures for closer economic cooperation between the Parties;

(g) to facilitate and enhance regional economic cooperation and integration; and

(h) to build upon their commitments at the World Trade Organization.

Article 1.2. General Application

For the purposes of Chapters 2 through 11 (Trade in Goods, Rules of Origin, Customs Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, Investment and Economic Cooperation) and the Annexes thereto, all Chapters of general application shall apply, unless otherwise provided.

Article 1.3. Non-Discrimination

Each Party shall ensure that any changes to domestic laws, procedures or regulations, ef cetera, undertaken as a result of that Partyâs international agreement or treaty with a non-Party in which the other Party is not a party to such international agreement or treaty, do not adversely affect the exports of the other Party.

Article 1.4. General Definitions

For the purposes of this Agreement, unless otherwise specified:

(a) days means calendar days, including weekends and holidays;

(b) GATT 1994 means the WTO General Agreement on Tariffs and Trade 1994;

(c) GATS means the WTO General Agreement on Trade in Services; goods means any merchandise, product, article or material;

(d) Harmonized System ("HS") means the Harmonized Commodity Description and Coding System defined in the International Convention on the Harmonized Commodity Description and Coding System, including all legal notes thereto, as may be amended, adopted and implemented by the Parties in their respective laws;

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

(f) measures by Parties means measures taken by:

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

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

(g) originating goods means goods that qualify as originating in accordance with Article 3.2 (Origin Criteria);

(h) Parties means the Governments of the Republic of India and Malaysia collectively;

(i) Party means the Governments of the Republic of India or Malaysia respectively;

(i) territory means:

(i) in respect of Malaysia,

(AA) the territories of the Federation of Malaysia;

(BB) the territorial waters of Malaysia and the seabed and subsoil of the territorial waters, and the air space above such areas over which Malaysia has sovereignty; and

(CC) any area extending beyond the limits of the territorial waters of Malaysia, and the seabed and subsoil of any such area, in accordance with the laws of Malaysia and international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living, as well as jurisdiction with regard to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment;

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

(l) WTO means the World Trade Organization; and

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

2. In this Agreement, all words in the singular shall include the plural and all words in the plural shall include the singular, unless otherwise indicated in the context.

Chapter 2. TRADE IN GOODS

Article 2.1. Definition and Interpretation

For the purposes of this Chapter, applied MFN tariff rates shall include in- quota rates, and shall refer to respective applied rate of the Republic of India and Malaysia as of 1 July 2008, except for products identified as Special Products in the Schedules of Tariff Commitments set out in Annex 2-1.

Article 2.2. Scope

Except as otherwise provided, this Chapter shall apply to trade in goods and all other matters relating thereto between the Parties.

Article 2.3. Classification of Goods

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

Article 2.4. National Treatment on Internal Taxation and Regulations

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, which shall apply, mutatis mutandis, to this Chapter.

Article 2.5. Tariff Reduction and Elimination

1. Except as otherwise provided for in this Chapter, each Party shall gradually liberalise, where applicable, applied MFN tariff rates on originating goods of the other Party in accordance with its Schedule of Tariff Commitments as set out in Annex 2-1.

2. Nothing in this Chapter shall preclude any Party from unilaterally accelerating the reduction and/or elimination of the applied MFN tariff rates on originating goods of the other Party as set out in its Schedule of Tariff Commitments in Annex 2-1.

Article 2.6. Customs Valuation

For the purposes of determining the customs value of goods traded between the countries of the Parties, provisions of Part I of the WTO Agreement on Implementation of Article VII of GATT 1994, as may be amended shall apply, mutatis mutandis, to this Agreement.

Article 2.7. Administrative Fees and Formalities

Each Party Reaffirms Its Commitments Under Article VIII.1 of GATT 1994.

Article 2.8. Rules of Origin

The Rules of Origin and Operational Certification Procedures applicable to the goods covered under this Chapter are set out in Chapter 3 (Rules of Origin) and its Annexes.

Article 2.9. Non-Tariff Measures

1. The Parties shall not institute or maintain any non-tariff measure on the importation of goods from the other Party or on the exportation or sale for export of goods destined for the territory of the other Party, except in accordance with its WTO rights and obligations or other provisions in this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures allowed under paragraph 1 of this Article and their full compliance with its obligations under the WTO Agreement with a view to minimising possible distortions to trade to the maximum extent possible.

Article 2.10. Modification of Concessions

1. The Parties shall not nullify or impair any of the concessions made by them under this Chapter, except as provided in the Agreement.

2. The Parties may, by negotiation and agreement, modify or withdraw any concession made under this Chapter. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other goods, the Party concerned shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided in this Chapter prior to such agreement.

Article 2.11. Regional and Local Governments

In fulfilling its obligations and commitments under this Agreement, each Party shall, in accordance with the provisions of Article XXIV.12 of GATT 1994 and the Understanding on the Interpretation of Article XXIV of GATT 1994, take such reasonable measures as may be available to it to ensure observance by regional and local governments and authorities within its territory.

Article 2.12. Implementation

The Sub-Committee on Trade in Goods established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Chapter 3. RULES OF ORIGIN

Article 3.1. Definitions

For the purposes of this Chapter:

(a) carrier means any vehicle for transportation by air, sea and land;

(b) CIF value means the price actually paid or payable to the exporter for a good including the cost of the good, insurance, and freight necessary to deliver the good to the named port of destination. The valuation shall be made in accordance with the WTO Agreement on Implementation of Article VII of GATT 1994;

(c) FOB value means the price actually paid or payable to the exporter for a good when the good is loaded onto the carrier at the named port of exportation, including the cost of the good and all costs necessary to bring the good onto the carrier. The valuation shall be made in accordance with the WTO Agreement on Implementation of Article VII of GATT 1994;

(d) identical and interchangeable materials means materials being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which, once they are incorporated into the finished good cannot be distinguished from one another for origin purposes by virtue of any markings, et cetera;

(e) materials means ingredients, raw materials, parts, components, sub- assemblies or goods that are used in the production of another good or are physically incorporated into another good;

(f) originating goods means goods that qualify as originating in accordance with the provisions of Article 3.2 (Origin Criteria);

(g) Product Specific Rules are rules which specify that the materials have undergone a change in tariff classification or a_ specific manufacturing or processing operation, or satisfy qualifying value content criterion, or a combination of any of these criteria, as provided in Annex 3-1 (Product Specific Rules); and

(h) production means methods of obtaining goods including growing, planting, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing, assembling or disassembling a good.

Article 3.2. Origin Criteria

For the purposes of this Chapter, goods imported by a Party which are consigned directly within the meaning of Article 3.8 (Direct Consignment), shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:

(a) goods which are wholly obtained or produced in the territory of the exporting Party as set out and defined in Article 3.3 (Wholly Obtained or Produced Goods); or

(b) goods not wholly obtained or produced in the territory of the exporting Party provided the said goods are eligible under Articles 3.4 (Not Wholly Obtained or Produced Goods) or 3.5 (Cumulative Rule of Origin).

Article 3.3. Wholly Obtained or Produced Goods

Within the meaning of paragraph (a) of Article 3.2 (Origin Criteria), the following good shall be deemed as being wholly obtained or produced in the territory of a Party:

(a) plant (1) and plant products grown, planted and harvested there;

(b) live animals (2) born and raised there;

(c) products (3) obtained from live animals referred to in paragraph (b);

(d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted there;

(e) minerals and other naturally occurring substances, not included in paragraphs (a) to (d), extracted or taken from its soil, waters, seabed or beneath their seabed;

(f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of that Party, provided that, the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with the United Nations Convention on the Law of the Sea, 1982;

(g) goods of sea-fishing and other marine goods taken from the high seas by vessels registered with a Party and entitled to fly the flag of that Party;

(h) goods processed or made on board factory ships registered with a Party and entitled to fly the flag of that Party, exclusively from goods referred to in paragraph (g) above;

(i) articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for disposal or recovery of parts of raw materials, or for recycling purposes (4); and

(j) goods obtained or produced in the territory of a Party solely from goods referred to in paragraphs (a) to (i).

(1) "Plant" refers to all plant life, including forestry goods, fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

(2) "Animals" referred to in paragraphs (b) and (c) of this Article covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, and living organisms.

(3) "Products" refer to those obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.

(4) This would cover all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials. Such manufacturing or processing operations shall include all types of processing, not only industrial or chemical but also mining, agriculture, construction, refining, incineration and sewage treatment operations.

Article 3.4. Not Wholly Obtained or Produced Goods

1. For the purposes of paragraph (b) of Article 3.2 (Origin Criteria), a good shall be deemed to be originating:

(a) when such goods satisfy the criteria under the Product Specific Rules provided in Annex 3-1; or

(b) when:

(i) all non-originating materials used in the production of the goods have undergone a change in tariff classification in a sub-heading at the six digit level of the HS; and

(ii) qualifying value content of the goods is not less than thirty five per cent of the FOB value,

provided that the final process of manufacturing is performed within the territory of the exporting Party.

2. For the purposes of this Article, the formulae for calculating the qualifying value content are as follows (5):

(a) Direct Method:

Originating Material Cost + Direct Labour Cost + Direct Overhead Cost + Other Cost + Profit / FOB Price x 100 % $\geq$ 35%

(b) Indirect Method:

Value of imported non-originating materials + Value of materials of undetermined origin / FOB Price x 100 % $\leq$ 65%

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

(a) the CIF value at the time of importation of the materials, parts or produce; or

(b) the earliest ascertained price paid for the materials, parts or produce of undetermined origin in the territory of the Party where the working or processing takes place.

4. The method of calculating the FOB value is as set out in Annex 3-2 (Method of Calculation of FOB Value).

(5) The Parties shall be given the flexibility to adopt the method of calculating the qualifying value content, whether it is the direct or indirect method. In order to promote transparency, consistency and certainty, each Party shall adhere to one method. Any change in the method of calculation shall be notified to all the other Parties at least six months prior to the adoption of the new method. It is understood that any verification of the content by the importing Party shall be done on the basis of the method used by the exporting Party.

Article 3.5. Cumulative Rule of Origin

Unless otherwise provided for, goods which comply with the origin requirements provided for in Article 3.2 (Origin Criteria) and which are used in the territory of a Party as materials for a finished good eligible for preferential tariff treatment under this Agreement shall be considered to be originating in the territory of the latter Party where working or processing of the finished goods has taken place.

Article 3.6. De Minimis

1. A good that does not undergo a change in tariff classification pursuant to Article 3.4 (Not Wholly Obtained or Produced Goods) and Annex 3-1 (Product Specific Rules) in the final process of production shall be deemed as originating if:

(a) for goods except for those falling within Chapters 1 through 14 and Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production, which do not undergo the required change in tariff classification, does not exceed ten percent of the FOB value of the good;

(b) for goods falling within Chapters 50 through 63 of the HS, the total weight of non-originating basic textile materials used in its production, which do not undergo the required change in tariff classification, does not exceed eight percent of the total weight of all the basic textile materials used; and

(c) the good meets all other applicable criteria set forth in this Chapter for qualifying as an originating good.

2. The value of such non-originating materials shall be included in the value of non-originating materials for any applicable

qualifying value content requirement for the good.

Article 3.7. Minimal Operations and Processes

1. Notwithstanding any provisions in this Chapter, a good shall not be considered 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 goods in good condition during transport and storage including, but not limited to, drying, freezing, keeping in brine, ventilation, spreading out, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations;

(b) simple (6) operations consisting of removal of dust, sifting or screening, sorting, classifying, matching including the making-up of sets of articles, washing, painting, cutting;

(c) changes of packing and breaking up and assembly of consignments;

(d) simple (7) cutting, slicing and repacking or placing in bottles, flasks, bags, boxes, fixing on cards or boards, and all other simple packing operations;

(e) affixing of marks, labels or other like distinguishing signs on goods or their packaging;

(f) simple (8) mixing of goods whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in this Chapter to enable them to be considered as originating goods;

(g) simple (9) assembly of parts of goods to constitute a complete good;

(h) disassembly;

(i) slaughter which means the mere killing of animals; and

(j) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

2. For textiles and textile goods, an article or material shall not be considered to be originating in the territory of a Party by virtue of merely having undergone any of the following:

(a) (a) simple (10) combining operations, labelling, pressing, cleaning or dry cleaning or packaging operations, or any combination thereof;

(b) (b) cutting to length or width and hemming, stitching or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(c) (c) trimming and/or joining together by sewing, looping, linking, attaching of accessory articles such as straps, bands, beads, cords, rings and eyelets;

(d) (d) one or more finishing operations on yarns, fabrics or other textile articles, such as bleaching, waterproofing, decanting, shrinking, mercerizing, or similar operations; or

(e) dyeing or printing of fabrics or yarns.

(6)"Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

(7) Refer to footnote 6 of this Chapter.

(8) Refer to footnote 6 of this Chapter.

(9) Refer to footnote 6 of this Chapter.

(10) Refer to footnote 6 of this Chapter.

Article 3.8. Direct Consignment

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

(a) if the goods are transported without passing through the territory of any non-Party; or

(b) if the goods are transported through the territory of any non-Party provided that:

(i) the transit entry is justified for geographical reasons or transport requirements;

(ii) the goods have not entered into trade or consumption in the territory of such non-Party;

(iii) the goods have not undergone any operation in the territory of such non-Party other than unloading and reloading or any operation required to keep the goods in good condition; and

(iv) the goods have remained under the control of the customs authority of such non-Party.

Article 3.9. Treatment of Packing Materials and Containers

1. If a good is subject to the change in tariff classification criterion as provided in paragraph 1(b)(i) of Article 3.4 (Not Wholly Obtained or Produced Goods), packing materials and containers classified together with the packaged good, shall not be taken into account in determining origin.

2. If a good is subject to qualifying value content requirement as provided in paragraph 1(b)(ii) of Article 3.4 (Not Wholly Obtained or Produced Goods), the value of the packing materials and containers, shall be taken into account in determining the origin of that good, provided that the packing materials and containers are considered as forming a whole with the good and the good is packaged in such packaging materials and containers for the purposes of retail sale. Packing materials and containers in which a good is packed for the purposes of shipment and used exclusively for the transportation of a good shall not be taken into account in determining the origin of such good.

Article 3.10. Accessories, Spare Parts, Tools and Instructional or other Information Material

1. Any accessories, spare parts, tools, instructional or other information material delivered with a good that form part of the standard accessories, spare parts, tools or instructional or other information material of the good, shall be treated as originating goods if the good is an originating good, and shall not be taken into account in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification, provided that:

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

(b) the quantities and value of the accessories, spare parts, tools or the instructional and other information material are standard trade practice for the good in the domestic market of the exporting Party.

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

Article 3.11. Indirect Materials

In order to determine whether a good originates in the territory of a Party, any indirect material, including power, fuel, plant and equipment, machines, tools or consumables used to obtain such good shall be treated as originating irrespective of the origin of the material and its value shall be the cost registered in the accounting records of the producer of such good.

Article 3.12. Identical and Interchangeable Materials

For the purposes of establishing if a good is originating when it is manufactured utilising both originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined on the basis of generally accepted accounting principles of stock control applicable or in accordance with the methods of inventory management practised in the exporting Party.

Explanation: For the purposes of this Article, "generally accepted accounting principles" means recognised consensus or substantial authoritative support given 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 and may encompass broad guidelines for general application, as well as detailed standards, practices, and procedures.

Article 3.13. Certificate of Origin

A claim that an imported good shall be accepted as eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an authority or authorities designated by the Government of the exporting Party and notified to the other Party in accordance with Annex 3-3 (Operational Certification Procedures).

Article 3.14. Implementation

The Sub-Committee on Trade in Goods established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Chapter 4. CUSTOMS COOPERATION

Article 4.1. Objectives

1. The objectives of this Chapter are to:

(a) simplify and harmonize customs procedures of the Parties on the basis of international standards and best practices to which the Parties have agreed;

(b) ensure consistency, predictability and transparency in the application of customs laws and regulations of the Parties;

(c) ensure efficient and expeditious clearance of goods;

(d) facilitate trade in goods between the Parties;

(e) promote cooperation between the customs authorities; and

(f) exchange information relating to all customs matters to the extent possible.

2. All measures to facilitate trade shall be without prejudice to the fulfillment of legitimate statutory and policy objectives, including revenue and the protection of national security, health and the environment.

Article 4.2. Definitions

For the purposes of this Chapter:

(a) customs authority means the authority that according to the legislation of each Party is responsible for the administration and enforcement of its customs laws:

(i) in the case of Malaysia, the Royal Malaysian Customs Department; and

(ii) in the case of India, the Central Board of Excise & Customs;

(b) customs laws means such laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation, and transit of goods, relating to customs duties, charges, and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each Party;

(c) clearance means the accomplishment of the customs formalities necessary to allow goods to enter home use, to be exported or to be placed under another customs procedure;

(d) information means any data, documents, reports and certified or authenticated copies thereof or other communications which are maintained by the customs authority of a Party in the course of administering its customs laws; and

(e) persons means both natural and legal persons.

Article 4.3. Scope and Coverage

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

2. This Chapter shall be implemented by each Party in accordance with the laws, regulations, national policies and administrative measures in force of each Party and within the competence and available resources of the customs authority of each Party.

Article 4.4. Publication and Enquiry Points

For the purposes of this Chapter, each party shall:

(a) make available on the internet or in print form all statutory and regulatory provisions and general administrative procedures applicable or enforced by its customs authority; and

(b) designate or maintain one or more inquiry points to address inquiries by interested persons concerning customs matters and shall make available on the Internet information concerning the procedures for making such inquiries.

Article 4.5. Clearance of Goods

1. Each Party shall, to the extent possible, adopt or maintain simplified customs procedures for the efficient clearance of goods in order to facilitate trade between the Parties.

2. For prompt clearance of goods traded between the Parties, to the extent possible, the Parties shall:

(a) provide for the clearance of goods within a period no more than that required to ensure compliance with its customs laws;

(b) provide for advance electronic submission and processing of information before physical arrival of goods to facilitate the expeditious clearance of goods on arrival;

(c) allow traders to interact with the customs authority without the mandatory use of brokers or customs agents; and

(d) harmonize its customs procedures, with relevant international standards and best practices, such as those recommended by the World Customs Organization.

Article 4.6. Information and Communications Technology

The customs authorities of the Parties shall cooperate to promote the use of information and communications technology including sharing best practices, for the purpose of improving their customs procedures.

Article 4.7. Risk Management

1. In order to facilitate clearance of goods traded between the Parties, the customs authority of each Party shall use risk management methodology.

2. The customs authority of each Party shall exchange information regarding best practices on risk management techniques.

Article 4.8. Cooperation and Capacity Building

1. Each Party shall cooperate and exchange information with each other on customs matters.

2. Bilateral cooperation shall include capacity building, such as training, technical assistance, exchange of experts and any other forms of cooperation, as may be mutually agreed upon by the Parties, for trade facilitation and effective administration of customs laws.

3. The Parties, shall in accordance with their national legal and administrative provisions in force, adopt procedures to enable a right holder, who has valid reason for suspecting that the importation of goods infringing an intellectual property may take place, to lodge an application in writing with competent authorities, for the suspension by customs authorities of the clearance of such goods.

4. To the extent permitted by their national laws and regulations, the customs authority of each Party shall assist each other in relation to:

(a) the implementation and operation of the provisions of this Agreement governing importation or exportation, including claims for preferential tariff treatment and the procedures for making claims for preferential tariff treatment;

(b) the implementation and operation of the WTO Agreement on Implementation of Article VII of GATT 1994;

(c) enforcement of prohibitions and restrictions on exports to and imports from their respective territories;

(d) joint efforts to combat customs fraud; and

(e) promote cooperation in any other areas as may be mutually agreed upon by the Parties.

Article 4.9. Mutual Assistance

1. The customs authority of each Party shall, to the extent possible, provide the customs authority of the other Party, upon request or on its own initiative, with information which helps to ensure proper application of customs laws and the prevention of violation or attempted violation of customs laws.

2. To the extent permitted by their laws, regulations and national policies the customs authorities may provide each other with mutual assistance in order to prevent or investigate violations of customs law.

3. The request pursuant to paragraph 1 shall, wherever appropriate, specify:

(a) the verification procedures that the requesting authority has undertaken or attempted to undertake; and

(b) the specific information that the requesting authority requires, which may include:

(i) subject and reason for the request;

(ii) a brief description of the matter and the action requested; and

(iii) the names and addresses of the parties concerned with the proceedings, if known.

Article 4.10. Information Relating to Import and Export

Subject to each Party's laws, regulations and national policies, the requested authority shall, on request by the requesting authority, provide the requesting authority with information relating to:

(a) whether goods imported into the territory of the requesting authority have been lawfully exported from the territory of the requested authority; and

(b) whether goods exported from the territory of the requesting authority have been lawfully imported into the territory of the requested authority and whether the goods have been placed under any customs procedures.

Article 4.11. Review and Appeal

1. Subject to domestic laws and regulations in each Party, any affected person shall have the right to appeal against the decisions taken by the customs authority of the Party.

2. Each Party shall provide easily accessible process for administrative and judicial review or appeal of decision taken by its customs authority.

Article 4.12. Advance Rulings

In accordance with its domestic laws and regulations, each Party shall endeavour to provide, through its customs or other competent authority, for the expeditious issuance of written advance rulings, prior to the importation of goods into its territory, in the territory of the other Party.

Article 4.13. Temporary Admission

1. For the purposes of this Article, temporary ad mission means customs procedures under which certain goods may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such goods shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and without having undergone any charge except normal depreciation due to the use made of them.

2. Each Party shall facilitate the procedures for the temporary admission of goods traded between the countries in accordance with the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, as may be amended ("the A.T.A. Convention").

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

4. The Parties shall endeavour to promote, through seminars and courses, the use of A.T.A. Carnet pursuant to the A.T.A. Convention for the temporary admission of goods and the facilitation of customs clearance of goods in transit in the territories of the Parties or non-Parties.

Article 4.14. Customs Contact Points

All communications under this Chapter shall be between the official contact points designated by each customs authority.

Article 4.15. Implementation

The Sub-Committee on Customs Cooperation established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.

Chapter 5. TRADE REMEDIES

Section A. Bilateral Safeguards

Article 5.1. Definitions

For the purposes of this Section:

(a) domestic industry means, with respect to an imported product, the producers as a whole of the like or directly competitive product or those producers whose collective production of the like or directly competitive product constitutes a major proportion of the total domestic production of such product;

(b) provisional measure means a provisional bilateral safeguard measure described in Article 5.5 (Provisional Measures);

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

(d) threat of serious injury means serious injury that is clearly imminent and shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility.

Article 5.2. Application of Bilateral Safeguard Measures

During the transition period, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement, an originating product of a Party is being imported into the other Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive products, the other Party may, to the extent necessary to prevent or remedy serious injury and facilitate adjustment, apply a safeguard measure consisting of:

(a) the suspension of the further reduction of any rate of customs duty provided for under this Agreement on the originating product from the date on which the action to apply the safeguard measure is taken; or

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

(i) the most-favoured-nation applied rate of customs duty in effect on the date on which the action to apply the safeguard measure is taken; or

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of the start of the period of investigation.

Article 5.3. Scope and Duration of Bilateral Safeguard Measures

1. A Party shall apply a bilateral safeguard measure for such period of time as may be necessary to prevent or remedy

serious injury and to facilitate adjustment. A Party may apply a bilateral safeguard measure for an initial period of no longer than two years. The period of a safeguard measure may be extended by up to two years provided that the conditions of this Chapter are met and that the bilateral safeguard measure continues to be applied to the extent necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting. The total period of a bilateral safeguard measure, including any extensions thereof, shall not exceed four years.

2. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a product shall terminate at the end of the transition period for such product.

3. In order to facilitate adjustment in a situation where the proposed duration of a safeguard measure is over one year, the Party applying the safeguard measure shall progressively liberalise it at regular intervals during the application of the safeguard measure, including at the time of any extension.

4. No bilateral safeguard measure shall be applied to the import of a product that has previously been subject to such a measure, for a period of at least one year since the expiry of the measure.

5. In case a Party has to apply a safeguard or provisional measure again on the same originating product, the duration of the bilateral safeguard measure shall be less than the duration of the previous safeguard measure.

6. An investigation shall be promptly terminated without any bilateral safeguard measure being applied if imports of the originating product represent less than three per cent of total imports.

7. A Party shall not apply a bilateral safeguard or provisional measure on an originating product that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture.

8. When a Party intends to apply, pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture, a measure on a product to which a bilateral safeguard measure is being applied, it shall terminate the bilateral safeguard measure prior to the imposition of the action to be applied pursuant to Article XIX of GATT 1994 and the WTO Agreement on Safeguards, or the WTO Agreement on Agriculture.

9. On the termination of a bilateral safeguard measure, the Party that applied the measure shall apply the rate of customs duty in effect as set out in its Schedule of Tariff Commitments as specified in Annex 2-1 on the date of termination as if the safeguard measure had never been applied.

10. No bilateral safeguard measure shall be taken beyond the expiration of the transition period that shall be defined as a period from the date of entry into force of this Agreement until seven years from the date of completion of tariff elimination or completion of tariff reduction, as the case may be for each good.

Article 5.4. Investigation

1. A Party may apply or extend a bilateral safeguard measure only following an investigation by the Party's competent authorities in accordance with the same procedures as those provided for in Articles 3 and 4.2 of the WTO Agreement on Safeguards.

2. The investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a bilateral safeguard measure would be in the public interest.

3. An investigation shall be completed within one year from the date of initiation. Upon completion of an investigation, the competent authorities shall promptly publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

4. Each Party shall ensure the consistent, transparent, impartial and reasonable administration of its laws, regulations, decisions and rulings relating to all bilateral safeguard investigation proceedings.

Article 5.5. Provisional Measures

1. In critical circumstances where delay would cause damage which would be difficult to repair, a Party may apply a provisional measure, which shall take the form of the measure set out in paragraphs (a) or (b) of Article 5.2 (Application of Bilateral Safeguard Measures), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating product of the other Party as a result of the reduction or elimination of a duty pursuant to this Agreement

have caused or are threatening to cause serious injury.

2. The duration of such a provisional measure shall not exceed two hundred days during which period the pertinent requirements of Articles 5.1 (Definitions) to 5.4 (Investigation) shall be met. The duration of any such provisional measure shall be counted as part of the total period referred to in Article 5.3 (Scope and Duration of Bilateral Safeguard Measures).

3. Any additional customs duties collected as a result of such a provisional measure shall be promptly refunded if the subsequent investigation referred to in Article 5.4 (Investigation) does not determine that increased imports of an originating product of the other Party have caused or threatened to cause serious injury to a domestic industry. In such a case, the Party that applied the provisional measure shall apply the rate of customs duty set out in its Schedule of Tariff Commitments in Annex 2-1 as if the provisional measure had never applied.

Article 5.6. Notification and Consultation

1. A Party shall promptly notify the other Party, in writing, upon:

(a) initiating an investigation under Article 5.4 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty on the product pursuant to this Agreement;

(c) taking a decision to apply or extend a safeguard measure, or to apply a provisional measure; and

(d) taking a decision to progressively liberalise a safeguard measure previously applied.

2. A Party shall provide to the other Party a copy of the public version of the report of its competent authorities required under paragraph 1 of Article 5.4 (Investigation) immediately after it is available.

3. In the written notice referred to in paragraph 1(a), the reason for the initiation of the investigation, a precise description of an originating product subject to the investigation and its subheading or more detailed level of the HS, the period subject to the investigation and the date of initiation of the investigation shall be included.

4. In notifying under paragraphs 1(b) and (c), the Party applying or extending a safeguard measure shall also provide evidence of serious injury or threat thereof caused by increased imports of an originating product of the other Party as a result of the reduction or elimination of a customs duty pursuant to this Agreement; a precise description of the product involved and its subheading or more detailed level of the HS; the details of the proposed safeguard measure; and the date of introduction, duration and timetable for progressive liberalisation of the measure, if such timetable is applicable. In the case of an extension of a safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request, the Party applying or extending a safeguard measure shall to the extent possible provide additional information as the other Party may consider necessary.

5. A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party as far in advance of taking any such measure as practicable but not less than thirty days before applying such measures, with a view to reviewing the information arising from the investigation and exchanging views on the measure for meeting the objective set out in Article 5.7 (Compensation).

6. Where a Party applies a provisional measure referred to in Article 5.5 (Provisional Measures), on request of the other Party, consultations shall be initiated immediately after such application.

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

Article 5.7. Compensation

1. A Party proposing to apply a bilateral safeguard measure shall consult with the Party whose products are subject to the measure in order to mutually agree on appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects.

2. The Party shall provide an opportunity for such consultations no later than thirty days after the application of definitive bilateral safeguard measure. If these consultations do not result in an agreement on trade liberalizing compensation within thirty days, the Party whose products are subject to the safeguard measure may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure.

3. A Party shall notify the other Party in writing at least thirty days before suspending concessions under paragraph 2.

4. The right of suspension provided for in this Article shall not be exercised for the first two years that the bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as the result of an absolute increase in imports.

Section B. Anti-Dumping Measures

Article 5.8. Recommendations of the WTO Committee on Anti-Dumping Practices

Each Party may keep in view, in all investigations conducted against goods from the other Party, the recommendations of the WTO Committee on Anti-Dumping Practices.

Article 5.9. Lesser Duty Rule

If a Party takes a decision to impose an anti-dumping duty pursuant to Article 9.1 of the WTO Agreement on Implementation of Article VI of GATT 1994 ("Anti- Dumping Agreement"), it shall apply a duty less than the margin of dumping where such lesser duty would be adequate to remove the injury to the domestic industry.

Article 5.10. Prohibition of Zeroing

When anti-dumping margins are established, assessed or reviewed under Articles 2, 9.3, 9.5, and 11 of the Anti-Dumping Agreement regardless of the comparison bases under Article 2.4.2 of the Anti-Dumping Agreement, all individual margins, whether positive or negative, shall be counted while calculating the dumping margin.

Article 5.11. Exemption from Investigation after Termination

1. In case where the investigating authority of the importing Party determines that the anti-dumping measures against imports from the other Party be terminated as a result of the review under Articles 11.2 and 11.3 of the Anti-Dumping Agreement, no investigation shall be initiated on the same goods during one year after the termination of the anti-dumping duties.

2. Notwithstanding paragraph 1, the investigating authority of the importing Party may initiate an investigation in an exceptional case, provided that the authority is satisfied, on the basis of evidence available with it, that dumping or injury has recurred as a result of withdrawal of the duties and that initiation of such an investigation is necessary to prevent material injury or threat thereof to the domestic industry as a consequence of such dumped imports from the exporting Party.

Article 5.12. Cooperation

The Parties may discuss issues related to the implementation of this Chapter in the Joint Committee established under Article 15.1 (Joint Committee), including on the following:

(a) exchange information and views on laws and regulations relating to trade remedy measures; and

(b) enhance technical cooperation on trade remedies such as holding seminars and training on human resources as mutually agreed by both Parties.

Section C. General Provisions

Article 5.13. Contact Points

Each Party shall designate a contact point for the purposes of this Chapter and provide details of such contact point to the other Party. The Parties shall notify each other promptly of any amendments to the contact details of their contact point.

Chapter 6. SANITARY AND PHYTOSANITARY MEASURES

Article 6.1. Objectives

The objectives of this Chapter are to:

(a) uphold and enhance the implementation of the WTO Agreement on Sanitary and Phytosanitary Agreement ("SPS Agreement");

(b) ensure transparency as regards sanitary and phytosanitary ("SPS") measures applicable to trade, and that SPS measures do not create unjustified barriers to trade;

(c) establish a mechanism for a decision on recognition of equivalence of such measures maintained by a Party consistent with the protection of human, animal and plant life or health in an agreed time-frame;

(d) recognize the health status of plants and animals of the Parties and apply the principle of compartmentalization; and

(e) enhance communication, consultation and cooperation between the Parties on SPS measures.

Article 6.2. Scope and Coverage

This Chapter applies to all SPS measures that may, directly or indirectly, affect trade between the Parties.

Article 6.3. Definitions

For purposes of this Chapter, the definitions in Annex A to the SPS Agreement shall apply.

Article 6.4. Affirmation of the SPS Agreement

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

Article 6.5. International Standards and Harmonization

1. Each Party shall use international standards, guidelines or recommendations as the basis for its SPS measures, in order to harmonize them.

2. Notwithstanding paragraph 1, the Parties may adopt SPS measures that offer a level of protection higher than that which would be achieved by measures based on an international standard, guideline or recommendation, if there is scientific justification. Provided that, in the event a Party adopts a level of protection different from that which would be achieved by measures based on an international standard, guideline or recommendation, it shall, when requested provide the other Party within thirty working days of such request and explanation of its scientific justification, except confidential data for the reasons for such higher standards.

Article 6.6. Equivalence

1. Parties recognise that the application of equivalence is an important tool for trade facilitation, and shall put in place systems for ensuring determination of equivalence in relation to partial or full equivalence of SPS measures.

2. Both Parties agree that an initial list of products or sectors in respect of which each Party would take a decision on equivalence is attached as Annex 6-1 (List of Products for Request for Equivalence). Consultations shall commence within three months from the entry into force of this Agreement and shall be carried out in accordance with the principles and procedures as set out in paragraphs 4 and 5.

3. For other products or sectors not listed in Annex 6-1 (List of Products for Request for Equivalence), either Party may request for equivalence in respect of such products or sectors. Consultations shall commence within three months from the receipt of such request from the other Party and shall be carried out in accordance with the principles and procedures as set out in paragraphs 4 and 5.

4. All consultations carried out pursuant to paragraphs 2 and 3 shall be guided by the following principles and procedures:

(a) equivalence can be determined for an individual measure or groups of measures related to a certain commodity or categories of commodities;

(b) the consideration of equivalence by the importing Party of a request by the exporting Party for recognition of its measures with regards to a specific commodity shall not be a reason to disrupt trade or suspend on-going imports from the exporting Party of the commodity in question;

(c) the exporting Party shall objectively demonstrate to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection. Objective demonstration and assessment in this context shall be based on international standards, guidelines or recommendations; and

(d) the final recognition of equivalence of the relevant measures of the exporting Party rests solely with the importing Party. In each case, the importing Party shall provide to the exporting Party, upon request, explanation excluding confidential data for its determination and decision.

5. Unless otherwise mutually agreed, the importing Party shall, within one hundred and eighty working days from the date of receipt of complete application (1) of the exporting Party's demonstration of equivalence, finalise the assessment of equivalence, except for seasonal crops when it is justifiable to delay the assessment to permit verification of phytosanitary measures during a suitable period of growth of a crop.

6. The importing Party may withdraw or suspend equivalence on the basis of any amendment by one of the Parties of measures affecting equivalence, in accordance with the following provisions:

(a) the exporting Party shall inform the importing Party of any proposal for amendment of its measures for which equivalence of measures is recognised and the likely effect of the proposed measures on the equivalence which has been recognised. Within sixty working days of receipt of this information, the importing Party shall inform the exporting Party whether or not equivalence would continue to be recognized on basis of the proposed measures;

(b) the importing Party shall inform the exporting Party of any proposal for amendment of its measures on which recognition of equivalence has been based and the likely effect of the proposed measures on the equivalence which has been recognized; and

(c) in case of non recognition or withdrawal or suspension of equivalence, the importing Party shall indicate to the exporting Party the required conditions on which the process referred to in paragraph 5 may be reinitiated, provided that the timelines of paragraph 6 shall be adhered to in any process for re-assessment of equivalence.

7. The withdrawal or suspension of equivalence rests solely with the importing Party acting in accordance with its administrative and legislative framework, which shall adhere to the international guidelines, standards and recommendations. The importing Party shall provide to the exporting Party, upon request explanation except confidential data for its determinations and decisions.

(1) If application from the exporting Party is incomplete, the importing Party shall request for the balance information within ninety working days of the submission of the application by the exporting Party.

Article 6.7. Regionalisation

1. The Parties recognise the concept of regionalisation, zoning and compartmentalisation, as set down in Article 6 of the SPS Agreement, and as elaborated in International Office of Epizootics ("OIE") and International Plant Protection Convention ("IPPC") Standards, which provide, inter alia, for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence where the exporting Party objectively demonstrates to the importing Party that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively.

2. Within this framework, the Parties may mutually recognise regionalisation, zoning and compartmentalisation at various levels, including farms and processing establishments, as having appropriate biosecurity measures, as mutually agreed.

3. The Parties may mutually decide on the principles, procedures or certification provisions applicable to regionalization, zoning and compartmentalization decision.

Article 6.8. Certification

1. The Parties shall ensure compliance with Annex C of the SPS Agreement, as well as the following principles and criteria in relation to certification procedures:

(a) certificates shall be drawn up as to ensure a link between the certificate and the consignment;

(b) both importing and exporting Parties shall introduce such checks and have such control measures taken as are necessary to prevent the issuing of false or misleading certification and the fraudulent production or use of certificates;

(c) the certificates shall be drawn up in the English language.

2. The Sub-Committee constituted under paragraph (c) of Article 15.2 (Sub- Committees) may through decisions by the competent authority adopt model certificates for specific sectors that shall be used as the basis for certification by the Parties. The Sub-Committee may also agree on rules to be followed in case of online certification, withdrawal or replacement of certificates.

Article 6.9. Verification

1. In order to maintain confidence in the effective implementation of the provisions of this Chapter, each Party shall have the right to carry out audit and verification of the procedures of the other Party, which may include an assessment of all or part of the competent authorities' total control programme.

2. The procedures referred to in paragraph 1 shall be carried out in accordance with the following principles:

(a) verifications should be made in co-operation between the auditor and the auditee, where "auditee" is the Party subject to the verification and "auditor" is the Party carrying on the verification;

(b) verifications shall be designed for the purpose of checking the auditee's regulatory control system;

(c) the auditor should prepare a plan that covers the following points:

(i) the subject, depth and scope of the verification;

(ii) the date and place of the verification, along with a timetable up to and including the issue of the final report;

(iii) the language or languages in which the verification will be conducted and the report written, with a provision relating to English translation in the event the report is written in a language other than English; and

(iv) a schedule of meetings with officials and visits to establishments or facilities, as appropriate.

This plan shall be reviewed together with the auditee before commencement of verifications;

(d) the frequency of verifications shall be decided by the importing Party subject to assessment of risk as stipulated under Article 5 of the SPS Agreement and shall be risk-based and reflect performance. Verifications, and the decisions based on them, shall be made in a simple, transparent and consistent manner, and the results and conclusions shall be made available to the other Party; and

(e) the Party carrying out the verification may share the results and conclusions of its verification with non-Parties only with the prior written consent of the other Party.

3. The Sub-Committee under paragraph (c) of Article 15.2 (Sub-Committees) may specify procedures and documentation requirements for verification, taking into account the work of international organizations in this regard.

Article 6.10. Import Checks

1. The Parties shall ensure that their control, inspection and approval procedures are in accordance with Annex C of the SPS Agreement.

2. The import checks applied to imported animals, animal products, plants and plant products traded between the Parties shall be based on the risk associated with such importations. They shall be carried out in a manner that is least trade-restrictive and without undue delay, and shall be based on the following principles:

(a) in carrying out the checks for plant health purposes, the importing Party shall ensure that the plants, plant products and other goods and their packaging are inspected, either in their entirety or by representative sample;

(b) in the event that the checks reveal non-conformity with the relevant standards or requirements, the importing Party shall take measures appropriate to the risk involved;

(c) wherever possible, the importer or his representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision concerning the consignment. Such decision shall be appropriate to the risk. Depending upon the gravity of the SPS risks, the importing Party may return, seize or destroy the consignment;

(d) at the request of the exporting Party, the importing Party shall to the maximum extent ensure that officials of the exporting Party or their representatives are given the opportunity to contribute any relevant information to assist the

importing Party in taking a final decision; and

(e) unless there is a clearly identified risk in holding that consignment, the consignments shall not be destroyed without affording an opportunity to the exporter or his representative to take back the consignment.

3. The frequencies of import checks on importations shall be made available on request. The importing Party shall notify the other Party in a timely manner of any amendment to the frequency of import checks in the event of change in the import risk. On request, an explanation regarding amendments shall be given or consultations shall be undertaken.

Article 6.11. Goods In Transit

The Parties reaffirm Article V of GATT 1994 and agree that there shall be freedom of transit for goods in transit. The inspection of goods may be carried out in the event of identifiable SPS risks.

Article 6.12. Transparency

1. Upon the entry into force of this Agreement, the importing Party, upon request, shall inform the exporting Party of its SPS import requirements. This information shall include, as appropriate, the models for the official certificates or attestations, as prescribed by the importing Party.

2. Each Party shall ensure translation of all measures, certificates, reports of any control checks or inspection procedures, or import checks or verification, or any records or other document relevant for the implementation of this Chapter, in English.

Article 6.13. Implementation

The Sub-Committee on Sanitary and Phytosanitary Measures established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.

Article 6.14. Technical Consultations

1. Either Party may request technical consultations on issues relating to this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within thirty days from the request for technical consultations by e-mail, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties.

2. Where a Party has requested technical consultations on any SPS issues, the Parties may mutually agree to establish a technical working group with a view to identify a workable and practical solution. The Parties may, subject to mutual agreement, establish any mechanisms as deemed necessary to resolve any such issues.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

Article 6.15. Cooperation

1. Consistent with the objectives of this Chapter, the Parties shall explore opportunities for further cooperation, collaboration and information exchange of SPS measures of mutual interest. This may include:

(a) improvement of monitoring, implementation and enforcement of SPS measures including training and information events for regulatory personnel. Public and private sector partnerships may be supported for the achievement of these objectives;

(b) establishment of the appropriate arrangements for the sharing of expertise, to address issues of human, animal and plant life or health, as well as training and information events for regulatory personnel and possible exchange of officials;

(c) carry out joint research and share the results of such research in important areas, such as animal and plant disease surveillance, animal and plant pest and disease prevention and control, detection methods for pathogenic micro-organisms in food, surveillance and control of harmful substances and agri-chemical and veterinary medicine residues and other food safety issues, and any other food safety, phytosanitary and zoosanitary issues of mutual interest.

Article 6.16. Exchange of Information and Consultations

1. Each Party shall give prompt and positive consideration to any request from the other Party for consultations on issues

relating to the implementation of this Chapter.

2. The Parties agree to enhance their communication and exchange of information on issues within the scope of this Chapter and in particular on ways to facilitate compliance with each other's SPS measures and to eliminate unnecessary obstacles to trade in goods between them.

3. Each Party shall respond to any requests for information from the other Party regarding any SPS measures within thirty days of request for such information.

Chapter 7. TECHNICAL BARRIERS TO TRADE

Article 7.1. Objectives

The objectives of this Chapter are to:

(a) (a) provide a framework and supporting mechanisms to facilitate and increase trade in goods by eliminating and preventing unnecessary barriers to trade while taking into account the legitimate objectives of the Parties, in accordance with Article 2.2 of the WTO Agreement on Technical Barriers to Trade ("TBT Agreement"), and the principle of non-discrimination, within the TBT Agreement;

(b) (b) ensure transparency in standards, technical regulations, and conformity assessment procedures, and also ensure that these do not create unnecessary obstacles to trade and are not more trade restrictive than necessary to fulfill a legitimate objective;

(c) (c) enhance joint cooperation between the Parties, and between regulatory authorities and conformity assessment bodies in the Parties, in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, and establish a mechanism for expeditious recognition of equivalence and mutual recognition and that positive consideration is given to the requests of the exporting Party in this regard by the importing Party, thereby facilitating the conduct of trade in goods;

(d) (d) improve the capacity of the Parties to identify, prevent and eliminate unnecessary obstacles to trade between the Parties as a result of technical regulations, standards and conformity assessment procedures applied by either Party;

(e) (e) increase the capacity of the Parties to ensure compliance with international standards and with each other's technical regulations, conformity assessment procedures and standards; and

(f) (f) provide a mechanism for expeditious resolution of issues, including disputes relating to standards, technical regulations and conformity assessment procedures.

Article 7.2. Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

(a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; or

(b) sanitary and phytosanitary measures as defined in Annex 1A of the WTO Agreement on the application of Sanitary and Phytosanitary Measures.

Article 7.3. Definitions

For purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

Article 7.4. Affirmation of the TBT Agreement

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

2. Each Party shall ensure compliance in the implementation of this Chapter by central government bodies within its territory that are responsible for the preparation, adoption and application of standards, technical regulations and

conformity assessment procedures. Each Party shall also take such reasonable measures as may be available to ensure compliance in the implementation of this Chapter, by local government and non-governmental bodies within its territory that are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. On request from the other Party, each Party shall make available the details of any measures taken by it in this direction.

Article 7.5. Joint Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, the Parties shall establish dialogue at both the horizontal and sectoral levels, as necessary, between the competent authorities and other regulators from their territories.

2. In their bilateral cooperation, the Parties shall work to identify, develop and promote trade facilitating measures which may include, but are not limited to:

(a) promoting regulatory cooperation through measures and steps such as the exchange of information, experience and data, and scientific and technical cooperation with a view to creating technical regulations, standards and conformity assessment procedures that are not more trade restrictive than necessary and making efficient use of regulatory resources;

(b) promoting good regulatory practices on risk management to improve the quality and effectiveness of regulations;

(c) promoting and encouraging participation in international standard setting bodies, and reinforcing the role of international standards as a basis for technical regulations;

(d) promoting and encouraging cooperation between their respective organisations, public or private, responsible for standardisation, testing, certification, inspection, accreditation and other related issues, both bilaterally and in international fora;

(e) exchange information on regulatory concerns, including implementation issues, of the other Party in areas such as:

(i) transparency in the preparation, adoption and application of technical regulations, conformity assessment procedures and standards;

(ii) necessity and proportionality of regulatory measures and related conformity assessment procedures, including the use of suppliers declaration of conformity;

(iii) enforcement of technical regulations and market surveillance activities;

(iv) the necessary technical infrastructure, standardisation, testing, certification and accreditation, to support technical regulations; and

(v) mechanisms and methods for reviewing technical regulations and conformity assessment procedures; and

(f) giving favourable consideration to any sector-specific proposal by the other Party for further cooperation under this Chapter.

Article 7.6. Standards

1. Each Party shall use relevant international standards as a basis for its technical regulations and relevant guides and recommendations issued by an international standardizing body as a basis for its conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement. Where relevant international standards or relevant international guides and recommendations have not been used as a basis, to explain on request to the other Party, in writing, the reasons why these have been judged inappropriate or ineffective for the aim pursued and, whenever possible, to identify the parts which in substance deviate from relevant international standards.

2. The Parties shall cooperate with each other, where appropriate, in the context of their participation in regional and international standardizing bodies, to ensure that standards developed within such organizations, are trade facilitating and do not create unnecessary obstacles to international trade.

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on international standards and related issues in other international fora, such as the WTO Committee on Technical Barriers to Trade ("WTO TBT Committee").

4. The Parties shall exchange information on:

(a) the Parties' use of standards in connection with technical regulation;

(b) the Parties' standardisation processes and the extent of usage of international standards as a base for their national or local standards; and

(c) cooperation agreements used by either Party in standardisation, for example on standardisation issues in free trade agreements with third parties.

5. At the request of a Party that has an interest in developing a standard similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it or its standardizing bodies has relied in the development of such standards.

Article 7.7. Technical Regulations

1. Each Party shall give positive consideration for accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

2. Each Party shall, within thirty working days of a request from the other Party for acceptance of equivalence of technical regulations, commence consideration. Each Party shall conclude decisions regarding equivalence within six months of the request from the other Party. Where a Party declines a request from the other Party to engage in consideration of equivalence, it shall, on request of that other Party, explain the reasons for its decision, and explain the requirements under which consideration of equivalence can be commenced.

3. The list of products for which the technical regulations of the exporting Party is accepted by the importing Party as equivalent shall be recorded and attached as Annex 7-1 (List of Products for which Equivalence of Technical Regulations Has Been Accepted).

4. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, which it has relied on for the development of the technical regulations.

5. As a general rule, the Parties shall not base their technical regulations on non-product-related process and production methods based standards. In exceptional cases, if such a regulation is required by either Party, the Party requiring such technical regulations shall, upon request by the other Party, provide justification for the same and consult the other Party before promulgating such a regulation.

Article 7.8. Conformity Assessment Procedures

1. The Parties agree to seek to increase efficiency, avoid duplication and ensure cost effectiveness through an appropriate range of mechanisms in order to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. In this regard, the Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory, including any or all of the following:

(a) adoption of accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;

(b) recognizing the results of certain conformity assessment procedures conducted in the territory of the other Party;

(c) agreement with the other Party to accept the results of conformity assessment procedures that bodies located in the other Partyâs territory conduct with respect to specific technical regulations;

(d) designation or recognition of conformity assessment bodies located in the territory of the other Party;

(e) facilitation of acceptance of results of each otherâs assessment procedures through agreements between conformity assessment bodies in their territories;

(f) adoption of procedures for accepting supplier's declaration of conformity or any registration scheme based on the same; and

(g) utilising the existing regional and international mutual recognition agreements ("MRA") of which both Parties are parties.

2. The Parties shall exchange information on mechanisms in paragraphs 1(a) to (g) and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

3. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is 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. Upon the request of a Party, Parties shall enter into negotiations for accepting results of conformity assessment procedures of the other Party, even if these procedures differ from its own, provided that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own conformity assessment procedures. The Parties may conclude agreements or arrangements on mutual recognition in accordance with Article 7.9 (Mutual Recognition Agreements).

5. The Parties shall cooperate by:

(a) exchanging information on the range of mechanisms that exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory;

(b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;

(c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or an arrangement between their respective accreditation systems or bodies; and

(d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements, including mutual recognition agreements, that promote the acceptance of conformity assessment results.

6. Each Party shall accredit, approve, 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. Where a Party accredits, approves, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision, and the basis on which such accreditation, approval, or recognition may be achieved.

7. Each Party shall, within thirty working days of a request from the other Party for acceptance in its territory of results of conformity assessment procedures conducted by bodies in the other Party's territory, commence such negotiations. Each Party shall take a decision regarding acceptance of conformity assessment procedures within six months of the request from the other Party. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating acceptance in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

8. The Parties agree to exchange information on accreditation policy and promote the use of accreditation to facilitate acceptance of conformity assessment results and consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement ("ILAC MRA") or the International Accreditation Forum Multilateral Arrangement ("IAF MLA"). For the purpose of complying with the requirements of the importing Party, the Parties shall consider accepting results of conformity assessment procedures by conformity assessment bodies accredited by the national accreditation body of the other Party, which is a member of the ILAC MRA or IAF MLA.

9. At the request of a Party that has an interest in developing conformity assessment procedures similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it or its conformity assessment bodies has relied in the development of such procedures.

10. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision so that necessary corrective actions may be taken, by the requesting Party to secure such acceptance.

Article 7.9. Mutual Recognition Agreements

1. The Parties shall, within sixty days upon the request of the other Party, enter into negotiations for possible MRAs on the

results of conformity assessment procedures, conducted by conformity assessment bodies of the exporting Party to assess conformity to importing Party's requirements, in the sectors which both Parties agree upon. Both Parties shall take a decision on the conclusion of such agreements within twelve months of commencement of negotiations.

2. With a view to facilitating the negotiation for possible MRA referred to in paragraph 1:

(a) the Parties shall take into consideration that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures;

(b) the Parties shall, recognizing the existence of differences in the structure and operation of conformity assessment procedures in their respective territories, endeavour to make compatible the conformity assessment procedures to the greatest extent practicable; and

(c) in order to build confidence in the reliability of results of conformity assessment procedures conducted by conformity assessment bodies of the other Party, a Party may consult with the other Party, as appropriate, on such matters as the technical competence of the conformity assessment bodies of the other Party.

3. Any MRAs concluded between the Parties shall be attached as Annex 7-2 (Mutual Recognition Agreements).

Article 7.10. Fees and Processing Periods

1. In regard to fees charged and processing periods for assessing the conformity of products, both Parties reaffirm their obligations under Article 5.2 of the TBT Agreement. Each Party shall also ensure that any fees imposed for assessing the conformity of products originating in the territory of the other Party are proportionate to the costs of the authorities conducting such assessment, taking into account communication, transportation and the costs arising from differences between location of facilities of the applicant and the conformity assessment body.

2. The Parties shall mutually discuss and resolve issues relating to the quantum of fees and ensure that fees and processing times reflect the actual costs incurred and processing activities required.

3. The Parties, on request, shall notify each other of: (a) any fees imposed for mandatory conformity assessments; and (b) the processing period for any mandatory conformity assessments.

Article 7.11. Trade Facilitation

1. The Parties reaffirm Article V of GATT 1994 and agree that there shall be freedom of transit for goods in transit. The inspection of goods may be carried out only in the event of identifiable risks.

2. Wherever appropriate, the importer or his representative should be given the opportunity to contribute any relevant information to assist the importing Party in taking a decision concerning the consignment that are subject to technical regulations and conformity assessment procedures.

3. The importing Party may return, seize or destroy any consignment not in compliance with its technical regulations and conformity assessment procedures. The destruction shall take place only in cases of clearly identifiable risk to human, animal or plant life or health or of environment.

Article 7.12. Labelling

1. The Parties recognize that labelling requirements may be necessary to inform consumers of certain essential characteristics of products, and consistent with the TBT Agreement, shall not be used to create unnecessary obstacles to trade.

2. The Parties agree that where a Party requires mandatory labelling of products:

(a) the Party shall endeavour to minimise its requirement for labelling relevant to consumers or users of the product. Where labelling for other purposes is required, such requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil the legitimate objective;

(b) where a Party requires the use of a unique identification number by economic operators, the Party shall issue such a number to the other Party's economic operators without undue delay and under conditions no less favourable than those applied to domestic operators;

(c) the Party shall accept that labelling and corrections to labelling takes place in customs warehouses at the point of import

and prior to distribution and sales, subject to the responsibility of the exporter or of the importer, as an alternative to labelling in the country of origin; and

(d) where permanent labels are required, Parties shall ensure that such labelling requirements are consistent with the legitimate objectives of the Parties in accordance with Article 2.2 of the TBT Agreement.

Article 7.13. Implementation

The Sub-Committee on Technical Barriers to Trade established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.

Article 7.14. Transparency

In addition to the Parties' affirmation in Article 7.4 (Affirmation of the TBT Agreement), the Parties shall endeavour to inform each other at an early stage of proposals to modify or introduce technical regulations, conformity assessment procedures or standards that are especially relevant to trade between the Parties.

Article 7.15. Technical Consultations

1. Either Party may request technical consultations on issues relating to this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within thirty days from the request for technical consultations by e-mail, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties.

2. Where a Party has requested technical consultations on the application of any technical regulations or conformity assessment procedures, the Parties may, with mutual consent agree to establish a technical working group with a view to identify a workable and practical solution. The Parties may, subject to mutual agreement, establish any mechanisms as deemed necessary to resolve any issues that arise.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

Chapter 8. TRADE IN SERVICES

Article 8.1. Scope and Coverage

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

2. This Chapter shall not apply to:

(a) a service supplied in the exercise of governmental authority;

(b) a juridical person which is not a juridical person of the other Party, and a natural person who is not a natural person of the other Party;

(c) any measures by a Party with respect to government procurement;

(d) 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 domestic services, service consumers or service suppliers, except as provided for in Article 8.14 (Subsidies);

(e) cabotage in maritime transport services; and

(f) measures affecting natural person seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. This Chapter shall not apply to measures affecting air traffic rights, however granted, or services directly related to the exercise of air traffic rights, except measures affecting:

(a) aircraft repair and maintenance services;

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

(c) computer reservation system services.

Paragraph 1 and the definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated mutatis mutandis and made part of this Chapter.

4. 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 as well as the terms of specific commitments undertaken.

5. New services shall be considered for possible incorporation into this Chapter at future reviews held in accordance with Article 8.8 (Review), or at the request of either Party immediately. The supply of services which are not technically or not technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future reviews or at the request of either Party immediately.

Article 8.2. Definitions

For the purposes of this Chapter:

(a) 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;

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

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

(ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;

(c) direct taxes comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(d) juridical pe rson means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, association, or cooperative (1);

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

(i) constituted or otherwise organised under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or

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

(AA) natural persons of that other Party; or

(BB) juridical persons of that other Party as identified under subparagraph (e)(i);

a juridical person is:

(i) owned by persons of a Party if more than fifty per cent of the equity interest in it is beneficially owned by persons of that Party;

(ii) controlled by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) affiliated with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

(g) licensing requirements means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to supply a service;

(h) licensing procedures means administrative or procedural rules that a natural or a juridical person, seeking authorisation to supply a service, including amendment or renewal of a license, must adhere to in order to demonstrate compliance with

licensing requirements;

(i) measures by Parties affecting trade in services include measures in respect of:

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

(j) monopoly supplier of a service means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(k) natural person of the other Party means a natural person who resides in the territory of that other Party or elsewhere, and who under the law of that other Party:

(i) is a citizen of that other Party; or

(ii) has the right of permanent residence in that other Party, provided that such other Party accords substantially the same treatment to its permanent residents as it does to its citizens in respect of measures affecting trade in services, provided that the Party is not obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents;

(l) person means either a natural person or a juridical person;

(m) qualification requirements means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service;

(n) qualification procedures means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service;

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

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

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

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

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

(r) service supplier means any person that supplies a service (2);

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

(t) technical standards means measures that lay down characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the enforcement of such standards; and

(u) trade in services is defined as the supply of a service:

(i) from the territory of a Party into the territory of the other Party;

(ii) in the territory of a Party to the service consumer of the other Party;

(iii) by a service supplier of a Party, through commercial presence in the territory of the other Party;

(iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party.

(1) A cooperative is a legal entity constituted under the relevant applicable laws in India and Malaysia.

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

Article 8.3. Market Access

1. With respect to market access through the modes of supply defined in paragraph (u) of Article 8.2 (Definitions), each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments. (3)

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (4)

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

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

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

(3) if a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.2(u)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 8.2(u)(iii), it is thereby committed to allow related transfers of capital into its territory.

(4) Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

Article 8.4. National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. (5)

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

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

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

Article 8.5. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8.3 (Market Access) or 8.4 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments.

Article 8.6. Schedule of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 8.3 (Market Access), 8.4 (National Treatment) and 8.5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 8.3 (Market Access) and 8.4 (National Treatment) shall be inscribed in both the columns relating to Articles 8.3 (Market Access) and 8.4 (National Treatment).

3. Schedules of Specific Commitments shall be annexed to this Chapter as Annex 8-1 and shall form an integral part of this Agreement.

Article 8.7. Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule of Specific Commitments in Annex 8-1, at any time after three year has elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. It shall notify the other Party of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Party, the modifying Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Party shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of Specific Commitments prior to such negotiations.

3. If agreement on paragraph 2 is not reached between the modifying Party and the affected Party within six months, the affected Party may refer the matter in accordance with the procedures set out in Chapter 14 (Dispute Settlement).

Article 8.8. Review

The Parties shall review commitments on trade in services with the first review within five years from the date of entry into force of this Agreement. In this process, there shall be due respect for the national policy objectives and the level of development of the Parties, both overall and in individual sectors.

Article 8.9. Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

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

4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

(a) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;

(b) at the request of the applicant, without undue delay provide information concerning the status of the application, including incomplete application. In the case of an incomplete application, identify all the additional information that is required to complete the application and provide an opportunity to the applicant to remedy deficiencies within a reasonable timeframe;

(c) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant shall have the possibility of resubmitting, at its discretion, a new application.

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

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

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

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

6. Pending the incorporation of disciplines pursuant to paragraph 5, for sectors where a Party has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Party shall not apply licensing and qualification requirements and procedures and technical standards that nullify or impair such specific commitments in a manner which:

(a) does not comply with the criteria outlined in paragraphs 5(a), 5(b) or 5(c);

(b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made; and

(c) in determining whether the Party is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organizations (6) applied by that Party.

7. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party in accordance with the provisions in paragraph 6.

(6) The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

Article 8.10. Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, each Party shall give due consideration to any requests by the other Party to recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party. Such recognition may be based upon an agreement or arrangement with the other Party, or otherwise be accorded autonomously.

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

3. After the entry into force of this Agreement, the Parties shall encourage their relevant authorities or professional bodies in the service sectors such as accounting and auditing, architecture, medical (doctors), dental and nursing to negotiate and

conclude, within twelve months or a reasonable period of time from the date of entry into force of this Agreement, any such agreements or arrangements providing mutual recognition of the education or experience obtained, qualification requirements and procedures and licensing requirements and procedures. Any delay or failure by these professional bodies to reach and conclude agreement on details of such agreement or arrangements shall not be regarded as a breach of a Party's obligation under this paragraph and shall not be subject to Chapter 14 (Dispute Settlement). Progress in this regard will be continuously reviewed by the Parties.

4. In respect of regulated service sectors, other than those mentioned in paragraph 3 above, upon a request being made in writing by a Party to the other Party in such sector, the Parties shall encourage that their respective professional bodies negotiate, in that service sector, agreements for mutual recognition of education, or experience obtained, qualifications requirements and procedures, and licensing requirements and procedures in that service sector, with a view to the achievement of early outcomes. The Parties shall report periodically to the Joint Committee on progress and on impediments experienced.

Article 8.11. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's Schedule of Specific Commitments.

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

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraphs 1 or 2 above, it may request that Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

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

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

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

Article 8.12. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.11 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 8.13. Safeguard Measures

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

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, the affected Party may request for consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph, including the duration for which the measure shall apply, shall be mutually agreed by the Parties concerned. The Parties concerned shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

Article 8.14. Subsidies

1. Notwithstanding Article 8.1 (Scope and Coverage), the Parties shall review the issue of disciplines on subsidies related to trade in services in the light of any disciplines agreed under Article XV of GATS, with a view to their incorporation into this Chapter.

2. The Parties recognise that, in certain circumstances, subsidies or grants may have distortive effects on trade in services. Any Party which considers that it is adversely affected by a subsidy or grants of the other Party may request consultations with that Party on such matters. Such request shall be accorded sympathetic consideration.

3. The provisions of Chapter 14 (Dispute Settlement) shall not apply to any requests made or consultations held under the provisions of this Article or to any disputes that may arise between the Parties out of, or under, the provisions of this Article.

Article 8.15. Payments and Transfers

1. Except under the circumstances envisaged in Article 12.4 (Measures to Safeguard the Balance of Payments) a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 12.4 (Measures to Safeguard the Balance of Payments) or at the request of the Fund.

Article 8.16. Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a country that is not a Party to this Agreement;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Party; and

(ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party;

(c) to the supply of a service from or in the territory of the other Party, if the Party establishes that the service is supplied by a service supplier that is owned or controlled by a person of a non-Party and the denying Party:

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

(ii) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person, or through other forms of commercial presence such as a branch or representative office that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or through other forms of commercial presence such as a branch or representative office.

Article 8.17. Affirmation of GATS Annex on Financial Services

The Parties reaffirm their rights and obligations with respect to each other under the GATS Annex on Financial Services.

Article 8.18. Implementation

The Sub-Committee on Trade in Services established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Chapter 9. MOVEMENT OF NATURAL PERSONS

Article 9.1. Objectives

The objectives of this Chapter are:

(a) to provide for rights and obligations additional to those set out in Chapters 8 (Trade in Services) and 10 (Investment) in relation to the movement of natural persons between the Parties while recognizing the need to ensure border security;

(b) to enhance and facilitate the movement of natural persons engaged in the conduct of trade in services, goods and investment between the Parties; and

(c) to establish simplified streamlined and transparent procedures for immigration formalities for the temporary entry of natural persons to whom this Chapter applies.

Article 9.2. Scope

1. This Chapter applies to measures affecting the temporary movement of natural persons of a Party into the territory of the other Party, where such natural persons are:

(a) business visitor;

(b) intra-corporate transferee;

(c) installer and servicer;

(d) contractual service supplier;

(e) independent professional.

2. This Chapter shall not apply to measures pertaining to citizenship, permanent residence, or employment on a permanent basis.

3. Nothing contained in this Chapter shall prevent a Party from applying measures to regulate the temporary entry or stay of natural persons of the other Party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders provided such measures are not applied in a manner so as to unduly impair the benefits accruing to the other Party or delay trade in goods, services or conduct of investment activities under this Agreement. The sole fact of requiring a visa or other relevant document authorizing employment to a natural person, shall not be regarded as unduly impairing or delaying trade in goods or service or conduct of investment activities under this Agreement.

Article 9.3. Definitions

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

(a) natural person of a Party means 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, provided that such Party accords substantially the same treatment to its permanent residents as it does to its citizens in respect of measures affecting trade in services. The other Party is not obligated to accord to such permanent residents treatment more favourable than would be accorded by a Party to such permanent residents;

(b) immigration formality or visa:

(i) in respect of Malaysia means a visa, permit, pass or other document or electronic authority granting natural person of one Party the right to enter, reside or work or establish commercial presence in the territory of the other Party;

(ii) in respect of India, immigration visa or visa refers to an employment visa or business visa or other document issued by a Party granting a natural person of the other Party the right to enter, reside or work or remain or establish commercial presence in the territory of the granting party, without the intent to reside permanently;

(c) temporary entry means entry by a business visitor, an intra-corporate transferee, or a professional, installer and servicer, contractual service supplier and spouses or dependants covered by this Chapter without the intent to establish permanent residence;

(d) business visitor means a natural person of either Party who is:

(i) a service seller being a natural person who is a representative of a service supplier of that Party and is seeking temporary entry into the other Party, for the purpose of negotiating the sale of services for that service supplier where such representative will not be engaged in direct sales to the general public or in supplying services directly;

(ii) a goods seller, being a natural person who is seeking temporary entry into the territory of the other Party to negotiate for the sale of goods, or to enter into a distribution or retailing arrangement where such negotiations do not involve direct sales to the general public; or

(iii) an investor of a Party, as defined in Chapter 10 (Investment), seeking temporary entry into the territory of the other Party to establish an investment and a natural person employed or otherwise engaged by an investor of the first mentioned Party in respect of an investment of that investor in the territory of the other Party;

(e) intra-corporate transferee means:

(i) in respect of Malaysia:

(AA) senior manager being person within an organization that provides services within Malaysia:

(1) having proprietary information of the organization;

(2) exercise wide latitude in decision making relating to the establishment, control and operation of the organization;

(3) primarily direct the management of the organization; and

(4) receive only general supervision or direction from the board of directors or partners of the organization;

(BB) specialists or experts being person within the organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organizationâs new service products and technology, research equipment and techniques or management,

provided that such persons are employees of the foreign service supplier and have been in the employment of that foreign service supplier for a period of not less than one year immediately preceding the date of their application for a work permit and he is to serve in at least a similar capacity.

(ii) in respect of India:

an employee of a juridical person of a Party as defined in Chapter 8 (Trade in Services), or of an investor of a Party or enterprise of a Party as defined in the Chapter 10 (Investment) established in the territory of the other Party (such juridical person or investor or enterprise, as the case may be referred to below as an organization), who is being transferred temporarily to a branch or a representative office or an affiliate or subsidiary of the said juridical person or investor or enterprise in the other Party, and who has been so employed by the relevant organization for the period of not less than one year immediately preceding the date of the application for the temporary entry and who is a manager, executive or specialist as defined below:

(AA) manager means a natural person within an organization who primarily directs the organization or a department or sub-division of the organization, supervises and controls the work of other supervisory, professional or managerial employees, has the authority to hire and fire or take other personnel actions (such as promotion or leave authorization), and exercises discretionary authority over day-to-day operations;

(BB) executive means a natural person within an organization who primarily directs the management of the organization, exercises wide latitude in decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business;

(CC) specialist means a natural person within an organization who possesses knowledge at an advanced level of expertise and who possesses relevant knowledge of the organizationâs service, research, equipment, techniques or management. (A specialist may include, but is not limited to, members of a licensed profession);

(f) installer or servicer means persons who are installer or servicer of machinery and/or equipment who is employed or appointed by a supplying company, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery and/or equipment, and are not performing activities which are not related to the installing or servicing activities which is the subject of the contract, and receives his or her remuneration from the supplying company;

(g) contractual service supplier means natural persons of a Party who:

(i) is an employee of a juridical person of the Party, who enters the territory of the other Party temporarily in order to perform a service pursuant to a contract between his or her employer and a person in the territory of the other Party;

(ii) is employed by a juridical person, of the Party, which has no commercial presence in the territory of the other Party where the service is to be provided;

(iii) receives his or her remuneration from that juridical person;

(iv) possesses appropriate educational and professional qualifications relevant to the service to be provided and has obtained, wherever necessary registration with the relevant professional body or regulator; and

(v) may not engage in other employment in the territory of the other Party where the service is being provided.

The service contract pursuant to which the natural person seeks to travel as a contractual service supplier has to be obtained in any one of the sectors or professions listed in the Horizontal Section of the Schedule of Specific Commitments;

(h) independent professional means a self-employed natural person of one Party who seeks to travel to the other Party temporarily, in order to perform a service pursuant to a contract with a person of the other Party, for which that natural person possesses appropriate educational and other qualifications relevant to the service to be provided, and has obtained wherever required, registration or license from the relevant professional body or regulator. The service contract pursuant to which the natural person seeks to travel as an independent professional has to be obtained in any one of the sectors or professions listed in the Horizontal Section of the Schedule of Specific Commitments and remuneration under such service contract should be payable directly to such natural person.

Article 9.4. Grant of Temporary Entry

1. Each Party shall, in accordance with this Chapter, grant temporary entry or extension of temporary stay to natural persons of the other Party, provided such persons are otherwise qualified for entry under applicable measures relating to public health and safety and national security. The conditions governing the temporary entry of natural persons including the duration of stay is inscribed in Annex 9-1.

2. Any fees imposed in respect of the processing of such applications for temporary stay or extension of temporary entry shall be reasonable and in accordance with domestic laws and regulations.

Article 9.5. Spouses and Dependents

For natural persons of a Party who have been granted the right to long term temporary entry and have been allowed to bring in their spouses and dependents, a Party shall, upon application and in accordance with that Party's domestic laws and regulation, and relevant licensing, administrative and registration requirements grant the accompanying spouses and dependents of such natural persons of the other Party, the right to work. The Parties agree that a natural person shall not be barred from working solely on the ground that he or she is a spouse or dependent of a natural person already employed in the other Party.

Article 9.6. Regulatory Transparency

1. Each Party shall publish or otherwise make publicly available explanatory material on all relevant visa formalities which pertain to or affect the operation of this Chapter.

2. Each Party shall maintain or establish contact points to respond to inquiries from interested persons regarding regulations affecting the temporary entry of natural persons. These contact points shall also be the authorized points allowing business persons to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking temporary entry in the other Party.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations affecting the temporary entry of natural persons and their effective date, and such notification to the other Party can be made electronically available.

Article 9.7. Procedures and Notification of Outcome

1. Each Party shall process expeditiously completed applications for temporary entry of natural persons of the other Party including requests for further extension of visas and permits, as applicable.

2. Each Party shall, at the request of the applicant, provide without undue delay, information concerning the status of the application. Each Party shall notify the applicant for temporary entry, either directly or through his or her prospective employers, of the outcome of the final determination, including period of stay and other conditions. In the case of an incomplete application, the Party shall notify the applicant of all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies.

3. If an application is terminated or denied, each Party shall, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. Each Party shall maintain or institute as soon as practicable procedures which provide, at the request of an affected applicant for temporary entry, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting such temporary entry.

Article 9.8. Consultations

A Party may request a consultation with the other Party regarding any matter arising under this Chapter. The other Party shall give sympathetic consideration to the request and shall endeavour to favourably resolve any specific or general problems which may arise from the implementation and administration of this Chapter.

Article 9.9. Dispute Settlement

1. A Party may not initiate proceedings under Chapter 14 (Dispute Settlement) regarding a refusal to grant temporary entry under this chapter unless:

(a) the matter involves a breach of any of the provisions relating to the grant of temporary entry accruing under this Chapter;

(b) the matter involves a pattern of practice; and

(c) that Party's natural persons affected by the pattern of practice have exhausted the available domestic administrative remedies.

Article 9.10. Reservations

The commitments made by each Party under this Chapter shall be subject to any terms, conditions, reservations or limitations it has scheduled in its Schedule of Specific Commitments under Chapter 8 (Trade in Services).

Article 9.11. Implementation

The Sub-Committee on Trade in Services established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Chapter 10. Investment

Article 10.1. Scope of Application

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

(a) investors of the other Party; and

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

2. This Chapter shall not apply to:

(a) any taxation measure, except under Article 10.8 (Transfers), unless otherwise provided;

(b) government procurement;

(c) subsidies or grants provided by a Party; and

(d) services supplied in the exercise of governmental authority by the relevant body or authority 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. This Chapter shall apply to existing investments as at the date of entry into force of this Agreement, as well as to investments made after the entry into force of this Agreement.

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

Article 10.2. Definition

For the purposes of this Chapter:

(a) an enterprise is:

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

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

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

(c) freely usable currency means a freely usable currency as determined by the International Monetary Fund under its Articles of Agreement and any amendments thereto;

(d) investments means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the other Party, and invested in accordance with the latter Party's laws, regulations and national policies, and has the characteristics of an investment, such as the commitment of capital, the expectation of gain or profit, or the assumption of risk, and includes:

(i) shares, stocks and other forms of equity participation in an enterprise and rights derived therefrom;

(ii) bonds, debentures, loans, and other debt instruments of an enterprise and rights derived therefrom;

(iii) a claim to money or to any performance having financial value associated with the investment;

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

(v) business concessions required to conduct economic activity and having financial value conferred by law or under a contract including any concession to search for, extract or exploit natural resources;

(vi) intellectual property rights recognised pursuant to the laws and regulations of each Party; and

(vii) movable and immovable property and any other property rights such as mortgages, liens or pledges.

The term investment also includes returns that are invested and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.

The term returns means an amount yielded by or derived from an investment of the investors of the other Party, including profits, dividends, interest, capital gains, technical fees, royalties and all other current income;

(e) investor of a Party means a natural person or an enterprise of a Party, that is making, or has made an investment in the territory of another Party; and

(f) natural pe rsonof aP arty means any person possessing the citizenship of a Party, or right of permanent residence in that Party and not having the citizenship of the other Party, in accordance with its laws, regulations and national policies.

Article 10.3. Relation to other Chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapters 8 (Trade in Services) or 9 (Movement of Natural Persons).

2. Notwithstanding paragraph 1 of this Article, Article 10.5 (Minimum Standard of Treatment), Article 10.6 (Compensation for Losses), Article 10.7 (Expropriation and Compensation), Article 10.8 (Transfers), Article 10.9 (Subrogation) and Article 10.14 (The Settlement of Investment Disputes between a Party and an Investor of the Other Party) of this Chapter shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to the provisions of Chapter 8 (Trade in Services), but only to the extent that they relate to an investment and an obligation under this Chapter, regardless of whether or not such a service sector is scheduled in a Party's Schedule of Specific Commitments pursuant to Article 8.6 (Schedule of Specific Commitments).

Article 10.4. National Treatment

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

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional or local government, treatment no less favourable than the most favoured treatment accorded, in like circumstances, at that regional or local government, to investors and investments of the Party to which it forms a part.

3. The provisions of paragraphs 1 and 2 above shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefits of any treatment, preference or privilege resulting from any arrangement or international agreement relating wholly or mainly to taxation.

Article 10.5. Minimum Standard of Treatment

1. Each Party shall accord to investments fair and equitable treatment and full protection and security.

2. The concepts of fair and equitable treatment and full protection and security do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. 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.

Article 10.6. Compensation for Losses

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

Article 10.7. Expropriation and Compensation

1. A Party shall not expropriate or nationalise an investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in paragraph 1(c) shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced, or when the expropriation occurred, whichever is the earlier;

(c) not reflect any change in value because the intended expropriation had become known earlier; and

(d) be effectively realisable and freely transferable in freely usable currency.

3. In the event of delay, the compensation shall include an interest at prevailing commercial rate. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely usable currency, the compensation referred to in paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. In accordance with the laws and regulations of the Party making the expropriation, the investor whose investment is expropriated shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek review of the expropriation measure or valuation of the compensation that has been assessed.

6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

7. Notwithstanding paragraphs 1, 2 and 3, any measure of expropriation relating to land shall be as defined in the expropriating Partyâs existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.

8. This Article shall be interpreted in accordance with Annex 10-1 (Indirect Expropriation). Article 10.8 Transfers 1. Each Party shall allow all transfers relating to an investment to be made freely and without delay. Such transfers include:

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

(b) returns;

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

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 10.6 (Compensation for Losses) and Article 10.7 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute under Article 10.14 (The Settlement of Investment Disputes between a Party and an Investor of the Other Party); and

(g) earnings and other remuneration of personnel from the other Party employed and allowed to work in connection with that investment.

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

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations 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) criminal or penal offences and the recovery of the proceeds of crime;

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

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

(f) taxation; and

(g) social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes.

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

Article 10.9. Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an 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 an agency of a Party 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 agency making the payment, pursue those rights and claims against the other Party.

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 10.10. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to an investment of such investor if investor of a non-Party own or control the enterprise, and the denying Party:

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

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

2. Subject to prior notification and consultation with the other Party, a Party may also deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that enterprise, and where the denying Party establishes that:

(a) the enterprise has no substantial business activities in the territory of the other Party; or

(b) the enterprise is owned or controlled by investors of a non-Party or of the denying Party.

Article 10.11. Special Formalities and Information Requirements

1. Nothing in Article 10.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that the investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the benefits of any of the provisions in this Chapter.

2. Notwithstanding Article 10.4 (National Treatment), a Party may require an investor of the other Party, or its investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect to the extent possible such information as confidential from any disclosure that would prejudice legitimate commercial interests of the investor or the 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 laws.

Article 10.12. Reservations

1. Article 10.4 (National Treatment) shall not apply to: (a) any existing non-conforming measure maintained by a Party at:

(i) the central and regional level of government, as set out by that Party in its Schedule to Annex 10-2; or

(ii) a local level of government;

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

(c) an amendment to any non-conforming measures referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as it existed at the date of entry into force of the Party's Schedule to Annex 10-2 with Article 10.4 (National Treatment).

2. Article 10.4 (National Treatment) 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 10-3.

3. Neither Party may, under any measure adopted after the date of entry into force of the Schedules referred to in Article 10.17 (Work Programme) and covered by its Schedule to Annex 10-3, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Each Party reserves the right to make future reservations on measures that do not conform to Article 10.4 (National Treatment) on new and emerging sectors, sub-sectors, industries, products, or activities.

Article 10.13. Review of Reservations

1. If, after the date of entry into force of this Agreement, a Party enters into any agreement on investment with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than

that provided under the aforesaid agreement.

2. As part of review of this Agreement pursuant to Article 16.9 (General Review), the Parties undertake to review their respective Schedule of Reservations in Annexes 10-2 and 10-3 with a view to decreasing its reservations and reducing the terms, limitations, conditions and qualifications on national treatment.

3. In any other case, a Party may, upon reasonable notice, request the other Party for a review of its reservations.

4. Any incorporation or review under this Article should maintain the overall balance of commitments undertaken by each Party under this Agreement.

Article 10.14. The Settlement of Investment Disputes between a Party and an Investor of the other Party

Scope

1. Any dispute between a Party ("disputing Party") and an investor of the other Party ("disputing investor") that has incurred loss or damage arising out of an alleged breach of any rights conferred by this Agreement with respect to the investment of the disputing investor shall, as far as possible, be settled by the parties to the dispute in an amicable way.

2. A natural person possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Article.

3. This Article shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.

4. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement available within the country of a disputing Party.

Consultation and Negotiation

5. In the event of an investment dispute referred to in paragraph 1, the disputing parties shall as far as possible resolve the dispute through consultation and negotiation, with a view towards reaching an amicable settlement. Such consultations and negotiations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for consultations and negotiations by the disputing investor to the disputing Party.

6. With the objective of resolving an investment dispute through consultations and negotiations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations and negotiations, with information regarding the legal and factual basis for the dispute.

Basis of Claim

7. If an investment dispute has not been resolved within 180 days of the receipt by a disputing Party of a request for consultations and negotiations, the disputing investor may submit to conciliation or arbitration a claim:

(a) that the disputing Party has breached an obligation arising under Article 10.4 (National Treatment), Article 10.5 (Minimum Standard of Treatment), Article 10.6 (Compensation for Losses), Article 10.7 (Expropriation and Compensation) and Article 10.8 (Transfers), relating to the management, conduct, operation or sale or other disposition of an investment; and

(b) that the disputing investor or the investment has incurred substantial loss or damage arising out of that breach.

Choice of Forum

8. A disputing investor may submit a claim referred to in paragraph 7:

(a) to arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") done at Washington on 18 March, 1965 provided both Parties are party to the ICSID Convention;

(b) to arbitration under the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;

(c) to an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or

(d) any other arbitral institution or in accordance with any other arbitral rules, if the parties to the dispute so agree.

Each Party hereby gives its consent to the submission of disputes to conciliation or arbitration set out in subparagraphs (a), (b), (c) or (d). Such consent is conditional upon the submission of the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach of any rights conferred by this Agreement with respect to the investment of the disputing investor.

Conditions and Limitations on Submission of Claim

9. An investor shall not be entitled to make a claim, if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred substantial loss or damage.

10. The disputing investor who intends to submit the dispute pursuant to paragraph 8 shall give to the disputing Party a written notice of intent to do so at least ninety days before the claim is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor and its legal representative;

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

(c) the relief sought, and where appropriate, the approximate amount of damages claimed; and

(d) the dispute settlement procedures set forth in paragraph 8 which the disputing investor will seek.

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

Selection of Arbitrators

12. Unless the disputing investor and the disputing Party ("the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 8 (a), (b), (c) and (d) shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by the two arbitrators. If the disputing investor or the disputing Party fails to appoint an arbitrator within sixty (60) days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of International Centre for Settlement of Investment Disputes ("ICSID") in the case of arbitration referred to in subparagraphs 8(a) or 8(b), or the Secretary-General of the Permanent Court of Arbitration ("PCA") in the case of arbitration referred to in subparagraphs 8(c) or 8(d), on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the ICSID or PCA Panel of Arbitrators respectively subject to the requirements of paragraph 13.

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

Conduct of the Arbitration

14. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter without making reference to the merits of the claim.

15. Adisputing Party may, no later than three months after the constitution of the tribunal, file an objection that a claim is not admissible. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

16. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

17. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to submit their views.

18. The place of arbitration shall be determined in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the United Nations Convention on the Recognition and Enforcement of

Foreign Arbitral Awards, done at New York on 10 June 1958.

Transparency

19. Subject to paragraph 20, the disputing Party may make publicly available all awards and decisions made by the tribunal.

20. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

Joint Interpretation

21. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within sixty days of the request. Without prejudice to paragraph 22, if the Parties fail to submit such a decision within sixty days, any interpretation submitted by a Party individually shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

22. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision. Awards 23. The award shall include: (a) a judgment as to whether or not there has been a breach by the disputing Party of any rights conferred by this Agreement in respect of 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.

24. The award rendered in accordance with paragraph 23 shall be final and binding upon the disputing parties. The disputing Party shall execute without delay any such award and provide in the disputing Party for the enforcement of such award in accordance with its relevant laws and regulations.

Costs

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

26. Neither Party shall, in respect of a dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 8, give diplomatic protection, or bring an international claim before another forum, unless the other party shall have failed to abide by and comply with the award in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 10.15. Other Obligations

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, result in a position entitling investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

Article 10.16. Duration and Termination

In the event that this Agreement is terminated, the provisions of this Chapter, the provisions in Chapter 14 (Dispute Settlement), and other provisions in the Agreement necessary for or consequential to the application of this Chapter, except Articles 10.4 (National Treatment), and 10.12 (Reservations), shall continue in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of ten years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

Article 10.17. Work Programme

1. The Parties shall enter into negotiations on Schedules of Reservations in Annexes 10-2 and 10-3 within three months of entry into force of this Agreement, unless the Parties otherwise agree.

2. The Parties shall conclude the negotiations referred to in paragraph 1, no later than six months from the date of entry into force of this Agreement, unless the Parties otherwise agree. These discussions shall be overseen by the Sub- Committee

on Investment established under Article 15.2 (Sub-Committees).

3. Schedules of Reservations referred to in paragraph 1 shall enter into force by exchange of notes on a date agreed to by the Parties.

4. Articles 10.4 (National Treatment) and 10.12 (Reservations) shall not apply until the Parties' Schedules of Reservations have entered into force in accordance with paragraph 3.

Article 10.18. Implementation

The Sub-Committee on Investment established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Article 10.19. Access to Courts of Justice

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

Article 10.20. Measures In Public Interest

Nothing in this Chapter shall be construed to prevent:

(a) a Party or its regulatory bodies from adopting, maintaining or enforcing any measure, on a non-discriminatory basis; or

(b) the judicial bodies of a Party from taking any measures,

consistent with this Chapter that is in the public interest, including measures to meet health, safety or environmental concerns.

Chapter 11. ECONOMIC COOPERATION

Article 11.1. Objectives

1. The Parties agree to establish a framework for cooperation as a means to expand and enhance the benefits of this Agreement and to promote capacity building activities in areas of mutual interest taking into account existing economic cooperation between them.

2. The Parties shall establish close cooperation aimed inter alia at:

(a) promoting and enhancing economic cooperation between them to further development objectives in accordance with the applicable laws and regulations of each Party;

(b) complementing existing, and building new, cooperative relationships between the Parties;

(c) creating new opportunities for trade and investment and promoting competitiveness and innovation including through the involvement, where appropriate, of the private sector;

(d) contributing to the important role of the private sector in promoting and building strategic alliances to encourage mutual economic growth and development;

(e) encouraging through this cooperative process the presence of the Parties and their goods and services in each others' respective markets; and

(f) increasing and deepening the level of cooperation activities between the Parties in areas of mutual interest.

Article 11.2. Scope

1. The Parties affirm the importance of all forms of co-operation to be identified and discussed by the Sub-Committee on Economic Cooperation. The areas of cooperation include, but not limited to:

(a) Infrastructure Development;

(b) Human Resource Development;

(c) Science and Technology, including Health;

(d) Creative Industries;

(e) Tourism;

(f) Small and Medium Enterprises;

(g) Business Facilitation;

(h) Finance; and

(i) Other related areas of cooperation to be mutually agreed upon by the Parties in accordance with the objectives as set out in Article 1.1 (Objectives) of this Agreement.

Notwithstanding ongoing cooperation activities, cooperation in the areas identified shall commence upon the entry into force of this Agreement, in which some of the identified projects could be implemented as soon as possible thereafter.

2. Cooperation between the Parties should contribute to achieving the objectives of this Agreement and in particular the objectives in Article 1.1 (Objectives).

3. Cooperation between the Parties under this Chapter will supplement the cooperation and cooperative activities between the Parties set out in this Agreement.

Article 11.3. Resources

Cooperation shall be undertaken subject to the availability of resources of each Party and the applicable laws and regulations of each Party.

Article 11.4. Implementation

The Sub-Committee on Economic Cooperation established under Article 15.2 (Sub- Committees) shall consider matters relating to the implementation of this Chapter.

Article 11.5. Mechanisms for Implementation of Cooperation

1. The Parties agree that the mechanisms for cooperation shall take the form of:

(a) meetings of the Sub-Committee on Economic Cooperation;

(b) meetings, as required between the relevant institutions of the Parties (including, but not limited to, relevant government agencies and universities), to further the implementation of cooperation activities with a view to ensuring the successful implementation of economic cooperation under this Chapter; and

(c) use of diplomatic channels to promote dialogue and cooperation consistent with this Agreement.

2. In accordance with Article 15.1 (Joint Committee), in the area of economic cooperation the Joint Committee shall:

(a) receive and deliberate on the reports of the Sub-Committee on Economic Cooperation;

(b) make decisions on issues referred to it by the Sub-Committee on Economic Cooperation;

(c) encourage undertaking of cooperation activities under the framework as well as new initiatives as agreed by the Parties; and

(d) make recommendations on the cooperation activities under this Chapter for implementation through the Sub-Committee on Economic Cooperation, in accordance with the strategic priorities of the Parties.

Article 11.6. Non-Application of Dispute Settlement

Neither Party shall have recourse to the dispute settlement procedures under Chapter 14 (Dispute Settlement) in respect of this Chapter.

Chapter 12. GENERAL EXCEPTIONS

Article 12.1. General Exceptions

1. For the purposes of Chapters 2 through 10 (Trade in Goods, Rules of Origin, Customs Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, Article XX of GATT 1994 and its interpretive notes and Article XIV of GATS (including its footnotes) shall apply to this Agreement, mutatis mutandis.

2. For the purposes of Chapters 2 through 10 (Trade in Goods, Rules of Origin, Customs Cooperation, Trade Remedies, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade in Services, Movement of Natural Persons, and Investment) of this Agreement, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in goods and services or investment, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures of artistic, historic or archaeological value.

Article 12.2. Security Exceptions

1. Nothing In this Agreement shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;

(ii) taken in time of war or other emergency in international relations;

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

(iv) relating to protection of critical public infrastructure, including communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Joint Commission shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

3. For the purposes of Chapters 8 (Trade in Services), 9 (Movement of Natural Persons) and 10 (Investment), nothing shall be construed to require a Party to accord the benefits of these Chapters to a service supplier or an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or a service supplier or an investor of a non-Party that would be violated or circumvented if the benefits of these Chapters were accorded to such a service supplier, an enterprise or to its investments, as the case may be.

4. Paragraph 3 shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in Annex 12-1 (Security Exceptions).

5. For purposes of Chapter 10 (Investment), this Article shall be interpreted in accordance with the understanding of the Parties on non-justiciability of security exceptions as set out in Annex 12-2 (Non-Justiciability of Security Exceptions).

Article 12.3. Taxation Measures

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

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

Article 12.4. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures;

(b) in the case of services, adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized 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.

(c) in the case of investments, adopt or maintain restrictions with regard to payments or transfers relating to investment. It is recognized 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.

2. Restrictions adopted or maintained under paragraph 1(b) or (c) 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 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and

(e) be applied in such a manner that the other Party is treated no less favourably than any country that is not a party to this Agreement.

3. In determining the incidence of such restrictions, the Parties may give priority to economic sectors which are more essential to their economic development. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

4. Any restrictions adopted or maintained by a Party under paragraph 1, or any changes therein, shall be notified promptly to the other Party from the date such measures are taken.

5. To the extent that it does not duplicate the process under WTO and International Monetary Fund (âIMFâ), the Party adopting or maintaining any restrictions under paragraph 1 shall promptly commence consultations with the other Party from the date of notification in order to review the measures adopted or maintained by it.

Chapter 13. TRANSPARENCY

Article 13.1. 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 and that is relevant to the implementation of this Agreement but does not include:

(a) a determination or ruling made in administrative or quasi-judicial proceedings that applies to a particular person, good, or service of the other Party in a specific case; or

(b) arruling that adjudicates with respect to a particular act or practice.

Article 13.2. Publication

1. Each Party shall ensure, wherever possible, that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published, and made available in the public

domain including in the official website in such a manner as to enable interested persons of the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide, where appropriate, interested persons and parties with a reasonable opportunity to comment on such proposed measures.

Article 13.3. Administrative Proceedings

With a view to administering in a consistent, impartial, and reasonable manner all measures concerning matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in paragraph 1 of Article 13.2 (Publication) 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 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 question;

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

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

Article 13.4. Review and Appeal

1. Each Party shall, where warranted, establish or maintain judicial, quasi- judicial, or administrative tribunals, or procedures for the purpose of the prompt review and correction of final administrative actions regarding matters covered by this Agreement, other than those taken for prudential reasons. Such tribunals shall be 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 proceedings are provided with the right to:

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

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

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

Article 13.5. Notification and Provision of Information

1. To the extent possible, each Party shall notify the other Party of any measure that the Party considers might materially affect the operation of this Agreement or otherwise substantially affect the other Party's interests under this Agreement. Such notification shall be issued in English and made available in the public domain, which may include in the official website.

2. Any such notification, documentation or other communication between the Parties shall be done in the English language.

3. On request of the other Party, a Party shall, where possible provide information and respond to questions pertaining to any measure, whether or not that other Party has been previously notified of that measure.

4. Any notification, request, or information under this Article shall be conveyed to the other Party through its contact point as established under Article 15.4 (Nodal Points) of this Agreement.

5. Any notification or information provided under this Article shall be without prejudice as to whether the measure is consistent with this Agreement.

Chapter 14. DISPUTE SETTLEMENT

Article 14.1. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes between the Parties concerning the interpretation, implementation or application of this Agreement, wherever a Party considers that:

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

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

2. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by state or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such measures as may be required to ensure its observance within its territory.

3. For the avoidance of doubt, the Parties agree that the provisions of this Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

4. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement of both Parties.

Article 14.2. Definition

For the purposes of this Chapter, award shall, unless the context otherwise requires, mean findings, recommendations or rulings, as the case may be, and shall exclude payment of monetary compensation by the Party concerned.

Article 14.3. Choice of Forum

1. Where a dispute regarding any matter arises under this Agreement and under another agreement to which the Parties are party, the complaining Party may select the forum in which to settle that matter from among the forums prescribed under the relevant agreements.

2. The complaining Party shall notify the other Party in writing of its intention to select a particular forum before doing so.

3. Once the complaining Party has selected a particular forum for settling a matter, that forum shall be used to the exclusion of other fora in respect of that matter.

4. For the purposes of this Article, the complaining Party shall be deemed to have selected a forum when it has requested the establishment of, or referred a matter to, a dispute settlement panel or arbitral tribunal.

Article 14.4. Consultations

1. Either Party may request for consultations with the other Party concerning the interpretation, implementation or application of this Agreement in accordance with paragraph 1 of Article 14.1 (Scope and Coverage).

2. A request for consultations shall be in writing setting out the reasons for the request including identification of the measure at issue and an indication of the legal basis for the complaint. The Party to which the request is made shall reply to the request in writing within ten days after the date of its receipt, and shall enter into consultations within a period of no more than thirty days after the receipt of the request.

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) provide sufficient information as may be reasonably available at the stage of consultations to enable a full examination of how the measure might affect the operation of the Agreement; and

(b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

Article 14.5. Referral to the Joint Committee

1. If the Parties fail to resolve a matter within sixty days of the delivery of a request for consultations under Article 14.4 (Consultations), either Party may refer the matter to the Joint Committee by delivering written notification to the other Party.

2. The Joint Committee shall promptly meet and endeavour to reach a mutually satisfactory resolution of the dispute.

Article 14.6. Good Offices, Conciliation and Mediation

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

2. If the Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal established under Article 14.7 (Establishment of Arbitral Tribunals).

3. All proceedings involving good offices, mediation and conciliation and positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Parties in any further proceedings under the provisions of this Chapter.

Article 14.7. Request for Establishment of Arbitral Tribunal

1. The complaining Party may request in writing for the establishment of an arbitral tribunal if:

(a) the Party complained against does not enter into consultations within thirty days after the date of its receipt of the request for consultations under Article 14.4 (Consultations) or there is no referral to the Joint Committee under Article 14.5 (Referral to the Joint Committee); or

(b) the Parties fail to resolve a dispute sixty days after the date of receipt of the request for consultations.

2. The request to establish an arbitral tribunal shall identify:

(a) the specific measures at issue; and

(b) the legal and factual basis of the complaint including the provisions of this Agreement alleged to have been breached.

Article 14.8. Terms of Reference

Unless the Parties otherwise agree within twenty days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of the arbitral tribunal shall be:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 14.7 (Request for Establishment of Arbitral Tribunal), to make findings of law and fact and determinations on whether the measure is not in conformity with the Agreement and to issue a written report for the resolution of the dispute. If the Parties agree, the arbitral tribunal may make recommendations for resolution of the dispute."

Article 14.9. Establishment and Composition of Arbitral Tribunals

1. Unless the Parties otherwise agree, an arbitral tribunal shall consist of three arbitrators. The complaining Party and the Party complained against shall each appoint one arbitrator within thirty days of the receipt of the request to establish an arbitral tribunal.

2. The parties to the dispute shall endeavour to agree on the third arbitrator within thirty days after the date of appointment of the second arbitrator. The third arbitrator shall serve as the chair. If the parties to the dispute are unable to agree on the chair within the aforesaid thirty days, the chair shall be jointly appointed, by the arbitrators who have been appointed under paragraph 1, within a further period of thirty days. If the third arbitrator has not been appointed within thirty days by the arbitrators appointed under paragraph 1, the parties to the dispute shall consult each other in order to jointly appoint the chair within a further period of thirty days.

3. The date of establishment of the arbitral tribunal shall be the date on which the chair of the Arbitral Tribunal is appointed.

4. All arbitrators shall: (a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

(c) be independent of, and not be affiliated with or take instructions from, any Party to the dispute.

5. The chair of the Arbitral Tribunal shall:

(a) not be a national of a Party;

(b) not have his or her usual place of residence in the territory of a Party;

(c) not be employed by either Party; and

(d) not have dealt with the matter in any capacity.

6. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in accordance with the appointment procedure provided for in this Article, which shall be applied, respectively, mutatis mutandis. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitral panel shall be suspended until the successor arbitrator is appointed.

Article 14.10. Proceedings of Arbitral Tribunal

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

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the two countries with the venue of the first sitting to be decided by a draw of lot in the presence of the Parties.

3. The Parties shall be given the opportunity to provide at least one written submission and to attend any of the presentations, statements or rebuttals in the proceedings. All information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the draft report and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

4. The arbitral tribunal should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution.

5. The arbitral tribunal shall aim to make its decisions, including its report, by consensus, provided that where an arbitral tribunal is unable to reach consensus it may take its decision by majority vote.

6. At the request of a Party to the arbitral proceeding or on its own initiative , and subject to such terms and conditions as the Parties may agree, the arbitral tribunal may seek information and technical advice from any expert to obtain their opinion or advice on certain aspects of the matter. The arbitral tribunal shall provide the Parties with a copy of the information or technical advice received and an opportunity to provide comments. Where the arbitral tribunal takes the information or technical advice into account in the preparation of its report, it shall also take into account any comments by the Parties on the information or technical advice.

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

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

9. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission, followed by the Party against which the complaint has been brought.

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

11. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

12. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

13. In the interests of full transparency, the presentations, submissions, rebuttals and statements referred to in this Article shall be made in the presence of the Parties. Each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Article 14.11. Functions of Arbitral Tribunals

1. The function of an arbitral tribunal established pursuant to Article 14.9 (Establishment and Composition of Arbitral Tribunals) is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that the Party in default bring the measure into conformity with that provision.

2. The award of the arbitral tribunal shall be set out in a report released to the Parties, including the reasons for the award. An arbitral tribunal may make its award upon the default of a Party.

3. Apart from the matters set out in Article 14.10 (Proceedings of Arbitral Tribunal), the arbitral tribunal shall regulate its own procedures in relation to the rights of the Parties to be heard and its deliberations, unless the Parties agree otherwise in writing.

Article 14.12. Suspension or Termination of Proceedings

1. The Parties may agree that the arbitral tribunal suspend its work at any time for a period not exceeding twelve months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than twelve months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal presents its final report, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

Article 14.13. Time Frame

All time frames stipulated in this Chapter may be reduced, waived or extended by mutual agreement of the Parties, or by application by either Party to the arbitral tribunal which is seized of the matter.

Article 14.14. Initial Report

1. The reports of the arbitral tribunal shall be drafted without the presence of the Parties and shall be based on the submissions and statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final report.

2. Unless the disputing Parties otherwise agree, the arbitral tribunal shall, within ninety days after the last arbitrator is selected, issue to the disputing Parties an initial report.

3. The initial report shall contain:

(a) findings of fact; and

(b) the determination as to whether a disputing Party has not conformed with its obligations under this Agreement.

4. In exceptional cases, if the arbitral tribunal considers it cannot issue its initial report within ninety days, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. Any delay shall not exceed a further period of thirty days unless the disputing Parties otherwise agree.

5. A disputing Party may submit written comments to the arbitral tribunal on its initial report within fifteen days of issuance of the report or within such other period as the disputing Parties may agree.

Article 14.15. Final Report

1. The arbitral tribunal shall issue its final report, within sixty days after the date of issuance of the initial report. When the arbitral tribunal considers that it cannot issue its final report within sixty days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its final report.

2. The final report of the arbitral tribunal shall be available to the public within fifteen days after the date of issuance,

subject to the requirement to protect confidential information.

3. The final report of the arbitral tribunal shall be final and binding on the Parties.

Article 14.16. Implementation

1. The Party complained against shall promptly comply with the award of the arbitral tribunal. Where it is not practicable to comply immediately, the Party complained against shall comply with the award within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties, or where the Parties fail to agree on the reasonable period of time within forty five days of the release of the arbitral tribunal's final report, either Party to the dispute may refer the matter to the arbitral tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the award of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible resorting to the original arbitral tribunal. (1) The arbitral tribunal shall provide its report to the Parties within sixty days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

(1) Consultations under Article 14.4 (Consultations) are not required for these procedures.

Article 14.17. Non-Implementation: Compensation and Suspension of Benefits

1. If the Party complained against fails to bring the measure found to be inconsistent with the Agreement into compliance with the award of the arbitral tribunal within the reasonable period of time that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory compensation.

2. If there is no satisfactory agreement on compensation within twenty days after the date of receipt of the request mentioned in paragraph 1, the complaining Party may give thirty days advance notice of its intention to suspend the benefits or other obligations under this Agreement. Such notification may only be given twenty days after the date of receipt of the request mentioned in paragraph 1.

3. The suspension of benefits shall only be applied until such time as the non- conformity is fully eliminated or a mutually satisfactory solution is reached.

4. In considering what benefits to suspend under paragraph 2:

(a) the complaining Party should first seek to suspend benefits or other obligations in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement; and

(b) the complaining Party may suspend benefits or other obligations in other sectors if it considers that it is not practicable or effective to suspend in the same sector.

5. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

6. Upon request of the Party complained against, Parties shall enter into consultation to discuss matters relating to:

(a) elimination of the non-conformity in accordance with the findings of the arbitral tribunal; or

(b) the level of concessions or other obligations suspended by the complaining Party pursuant to this Article.

Article 14.18. Expenses

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

Chapter 15. INSTITUTIONAL PROVISIONS

Article 15.1. Joint Committee

1. A Joint Committee shall be established under this Agreement which may meet at the level of Ministers or senior officials, as mutually determined by the Parties. The Joint Committee shall be co-chaired by senior government officials of the Parties, unless the Parties agree to convene the meeting at ministerial level. Each Party shall be responsible for the composition of its delegation.

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

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

(b) consider any matters relating to the implementation of this Agreement;

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

(d) adopt any decisions and recommendations of the Sub-Committees if necessary; and

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

3. The Joint Committee may:

(a) refer matters to a Sub-Committee for advice, and consider matters raised by any Sub-Committee established under this Agreement;

(b) establish ad hoc Working Groups to address specific issues where these are not more appropriately dealt with by an existing Sub- Committee;

(c) further the implementation of the Agreementâs objectives through implementing arrangements;

(d) explore measures for the further expansion of trade and investment among the Parties and identify appropriate areas of commercial, industrial and technical cooperation between relevant enterprises and organisations of the Parties;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement including matters referred to it pursuant to Chapter 14 (Dispute Settlement Mechanism); and

(f) consult third parties on any matter falling within the responsibilities of the Joint Committee where this would help the Joint Committee make an informed decision.

4. The Joint Committee may establish its rules and procedures and financial arrangements, if necessary.

5. The Joint Committee shall convene its inaugural meeting within one year after this Agreement enters into force. Its subsequent meetings shall be held at such frequency as the Parties may agree upon. Upon request by a Party, special meetings of the Joint Committee may be convened at a mutually convenient date. The Joint Committee shall convene alternately in Malaysia and India, unless the Parties agree otherwise.

Article 15.2. Sub-Committees

1. The following Sub-Committees shall be established on the date of entry into force of this Agreement:

(a) Sub-Committee on Trade in Goods;

(b) Sub-Committee on Customs Cooperation;

(c) Sub-Committee on Sanitary and Phytosanitary Measures;

(d) Sub-Committee on Technical Barriers to Trade;

(e) Sub-Committee on Trade in Services;

(f) Sub-Committee on Investment; and

(g) Sub-Committee on Economic Cooperation.

2. The Sub-Committee on Trade in Goods shall undertake the following functions:

(a) review the implementation and operation of the Chapters 2 (Trade in Goods) and 3 (Rules of Origin);

(b) submit a report to the Parties on the implementation and operation of the Chapters 2 (Trade in Goods) and 3 (Rules of Origin);

(c) consider and recommend to the Parties any amendments to the Chapters 2 (Trade in Goods) and 3 (Rules of Origin);

(d) supervise and coordinate the work of all Sub-Committees established under the Chapters 2 (Trade in Goods) and 3 (Rules of Origin); and

(e) carry out other functions as may be agreed to by the Parties.

3. The Sub-Committee on Customs Cooperation shall:

(a) comprise representatives of customs and other competent authorities from each Party and shall draw up its own rules of procedure at its first meeting. The Sub-Committee may, by mutual consent of the Parties, invite representatives of relevant entities other than the Parties with the necessary expertise relevant to the issues to be discussed;

(b) undertake the following functions:

(i) the uniform interpretation, application and administration of Chapter 4 (Customs Cooperation);

(ii) reviewing the implementation and operation of Chapter 4 (Customs Cooperation);

(iii) identifying areas, relating to Chapter 4 (Customs Cooperation), to be improved for facilitating trade between the Parties;

(iv) reporting the findings of the customs authorities of both the Parties to the Joint Committee formed for coordination purposes in this Agreement; and

(v) considering any other customs matter referred to it by the customs authorities of both the Parties or by the Joint Committee formed for coordination purposes in this Agreement.

(c) hold its first meeting within a period of one year from the date of entry of the Agreement and shall meet thereafter once a year or as often as required, alternating between the Parties.

4. The Sub-Committee on Sanitary and Phytosanitary Measures shall undertake the following functions:

(a) review and monitor the implementation of Chapter 6 (Sanitary and Phytosanitary Measures) and consider any matter incidental thereto;

(b) design, implement and review technical and institutional cooperation programs to further the objectives of Chapter 6 (Sanitary and Phytosanitary Measures);

(c) enhance mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures;

(d) address bilateral SPS matters with a view to facilitate trade between the Parties;

(e) establish definitions for those terms that are not available in the SPS Agreement;

(f) develop conditions and provisions for approval of establishments; and

(g) carry out other functions as may be agreed to by the Parties.

5. The Sub-Committee on Technical Barriers to Trade shall undertake the following functions:

(a) exchange information on and discuss issues related to Chapter 7 (Technical Barriers to Trade);

(b) review and monitor the implementation and operation of Chapter 7 (Technical Barriers to Trade);

(c) establish definitions for those terms that are not available in the TBT Agreement;

(d) strengthen cooperation at relevant international and regional fora on standards, technical regulations and conformity assessment procedures;

(e) encourage, promote and otherwise facilitate cooperation between the public and private organizations on standards, technical regulations and conformity assessment procedures;

(f) report the findings and the outcome of discussions to the Joint Committee; and

(g) carry out other functions as may be agreed to by the Parties.

6. The Sub-Committee on Trade in Services shall undertake the following functions:

(a) review the implementation and operation of the Chapters 8 (Trade in Services) and 9 (Movement of Natural Persons);

(b) submit a report to the Joint Committee on the implementation and operation of Chapters 8 (Trade in Services) and 9 (Movement of Natural Persons);

(c) consider and recommend to the Joint Committee any amendments to the Chapters 8 (Trade in Services) and 9 (Movement of Natural Persons) and modification or review of the Schedules of Specific Commitments;

(d) exchanging information on domestic laws and regulations; and

(e) carry out other functions as may be agreed to by the Parties.

7. The Sub-Committee on Investment shall undertake the following functions:

(a) exchange information on and discuss issues related to Chapter 10 (Investment);

(b) review and monitor the implementation and operation of Chapter 10 (Investment);

(c) oversee the negotiations referred to in Article 10.17 (Work Programme);

(d) report the findings and the outcome of discussions to the Joint Committee; and

(e) carry out other functions as may be agreed to by the Parties.

8. The Sub-Committee on Economic Cooperation shall undertake the following functions:

(a) establish an agreed work programme of cooperative activities; (b) â exchange information in the field of cooperation;

(c) identify new areas of cooperation and new ways to further cooperation between the Parties;

(d) serve as a channel for dialogue on matters of mutual interest;

(e) oversee the implementation and coordination of the economic cooperation framework and activities as agreed by the Parties; and

(f) report the findings and the outcome of discussions to the Joint Committee; and

(g) carry out other functions as may be agreed to by the Parties.

9. The Sub-Committees shall be co-chaired by officials of the Governments of the Parties and shall have the necessary and relevant expertise related to the issues, and decisions shall be taken by consensus between the Parties. The Sub-Committees shall meet at such venues and times as may be agreed by the Parties.

10. To the extent possible, the work of the Sub-Committees shall be conducted using electronic means, including e-mail, teleconference and video-conference. Where a physical meeting is required, it shall, unless otherwise agreed by the Parties, take place contiguous to a meeting of the Joint Committee.

Article 15.3. Contact Points and Exchange of Information

1. Each Party shall designate contact points to facilitate communication on work undertaken by the Sub-Committees.

2. Each Party shall provide to the other Party the names of the designated contact points, contact details of the contact points including telephone, facsimile, email and any other relevant details. Each Party shall notify the other Party promptly of any change of their contact points or any amendments to the contact details.

3. The contact points shall work with their respective government agencies, private sector representatives and educational and research institutions in the operation of this Agreement.

4. The contact points shall ensure communication and exchange of information to facilitate better implementation of this Agreement.

Article 15.4. Nodal Points

The overall coordination for this Agreement shall be undertaken by the following nodal points:

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

(b) in the case of India, the Ministry of Commerce and Industry.

Chapter 16. FINAL PROVISIONS

Article 16.1. Annexes and Footnotes

The Annexes and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 16.2. Relation to other Agreements

1. The Parties affirm their rights and obligations with respect to each other under bilateral and multilateral agreements to which both Parties are parties, including the WTO Agreement.

2. In the event of any inconsistency between this Agreement and any 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.

Article 16.3. Succession of Treaties or International Agreements

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 a Party is party.

Article 16.4. Application

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

Article 16.5. Disclosure of Information

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

(a) would be contrary to the public interest as determined by its legislation;

(b) is 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) would impede law enforcement; or

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

Article 16.6. Confidentiality

Where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 16.7. Financial Provisions

Any cooperative activities envisaged or undertaken under this Agreement shall be subject to the availability of resources and to the laws, regulations and policies of the Parties. Costs of cooperative activities shall be borne in such manner as may be mutually determined from time to time between the Parties.

Article 16.8. Amendments

1. This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such a date as may be agreed between the Parties.

2. Amendments shall not affect the rights and obligations of the Parties provided for under this Agreement until the amendments enter into force.

Article 16.9. General Reviews

The Parties shall undertake a general review of the Agreement, with a view to furthering its objectives, at ministerial level, within one year of the entry into force of this Agreement and thereafter biennially or otherwise as considered mutually appropriate.

Article 16.10. Duration and Termination

1. This Agreement shall remain in force until one Party gives written notice of its intention to terminate it.

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

3. The other Party may request in writing consultations concerning any matter that would arise from the termination within forty five days after the date of receipt of the notice referred to in paragraph 2.

4. The requested Party shall enter into consultations in good faith with a view to reaching a mutually satisfactory solution within thirty days after the date of receipt of the request referred to in paragraph 3.

Article 16.11. Entry Into Force

1. This Agreement shall enter into force on 1 July 2011, and shall remain in force unless terminated as provided for in Article 16.10 (Termination).

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement prior to 1 July 2011.

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

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

DONE at Kuala Lumpur, this 18" day of February, 2011 in duplicate copies in the English language.

FOR THE GOVERNMENT OF THE REPUBLIC OF MALAYSIA

(Dato' Sri Mustapa Mohamed)

Minister of International Trade and Industry

FOR THE GOVERNMENT OF INDIA

(Anand Sharma)

Minister of Commerce and Industry