THE FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

PREAMBLE

The Government of the Republic of the Philippines: ("the Philippines") and the Government of the Republic of Korea ("Korea"), hereinafter referred to collectively as the "Parties" and individually as a "Party":

RECOGNIZING their longstanding and strong friendship and the need to strengthen their close economic relations;

CONVINCED that a free trade area will create an expanded and secure market for goods and services in their territories and a stable and predictable environment for investment, thus enhancing the competitiveness of their firms in global markets;

RECOGNIZING the need to strengthen the framework for broader and deeper economic cooperation;

DESIRING to promote economic growth and create new employment opportunities;

RECOGNIZING the different levels of economic development between the Parties;

DESIRING to strengthen a mutually beneficial cooperative framework to foster creativity and innovation, and to promote stronger linkages in and between the dynamic sectors of their economies;

SEEKING to establish clear and mutually advantageous rules governing their trade and investment and to reduce or eliminate the barriers to such trade and investment between them;

DESIRING to promote a predictable, transparent, and consistent business environment that will assist enterprises in planning effectively and using resources efficiently;

RESOLVED to contribute to the harmonious development and expansion of world trade by removing obstacles to trade through the creation of a free trade area;

BUILDING on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization and other multilateral, regional, and bilateral agreements to which both Parties are party; and

REAFFIRMING their desire to build upon their commitments under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea as well as other relevant agreements pursuant to the Framework Agreement,

HAVE AGREED as follows:

Chapter ONE. GENERAL PROVISIONS

Article 1.1. Establishment of a Free Trade Area

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

Article 1.2. Objectives

The objectives of this Agreement are to:

(a) achieve the substantial liberalization of trade in goods between the Parties, in conformity with Article XXIV of GATT 1994;

(b) achieve the substantial liberalization of trade in services between the Parties, in conformity with Article V of GATS;

(c) mutually enhance investment opportunities;

(d) promote competition in their economies, particularly as it relates to economic relations between the Parties;

(e) bring substantial benefits to the Parties, with special consideration for Micro, Small and Medium Enterprises (MSMEs);

(f) develop appropriate cooperation initiatives in the fields of innovation and research and development; and

(g) establish a framework to enhance closer cooperation in the fields agreed upon by the Parties in this Agreement.

Article 1.3. Relation to other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement, the ASEAN-Korea FTA, and any other agreements to which both Parties are party.

2. Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and another agreement to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

Article 1.4. Extent of Obligations

Each Party shall, subject to the provisions of this Agreement, ensure the observance of all obligations and commitments under this Agreement by its regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

Article 1.5. General Definitions

For purposes of this Agreement, unless otherwise specified,

Agreement on Agriculture means the Agreement on Agriculture, in Annex 1A to the WTO Agreement;

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

customs authority means the authority that, in accordance with the legislation of each Party, is responsible for the administration and enforcement of its customs laws and regulations:

(a) for the Philippines, the Bureau of Customs, or its successor; and

(b) for Korea, the Ministry of Economy and Finance or the Korea Customs Service, or their respective successors;

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

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of a Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(b) duty imposed pursuant to a Party?s laws and regulations consistent with Chapter Three (Trade Remedies);

(c) fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) premiums offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions or tariff rate quotas; or

(e) duty imposed pursuant to any agricultural safeguard measure taken under the Agreement on Agriculture;

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

days means calendar days, including weekends and holidays;

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

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

GATT 1994 means the General Agreement on Tariffs and Trade 1994, including its notes and supplementary provisions, which is a part of the WTO Agreement;

goods means any merchandise, product, article, or material;

Harmonized System (HS) means the nomenclature of 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 in force and as amended from time to time;

Joint Committee means the Philippines-Korea Free Trade Agreement Joint Committee established under Article 11.1 (Joint Committee);

juridical person means any legal entity duly constituted or otherwise organized under applicable laws and regulations, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;

ASEAN-Korea FTA means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea and other means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea and other relevant agreements stipulated in paragraph 1 of Article 1.4 of the Framework Agreement;

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

measures adopted or maintained by a Party means measures adopted or maintained by:

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

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

national means:

(a) for the Philippines, a Filipino national as defined in its Constitution, as amended; and

(b) for Korea, a Korean national within the meaning of the Nationality Act, as amended;

originating goods means products or materials that qualify as originating under Chapter Four (Rules of Origin);

person means a natural person or a juridical person;

preferential tariff treatment means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

Safeguards Agreement means the Agreement on Safeguards, in Annex 1A to the WTO Agreement;

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

territory means:

(a) for the Philippines, the national territory as defined in Article I of its Constitution. The term "national territory" also includes the exclusive economic zone and the continental shelf over which the Philippines exercises sovereign rights or jurisdiction in accordance with its laws and regulations and under international law; and

(b) for Korea, the land, maritime, and airspace under its sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law;

Trade Facilitation Agreement means the Agreement on Trade Facilitation, in Annex 1A to the WTO Agreement;

WTO means the World Trade Organization; and

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

Chapter TWO. TRADE IN GOODS

Article 2.1: Definitions

For purposes of this Chapter:

consular transactions

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

import licensing

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

Article 2.2: Objectives

The Parties shall liberalize trade in goods under this Agreement, in conformity with Article XXIV of GATT 1994.

Article 2.3: Scope and Coverage

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

Article 2.4: Reduction or Elimination of Customs Duties

1.

Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on originating goods of the other Party in accordance with its respective Schedule of Tariff Commitments reflected in Annex 2-A.

2.

In accordance with the WTO Agreement, originating goods of the other Party shall be eligible, at the time of importation, for the most-favored-nation (MFN) applied rate of customs duty for those goods in a Party, where that MFN

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applied rate is lower than the preferential rate of customs duty provided for in that Party?s Schedule of Tariff Commitments. Subject to each Party?s laws and regulations, each Party shall provide that an importer may apply for a refund of any excess duty paid for a good if the importer did not make a claim for the lower MFN rate applicable at the time of importation.

3.

Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on originating goods of the other Party, as provided in its Schedule of Tariff Commitments.

Article 2.5: Acceleration of Tariff Commitments

1.

A Party may, at any time, unilaterally improve or accelerate its tariff commitments set out in its Schedule of Tariff Commitments. Such Party shall inform the other Party as early as practicable before the new preferential rate of customs duty takes effect.

2.

Upon request of a Party, the Parties will consult to consider accelerating the reduction or elimination of customs duties set out in their respective Schedule of Tariff Commitments. An agreement by the Parties to accelerate the reduction or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to their

respective Schedules of Tariff Commitments reflected in Annex 2-A.

3.

Following a unilateral improvement or acceleration of its tariff commitments referred to in Paragraph 1, a Party may raise its preferential customs duty to a level not in excess of that set out in its Schedule of Tariff Commitments for that year. Such Party shall inform the other Party of the date from which the new preferential rate of customs duty comes into effect as early as practicable before such date.

Article 2.6: Classification of Goods

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

Article 2.7: Agricultural Export Subsidies

The Parties reaffirm their commitments made in the 2015 Ministerial Decision on Export Competition, adopted in Nairobi, including elimination of scheduled export subsidy entitlements for agriculture goods.

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Article 2.8: Goods in Transit

Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of GATT 1994 and the relevant provisions of the Trade

Facilitation Agreement.

Article 2.9: Temporary Admission of Goods

1.

Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:

(a)

are brought into its customs territory for a specific purpose;

(b)

are intended for re-exportation within a specific period; and

(c)

have not undergone any change, except normal depreciation and wastage due to the use made of them.

2.

Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission provided for in paragraph 1 beyond the period initially fixed.

3.

Neither Party shall condition the duty-free temporary admission of a good provided for in paragraph 1, other than to require that the good:

(a)

be used solely by or under the personal supervision of a national or resident of the other Party in the exercise of the business activity, trade, profession, or sport of that person;

(b)

not be sold or leased while in its territory;

(c)

be accompanied by a security or guarantee in an amount no greater than the customs duties, taxes, fees, and charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d)

be capable of identification when imported and exported;

(e)

be exported on the departure of the person referred to in subparagraph (a), or within such other period related to the

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purpose of the temporary admission as the Party may establish, unless extended;

(f)

be admitted in no greater quantity than is reasonable for its intended use; and

(g)

be otherwise admissible into the Party?s territory under its laws and regulations.

4.

If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good in addition to any other charges or penalties provided for under its laws and regulations.

5.

Each Party shall permit a good temporarily admitted under this Article to be re-exported through a customs port other than that through which it was admitted.

Article 2.10: Customs Valuation

For purposes of determining the customs value of goods traded between the Parties, Article VII of GATT 1994 and Part I of the Customs Valuation Agreement

shall apply and are

hereby incorporated into and made part of this Agreement, mutatis mutandis.

Article 2.11: Quantitative Restrictions and Non-Tariff Measures

1.

Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses, or other measures, on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its rights and obligations under the relevant provisions under the WTO Agreement. To this end,

Article XI of GATT 1994 shall apply and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

2.

In this regard, a Party shall not adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

3.

Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 2 and shall ensure that any

such measures are not

Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 2 and shall ensure that any such measures are not

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prepared, adopted, or applied with the view to or with the effect of creating unnecessary obstacles to trade between the Parties.

Article 2.12: Import Licensing

1.

With respect to the rights and obligations of the Parties concerning import licensing, the

Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement

shall apply and is hereby incorporated into and made part of this Agreement, mutatis mutandis.

2.

Within 30 days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing import licensing procedures1, if any. The notification shall:

(a)

include the information specified in Article 5 of the Import Licensing Agreement; and

(b)

be without prejudice as to whether the import licensing procedure is consistent with this Agreement.

3.

Before applying any new or modified import licensing procedure, a Party shall notify the other Party of the new procedure or modification, and to the extent possible, publish in an official

government website at least 20 days before the new procedure or modification takes effect.

Article 2.13: Fees and Formalities

1.

Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994, that all fees and charges of whatever character (other than import or export duties, and other than taxes within the purview of Article III of GATT 1994, and any additional customs duty collected as a result of a measure consistent with Chapter Three (Trade Remedies)) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.

2.

Each Party shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation and shall make such information available on the internet.

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Existing import licensing procedures being referred to in this paragraph are those which have not yet been notified to the WTO at the date of entry into force of this Agreement.

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3.

Neither Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of the other Party.

Article 2.14: National Treatment on Internal Taxation and Regulation

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

To this end, Article III of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

Article 2.15: Agricultural Safeguard Measures

1.

Notwithstanding Article 2.4, a Party may apply an agricultural safeguard measure only up to the end of that particular year when it was imposed, in the form of a higher import duty on an originating agricultural good listed in that Party?s Schedule to Annex 2-B, consistent with paragraphs 2 through 7 if the aggregate volume of imports of that good in any year exceeds a trigger level as set out in its Schedule to Annex 2-B.

2.

The duty under paragraph 1 shall not exceed the lesser of:

(a)

the prevailing most-favored-nation (MFN) applied rate;

(b)

the MFN applied rate of duty in effect on the day immediately preceding the date of entry into force of this Agreement; or

(c)

the duty rate set out in the applying Party?s Schedule to Annex 2-B.

3.

The duties each Party applies under paragraph 1 shall be set according to the maximum duty that may be applied each year for each such good in the Party?s Schedule to Annex 2-B.

4.

Neither Party may apply or maintain an agricultural safeguard measure and at the same time apply or maintain, with respect to the same good:

(a)

a bilateral transitional safeguard measure under Chapter Three (Trade Remedies);

(b)

a measure under Article XIX of GATT 1994 and the Safeguards Agreement; or

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(c)

a measure under any agricultural safeguard provisions of the Agreement on Agriculture in Annex 1A to the WTO Agreement.

5.

A Party shall implement any agricultural safeguard measure in a transparent manner. Within 60 days after imposing a measure, the Party applying the measure shall notify the other Party in writing and provide the other Party with relevant data concerning the measure. On the written request of the other Party, a Party shall consult with the other Party within 45 days upon receipt of the written request regarding the application of the measure.

6.

The implementation and operation of this Article may be the subject of discussion and review in the Committee on Trade in Goods under Article 2.20.

7.

Neither Party shall apply or maintain an agricultural safeguard measure on an originating agricultural good if the period specified in the agricultural safeguard provisions of the Party?s Schedule to Annex 2-B has expired.

Article 2.16: Sanitary and Phytosanitary Measures

1.

The Parties affirm their existing rights and obligations with respect to each other under the

Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement.

2.

Neither Party shall have recourse to Chapter Nine (Dispute Settlement) for any matter arising under this Article.

Article 2.17: Technical Barriers to Trade

The Parties affirm their existing rights and obligations with respect to each other under the

Agreement on Technical Barriers to Trade,

in Annex 1A to the WTO Agreement.

Article 2.18: Modification of Concessions

In exceptional circumstances, where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may, subject to an agreement with the other Party, modify or withdraw a concession contained in its schedule of tariff commitments.

In order to reach such agreement, a Party shall engage in negotiations with the other Party. In such negotiations, the Party proposing to modify or withdraw a concession shall maintain a level of reciprocal and mutually advantageous concessions no less favorable to the other Party than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed

In order to reach such agreement, a Party shall engage in negotiations with the other Party. In such negotiations, the Party proposing to modify or withdraw a concession shall maintain a level of reciprocal and mutually advantageous concessions no less favorable to the other Party than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed

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outcome of the negotiations, including any compensatory adjustments,

shall be incorporated into this Agreement in accordance with Article 12.2 (Amendments).

Article 2.19: Contact Points

The Parties shall exchange contact details of focal points for this Chapter in order to facilitate the communication and the exchange of information.

Article 2.20: Committee on Trade in Goods

1.

The Parties hereby establish a Committee on Trade in Goods composed of government representatives of each Party.

2.

The Committee on Trade in Goods may consider any matter arising under this Chapter, including Annex 2-A.

3.

The functions of the Committee on Trade in Goods shall include:

(a)

monitoring the implementation and administration of this Chapter, including utilization of their respective preferences, and undertaking consultations, as appropriate;

(b)

preparing technical amendments, including the transposition of the Tariff Elimination or Reduction Schedules according to the amendments in the HS;

(c)

reviewing and making appropriate recommendations to the Joint Committee on matters arising from the implementation and administration of the Chapter;

(d)

addressing matters related to trade in goods between the Parties, especially those related to quantitative restrictions,

non-tariff measures,

and, if appropriate, referring such matters to the Joint Committee for its consideration; and

(e)

carrying out other functions as may be delegated by the Joint Committee or agreed by the Parties.

4.

The Committee on Trade in Goods shall strengthen their cooperation to facilitate the exchange of information between the competent authorities of the Parties, for purposes of carrying out the functions under paragraph 3.

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5.

The Committee on Trade in Goods shall meet at least once a year or as otherwise agreed. Meetings may be

conducted in person or by any technological means available to the Parties.

6.

The Committee on Trade in Goods shall report to the Joint Committee on the results of its meetings.

Chapter THREE. TRADE REMEDIES

Section A: Safeguard Measures

Article 3.1:

Definitions

For purposes of this Section:

bilateral transitional

safeguard measure

means a measure described in Article 3.2;

domestic industry

means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating in the territory of a Party, or those whose collective output of the like or directly competitive good constitutes a major proportion

of the total domestic production of that good;

serious injury

means a significant overall impairment in the position of a domestic industry;

substantial cause

means a cause that is important and not less than any other cause;

threat of serious injury

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

transition period

means, in relation to a particular good, the period from the date of entry into force of this Agreement until three years after the date of completion of tariff

reduction or

elimination

in accordance with a Party?s schedule of tariff commitments in Annex 2-A

(Reduction or Elimination of Customs Duties).

Article 3.2: Application of a Bilateral Transitional Safeguard Measure

1.

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of the other Party is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of such originating good from the other Party constitute a substantial cause of serious injury, or threat thereof, to a domestic industry producing a like or directly competitive good in the territory of the importing Party, the Party may take a

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bilateral

transitional safeguard measure in the form of:

(a)

suspending the further reduction of any rate of customs duty on the good provided for under this Agreement; or

(b)

increasing the rate of customs duty on the good to a level not to exceed the lesser of:

(i)

the most-favored-nation

(MFN)

rate of duty applied at the time the

bilateral transitional safeguard measure is taken;

or

(ii)

the MFN rate of duty applied on the day immediately preceding the date of the entry into force of this Agreement.

Article

3.3: Conditions and Limitations

1.

A Party shall notify the other Party in writing on the initiation of an investigation described in paragraph 2 and shall consult with the other Party as far in advance as practicable prior to

applying a bilateral transitional safeguard measure,

with a view to reviewing the information arising from the investigation and exchanging views on the bilateral

transitional safeguard measure.

2.

A Party shall apply a

bilateral transitional safeguard measure

only following an investigation by the Party?s competent authorities in accordance with Articles 3 and 4.2(c) of the Safeguards

Agreement, which are incorporated into and made part of this Agreement, mutatis mutandis.

3.

In the investigation described in paragraph 2, the Party shall comply with the requirements of Articles 4.2(a) and 4.2(b) of the Safeguards Agreement, which are incorporated into and made a part of this Agreement, mutatis mutandis.

4.

Each Party shall ensure that its competent authorities complete any such investigation within one year from the date of

its

initiation.

5.

Neither Party shall

apply a

bilateral transitional safeguard measure:

(a)

except to the extent, and for such time, as may be necessary to prevent or remedy serious injury

and to facilitate adjustment;

(b)

for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the importing Party determine, in conformity with the procedures

for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of the importing Party determine, in conformity with the procedures

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specified in this Article, that the measure continues to be necessary to prevent or remedy serious injury

to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a bilateral transitional safeguard measure, including the period of initial application and any extension thereof, shall not

exceed three years; or

(c)

beyond the expiration of the transition period.

6.

A Party

may apply a bilateral transitional safeguard measure

more than once against the same good,

if deemed necessary, provided that at least two years

has elapsed since the completion of the period of application of a bilateral transitional safeguard measure on the import of that product.

7.

Where the expected duration of the bilateral transitional safeguard measure

is over one year, the importing Party shall progressively liberalize it at regular intervals.

8.

When a Party

terminates a

bilateral

transitional safeguard measure, the customs duty rate shall be the rate that, according to the Party?s Schedule in

Annex 2-A

(Reduction or Elimination of Customs Duties),

would have been in effect but

for the measure.

Article

3.4: Provisional Measures

1.

In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a

bilateral

transitional safeguard measure on a provisional basis pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from the other Party have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such imports constitute a substantial cause of serious injury, or threat thereof, to the domestic industry.

2.

Before a Party?s competent authorities may make a preliminary determination, the Party shall publish a public notice setting out how interested parties, including importers and exporters, may obtain a non-confidential copy of the application requesting a provisional safeguard measure, and shall provide interested parties at least 20 days after the date it publishes the notice to submit evidence and views regarding the application of a provisional measure. A Party may not apply a provisional measure

until at

least 45 days after the date its competent authorities initiate an investigation.

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3.

The applying Party shall notify the other Party before applying a provisional safeguard measure, and, on the request of the other Party, shall initiate consultations after applying the measure.

4.

The duration of any provisional measure shall not exceed 200 days, during which time the Party shall comply with the requirements of Articles

3.3.2 and 3.3.3.

5.

The applying Party shall promptly refund any tariff increase if the investigation described in Article 3.3.2

does not result in a finding that the requirements of Article 3.2

are met. The duration of any provisional measure shall be counted as part of the period described in Article 3.3.5(b).

Article 3.5: Compensation

1.

No later than 30 days after it applies a

bilateral transitional safeguard measure, the applying Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the

bilateral transitional safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.

2.

If the Parties are unable to agree on compensation through consultations under paragraph 1 within 30 days from

the

beginning of the

consultations, the Party against whose originating good the

bilateral transitional safeguard measure

is applied may suspend the application of concessions with respect to originating goods of the applying Party that have trade effects substantially equivalent to the safeguard measure.

3.

The applying Party?s obligation to provide compensation under paragraph 1 and the other Party?s right to suspend concessions under paragraph 2 shall terminate on the date the

bilateral transitional safeguard measure terminates.

4.

Any compensation shall be based on the total period of application of the bilateral transitional safeguard measure, which includes the provisional safeguard measures under Article 3.4.

5.

The right of suspension referred to in paragraph 2 shall not be exercised for the

first 24 months during which a

bilateral

transitional safeguard measure is in effect, provided that the bilateral transitional safeguard measure has been applied as a result of an absolute increase in imports and that the bilateral transitional safeguard measure

conforms to the provisions of this Agreement.

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Article

3.6: Global Safeguard Measures

1.

Each Party retains its rights and obligations under Article XIX of GATT 1994 and the Safeguards

Agreement. This Agreement does not confer any additional rights or obligations on the Parties with regard to actions taken under Article XIX of GATT 1994 and the Safeguards

Agreement. In taking measures under these WTO provisions, a Party shall, in accordance with WTO rules, exclude imports of an originating product from the other Party if such imports do not in and of themselves cause or threaten to cause serious injury.

2

Upon request of the other Party, the Party intending to take safeguard measures shall promptly provide written notification of all pertinent information on the initiation of a safeguard investigation, the preliminary determination,

and the final finding

of the investigation.

3.

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

(a)

a

bilateral

transitional safeguard measure; and

(b)

a measure under Article XIX of GATT 1994 and the

Safeguards

Agreement.

Section B: Anti-Dumping and Countervailing Duties

Article 3.7: General Provisions

1.

Except as otherwise provided for in this Agreement, each Party retains its rights and obligations under the WTO Agreement with regard to the application of anti-dumping and countervailing duties.

2.

The Parties shall ensure, immediately after any imposition of provisional measures and in any case before the final determination, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures, without prejudice to Article 6.5 of the Anti-Dumping Agreement and Article 12.4 of the SCM Agreement.

Disclosures shall be made in writing, and interested parties

shall be allowed sufficient time to make their comments.

3.

The Parties shall observe the following practices in anti-dumping or countervailing cases between them in order to enhance transparency in the implementation of the WTO Agreement:

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(a)

when 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, should be counted toward the average;

(b)

if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the Anti-Dumping Agreement, the Party taking such a decision may apply the ?lesser duty? rule, by imposing a duty which is less than the dumping margin where such lesser duty would

be adequate to remove the injury to the domestic industry; and

(c)

the investigating Party shall request an exporter or producer in the territory of the other Party for the timely response to its questionnaires. When the investigating Party finds major deficiency in information in a questionnaire response from relevant exporter or producer received before the deadline or requires clarifications for the purposes of investigation, the investigating Party shall demand missing information or request clarification of information concerning the answers to the questionnaires. This procedure shall not be used to cause unwarranted delays in the investigation or to circumvent the deadlines which are provided in the Party?s laws and regulations. The Parties may make preliminary and final determinations on the basis of the facts available pursuant to the Anti-Dumping Agreement

and SCM Agreement.

Article 3.8: Notification and Consultations

1.

Upon receipt by a Party?s competent authorities of a properly documented anti-dumping application with respect to imports from the other Party, and no later than 15 days before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting or other similar opportunities regarding the application, consistent with the Party?s laws and regulations.

2.

Upon receipt by a Party?s competent authorities of a properly documented countervailing duty application with respect to imports from the other Party, and before initiating an investigation, the Party shall provide written notification to the other Party of its receipt of the application and afford the other Party a meeting to consult with its competent authorities regarding the application.

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Article 3.9: Undertakings

1.

After a Party?s competent authorities initiate an anti-dumping or countervailing duty investigation, the Party shall transmit to the other Party?s embassy or competent authorities written information regarding the Party?s procedures for requesting

its authorities to consider an undertaking on price including the timeframes for offering and concluding any such undertaking,

if practicable.

2.

In an anti-dumping investigation, where a Party?s

competent authorities have made a preliminary affirmative determination of dumping and injury caused by such dumping, the Party shall afford due consideration and adequate opportunity for consultations to exporters of the other Party regarding proposed price undertakings which, if accepted, may result in suspension of the investigation without imposition of anti-dumping duties, through the means provided for in the Party?s laws, regulations,

and procedures.

3.

In a countervailing duty investigation, where a Party?s competent authorities have made a preliminary affirmative determination of subsidization and injury caused by such subsidization, the Party shall afford due consideration and adequate opportunity for consultations to the other Party and exporters of the other Party regarding proposed undertakings on price which, if accepted, may result in suspension of the investigation without imposition of countervailing duties, through the means provided for in the Party?s laws, regulations,

and procedures.

Article 3.10: Investigation after Termination Resulting from a Review

The Parties agree to examine, with special care, any application for initiation of an anti-dumping investigation on a good originating in the other Party and on which anti-dumping measures have been terminated in the previous 12 months as a result of a review. Unless this pre-initiation examination indicates that the circumstances have changed, the investigation shall not proceed.

Section C: Committee on Trade Remedies

Article 3.11: Committee on Trade Remedies

1.

The Parties hereby establish a Committee on Trade Remedies (hereinafter referred to as the ?Committee?), comprising representatives at an appropriate level from relevant agencies of each Party who have responsibility for trade remedies matters, including anti-dumping, subsidies and

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countervailing measures, and safeguards issues.

2.

The functions of the Committee shall include:

(a)

enhancing a Party?s knowledge and understanding of the other Party?s trade remedies laws, regulations, policies and practices;

(b)

overseeing the implementation of this Chapter;

(c)

improving cooperation between the competent authorities of the Parties having responsibility for matters on trade remedies;

(d)

providing a forum for the Parties to exchange information on issues relating to anti-dumping, subsidies and countervailing measures,

and safeguards;

(e)

providing a forum for the Parties to discuss other relevant topics of mutual interest,

including:

(i)

international issues relating to trade remedies, including issues relating to the WTO Doha Round Rules negotiations; and

(ii)

practices by the competent authorities of the Parties in anti-dumping and countervailing duty investigations such as the application of ?facts available? and verification procedures; and

(f)

cooperating on any other matter that the Parties may agree on, as necessary.

3.

The Committee shall meet at least once a year and may meet more frequently as the Parties may agree.

Chapter FOUR. RULES OF ORIGIN

Article 4.1: Definitions

For purposes of this Chapter:

Cost, Insurance, and Freight (CIF)

means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation, in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

Free on Board (FOB)

means the free on board value of a good, inclusive of the cost of transport, from the producer to the port or site of final shipment abroad, in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement;

fungible materials

means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

materials

means ingredients, raw materials, components, parts, or accessories used in the production of goods;

packing materials and containers for transportation

means the goods used to protect goods during their transportation, different from those materials or containers used for their retail sale;

preferential tariff treatment means tariff concessions granted to originating goods as reflected by the tariff rates applicable under this Agreement;

Product Specific Rules (PSR)

means the rules that specify that the materials have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content or a combination of any of these criteria; and

production

means methods of obtaining goods including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing, or assembling goods.

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Article 4.2: Origin Criteria

For purposes of this Agreement, goods shall be considered as originating in a Party if they have been:

(a)

wholly obtained or produced entirely in the

territory of a Party, in accordance with Article 4.3;

(b)

produced entirely in the territory of a Party using non-originating materials provided the goods satisfy the requirements set out in Annex 4-B; or

(c)

produced entirely in the territory of a Party exclusively from materials originating in the Parties

and meet all other applicable requirements of this Chapter.

Article 4.3:

Wholly Obtained or Produced Goods

For purposes of Article 4.2(a), the following goods shall be considered as wholly obtained or produced entirely in the

territory of a Party:

(a)

plants and plant products grown and harvested, picked, or gathered in that Party;

(b)

live animals born and raised in that Party;

(c)

goods obtained from live animals referred to in subparagraph (b);

(d)

goods obtained by hunting, trapping, fishing, aquaculture, gathering, or capturing conducted in that Party;

(e)

minerals and other naturally occurring substances not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed, or beneath the seabed;

(f)

goods of sea-fishing and other marine products extracted or taken by vessels registered with the Party and entitled to fly the flag of that Party, and other products extracted or taken by the Party or a person of that Party from the waters, seabed, or beneath the seabed outside the territorial waters of the Party, provided that the Party or a person of that Party has the rights to exploit1

such

1

The Parties understand that for purposes of determining the origin of goods

of sea-fishing and other goods, the ?rights to exploit? include those rights of access to the fisheries resources of a

of sea-fishing and other goods, the ?rights to exploit? include those rights of access to the fisheries resources of a

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waters, seabed, and beneath the seabed in accordance with international law2;

(g)

goods of sea-fishing and other marine products extracted or taken from the high seas by vessels registered with the Party and entitled to fly the flag of that Party;

(h)

goods produced 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 subparagraph (f) or (g);

(i)

articles collected from that Party which can no longer perform their original purpose nor are capable of being restored or repaired and are fit only for the recovery of parts of raw materials or recycling purposes;

(j)

waste and scrap derived from:

(i)

manufacturing or processing operations conducted

in that

Party; or

(ii)

used goods collected in that Party, provided that such goods are fit only for the recovery of raw materials; and

(k)

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

Article 4.4: Not Wholly Obtained or Produced Goods

1.

For purposes of Article 4.2(b), goods shall be considered originating if the regional value content (hereinafter referred to as the ?RVC?) is not less than 40 percent of the FOB value or the goods have undergone a change in tariff classification at four digit-level (change in tariff

heading) of the HS as a general rule except those covered in Annex 4-B.

2.

For purposes of Article 4.2(b), the RVC shall be calculated in accordance with any of the following methods:

coastal State, as accruing from agreements or other arrangements concluded between a Party and the coastal State at the level of governments or duly authorized private entities.

2

International law refers to generally accepted international

law such as the United Nations Convention on the Law of the Sea.

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(a)

Build-Up Method

VOM

RVC = ----------

x 100%

FOB

VOM means value of originating materials, which includes the value of originating materials, direct labor

cost, direct overhead cost, transportation cost, and profit.

(b)

Build-Down Method

FOB -

VNM

RVC = ----------

x 100%

FOB

VNM means value of non-originating materials, which shall be:

(i)

the CIF value at the time of importation of the materials, parts, or goods; or

(ii)

the earliest ascertained price paid for the materials, parts, or goods of undetermined origin in the

territory of the Party where the working or processing has taken place.

Article 4.5: De Minimis

1.

Goods that do not undergo a change in tariff classification shall be considered as originating if:

(a)

for goods, other than those provided in Chapters 50 through 63 of the HS, the value of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the goods;

(b)

for goods provided in Chapters 50 through 63 of the HS, the weight of all non-originating materials used in its production that do not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the goods;

and the goods specified in subparagraphs (a) and (b) meet all other applicable

and the goods specified in subparagraphs (a) and (b) meet all other applicable

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criteria set forth in this Chapter for qualifying as originating goods.

2.

The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable RVC requirement for the goods.

Article 4.6: Minimal Operations

1.

Notwithstanding any provision in this Chapter, goods shall not be considered as originating in a Party if they have undergone only one or a combination of any of the following operations or processes in the territory of that Party:

(a)

preserving operations to ensure that goods remain in good condition during transport and storage;

(b)

packaging and re-packaging, breaking-up, and assembly of packages;

(c)

simple washing, cleaning, removal of dust, oxide, oil, paint, or other coverings;

(d)

ironing or pressing of textiles or textile products;

(e)

simple painting and polishing;

(f)

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

(g)

coloring sugar or forming sugar lumps;

(h)

simple peeling, stoning, or un-shelling;

(i)

sharpening, simple grinding, or simple cutting;

(j)

sifting, screening, sorting, classifying, grading, or matching;

(k)

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

(l)

affixing or printing marks, labels, logos, and other like distinguishing signs on goods

or their packaging;

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(m)

simple mixing3

of goods, whether or not of different kinds;

(n)

simple assembly of parts of articles to constitute a complete article;

(o)

disassembly of products into parts;

(p)

simple

testing or calibrations; or

(q)

slaughter of animals4.

2.

For purposes of paragraph 1, simple describes operations or processes which do not need special skills, or machines, apparatus, or equipment especially produced or installed to carry out the operation or process.

3.

Goods originating in the territory of a Party shall retain their initial originating status when exported from the other Party, where operations undertaken have not gone beyond those referred to in paragraph 1.

Article 4.7: Accumulation of Origin

Unless otherwise provided for in this Chapter, goods originating in the territory of a Party, which are used in the territory of the other Party as materials for finished goods eligible for preferential tariff treatment, 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 4.8: Treatment for Certain Goods

Notwithstanding Article 4.2, certain goods shall be considered to be originating even if they have undergone working or processing outside the Parties, on materials exported from a Party and subsequently re-imported there, provided that the working or processing is done in the areas designated by the Parties pursuant to Annex 4-C.

3

Simple mixing generally describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity. However, simple mixing does not include chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

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Slaughtering means the mere killing of animals and subsequent processes such as cutting, chilling, or freezing for the purpose of preservation for storage and transport.

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Article 4.9: Intermediate Goods

When originating goods are used in the subsequent production of other goods, no account shall be taken of the non-

originating materials contained in the originating goods for purposes of determining the originating status of the subsequently produced goods.

Article

4.10:

Treatment of Packaging and Packing Materials

1. (a)

If the goods are subject to the RVC criterion as set out in Article 4.4, the value of the packaging and packing materials for retail sale shall be taken into account in the determination of origin, where the packaging and packing materials are considered to be taken as a whole with the goods.

(b)

Where subparagraph (a) is not applicable, the packaging and packing materials for retail sale, when classified together with the packaged goods, shall not be taken into account in considering whether all non-originating materials used in the manufacture of the goods fulfil the criterion corresponding to a change in tariff classification or a specific manufacturing or processing operation of the said goods.

2.

Packing materials and containers for transportation of goods shall not be taken into account in determining the origin of the goods.

Article 4.11: Sets

1.

Sets, as defined in Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall be considered as originating when all the components of the sets are originating.

2.

Nevertheless, when a set is composed of originating and non-originating goods, the set as a whole shall be considered as originating, provided that the value of the non-originating goods determined in accordance with Article 4.4 does not exceed 10 percent of the FOB value of the set.

Article 4.12: Accessories, Spare Parts, and Tools

1.

For purposes of determining the originating status of goods, accessories, spare parts, tools, and instructional or other information materials presented

For purposes of determining the originating status of goods, accessories, spare parts, tools, and instructional or other information materials presented

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with the good shall be considered as part of those goods and shall be disregarded in determining whether all the non-originating materials used in the production of the goods have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 4-B, provided that:

(a)

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

(b)

the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods are customary for those goods.

2.

Notwithstanding paragraph 1, if the goods are subject to the RVC criterion, the value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods provided that:

(a)

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

(b)

the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the goods are customary for those goods.

Article 4.13: Neutral Elements

In order to determine whether goods are originating, it shall not be necessary to determine the origin of the following which might be used in its production and not incorporated into the goods:

(a)

fuel and energy;

(b)

tools, dies, and moulds;

(c)

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

(d)

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

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(e)

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

(f)

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

(g)

any other goods that are not incorporated into the goods but of which use in the production of the goods can reasonably be demonstrated to be a

part of that production.

Article 4.14: Fungible Materials

1.

For purposes of establishing the origin of goods, when the goods are manufactured utilizing originating and non-originating materials, mixed or physically combined, the origin of such materials can be determined by generally accepted accounting principles of inventory management practiced in the territory of the exporting Party.

2.

Once an inventory management method has been chosen, it must be used throughout the fiscal year.

Article 4.15: Direct Consignment

1.

Preferential tariff treatment shall be applied to goods satisfying the requirements of this Chapter and which are transported directly between the territories of the exporting Party and the importing Party.

2.

Notwithstanding paragraph 1, goods which

involve transit through one or more non-Parties, other than the territories of the Parties, shall be considered to be consigned directly, provided that:

(a)

the transit is justified for geographical reason or by consideration related exclusively to transport requirement;

(b)

the goods have not entered into trade or consumption there; and

(c)

the goods have not undergone any operation other than unloading and reloading or any operation required to keep them in good condition.

3.

For purposes of implementing paragraph 2, where transportation is effected through the territory of one or more intermediate countries, other than that of the exporting Party and the importing Party, the following shall be produced to the relevant government authorities of the importing Party:

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(a)

a through Bill of Lading issued in the territory of the exporting Party, which include a combination of any transport document covering the entire transport route of the goods from the exporting Party to the importing Party; or

(b)

other relevant supporting documents, if any, as evidence that the requirements of paragraph 2 are being complied with.

Article 4.16: Proof of Origin

A claim that goods shall be accepted as eligible for preferential tariff treatment shall be supported by a Proof of Origin, in accordance with the Operational Certification Procedures, as set out in Annex 4-A.

Article 4.17: Denial of Preferential Treatment

The importing Party may deny preferential tariff treatment or recover unpaid customs duties in accordance with its laws and regulations, where goods do not meet the requirements of this Chapter or where the importer or exporter fails to demonstrate compliance with the relevant requirements.

Article 4.18: Confidentiality

1.

The Parties shall maintain, in accordance with their respective laws and regulations, the confidentiality of classified business information collected in the process of verification pursuant to Rule 15 of Annex 4-A and shall protect that information from disclosure that could prejudice the competitive position of the person who provided the information.

2.

Subject to the laws and regulations and agreement of the Parties, classified information may only be disclosed by the

authorities of a Party to the other Party, for the administration and enforcement of origin determination.

Article

4.19:

Penalties

Each Party shall ensure, in accordance with its laws and regulations, that appropriate penalties, sanctions, or other measures are imposed for violations of the laws and regulations related to this Chapter.

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Article 4.20: Transitional Provisions for Goods in Transit or Storage

The provisions of this Agreement may be applied to goods which, on the date of entry into force of this Agreement, are either in transit or in temporary storage in a customs warehouse or free zone under customs control. For such goods, a Proof of Origin may be completed retrospectively up to three months after the entry into force of this Agreement, provided that the provisions of this Chapter have been fulfilled.

Article 4.21: Product Specific Rules Transposition

For purposes of the transposition of the Product Specific Rules (PSR) set out in Annex 4-B as a result of the amendments to the HS, the following subparagraphs shall apply:

(a)

Prior to the entry into force of an amended version of the HS, the Parties shall undertake consultation to prepare updates to Annex 4-B that are necessary to reflect changes to the HS;

(b)

The Parties shall ensure that the transposition of Annex 4-B is carried out without impairing the PSR set out therein and is completed within a reasonable period of time;

(c)

The Joint Committee, upon recommendation of the Committee on Rules of Origin and Customs Procedures, shall adopt the transposition of the PSR in accordance with the nomenclature of the revised HS; and

(d)

The Parties shall promptly publish the adopted transposition document of Annex 4-B in accordance with the nomenclature of the revised HS.

Article 4.22: Consultations

The Parties shall consult regularly to ensure that provisions in this Chapter are administered effectively, uniformly, and consistently in order to achieve the spirit and objectives of this Chapter.

Article 4. 23 Committee on Rules of Origin and Customs Procedures

The Parties hereby establish a Committee on Rules of Origin and Customs Procedures pursuant to Article 5.21 (Committee on Rules of Origin and Customs Procedures).

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Article 4.24: Review and Modification

1.

This Chapter may be reviewed and modified as and when necessary upon request of a Party and may be open to such reviews and modifications as may be agreed upon in the Joint Committee established under Article 11.1 (Joint Committee).

2.

Annexes and Appendices of this Chapter may be modified through amendments endorsed by the Joint Committee. The amendments shall enter into force 60 days after the date on which the Parties have notified in writing the completion of their applicable legal procedures or on such date as the Parties may agree.

Chapter FIVE. CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 5.1: Definitions

For purposes of this

Chapter:

competent authority

means the authorities that are responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;

customs laws and regulations

means the statutory and regulatory provisions relating to the importation, exportation, movement,

or storage of goods, the administration and enforcement of which are specifically charged to customs authorities, and any regulations made by customs authorities, under their statutory powers;

customs procedure

means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws and regulations;

express consignment

means all goods imported by or through an enterprise that operates a consignment service for the expeditious cross-border movement of goods and assumes liability to the customs authority

for those goods; and

means of transport

means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of the Parties carrying persons,

goods,

or articles.

Article 5.2: Objectives

The objectives of this Chapter are to:

(a)

ensure predictability, consistency,

and transparency in the application of

customs laws and regulations of the Parties;

(b)

promote efficient administration of customs procedures and the expeditious

clearance of goods;

(c)

simplify customs procedures of the Parties and harmonize

them to

the extent possible with relevant international standards;

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(d)

promote cooperation among the customs authorities of the Parties; and

(e)

facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

Article 5.3: Scope

This Chapter shall apply to customs procedures applied to goods traded between the Parties and the means of transport which enter or leave the customs territory of the Parties.

Article 5.4: Consistency

1.

Each Party shall ensure consistent implementation and application of its customs laws

and regulations throughout its customs territory. For greater certainty, this does not prevent the exercise of discretion granted to the customs authority of a Party where such discretion is granted by that Party?s customs laws and regulations, provided that the discretion is exercised consistently throughout that Party?s customs territory and in accordance with its customs laws and regulations.

2.

In fulfilling the obligation in paragraph 1, each Party shall endeavor to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.

3.

If a Party fails to comply with the obligations in paragraphs 1 and 2, the other

Party may consult with that Party on the matter relating thereto in accordance with Article 5.20.

4.

Each Party is encouraged to share with the other Party its practices and experiences relating to the administrative mechanism referred to in paragraph 2 with a view to improving the operations thereof.

Article 5.5: Transparency

1.

Each Party shall promptly publish, on the internet to the extent possible, the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested persons to become acquainted with them:

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(a)

procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;

(b)

applied rates of duties and taxes of any kind imposed on or in connection

with

importation or exportation;

(c)

fees and charges imposed by or for governmental agencies on or in connection with importation, exportation,

or transit;

(d)

rules for the classification or valuation of products for customs purposes;

(e)

laws, regulations, and administrative rulings of general application relating to rules of origin;

(f)

import, export,

or transit restrictions or prohibitions;

(g)

penalty provisions for breaches of import, export, or transit formalities;

(h)

procedures for appeal or review;

(i)

agreements

to which it is party,

or parts thereof,

with any country or countries relating

to importation, exportation, or transit; and

(j)

procedures relating to the administration of tariff quotas.

2.

In particular, each Party shall make available,

and update to the extent possible and as appropriate, the following through the internet:

(a)

a description1

of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders,

and other interested persons of the practical steps needed for importation, exportation, and transit;

(b)

the forms and documents required for importation into, exportation from, or transit through the territory of that Party;

and

(c)

contact information for the enquiry points as well as information on how to make enquiries on customs matters as provided for in Article 5.6.

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Each Party

has the discretion to state on its website the legal limitations of this description.

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3.

To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is precluded.

4.

Each Party shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them is otherwise

made

publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

5.

Nothing in this Article shall be construed as requiring the publication or provision of information other than in the language of the Party.

Article 5.6: Enquiry Points

Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons concerning customs matters and to facilitate access to forms and documents required for importation, exportation,

and transit.

Article 5.7: Customs Procedures

1.

Each Party shall ensure that its customs procedures and practices are predictable, consistent, and

transparent,

and facilitate trade, including through the expeditious clearance of goods.

2.

Customs procedures of each Party shall, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of

the World Customs Organization.

3.

The customs authority of each Party shall review its customs procedures with a view to their simplification to facilitate trade.

Article

5.8: Pre-shipment Inspection

1.

Each Party shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

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2.

Without prejudice to the rights of

the Parties to use other types of pre-shipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.

3.

Paragraph 2 refers to pre-shipment inspections covered by the Agreement on Pre-shipment Inspection, and does not preclude pre-shipment inspections for sanitary and phytosanitary purposes.

Article 5.9: Pre-arrival Processing

1.

Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for

the

importation of goods in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

2.

Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in paragraph 1 in electronic format for pre-arrival processing of such documents.

Article

5.10: Advance Rulings

1.

Each Party shall, to the extent permitted by its respective laws, regulations, and administrative determinations, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:

(a)

tariff classification;

(b)

whether a good is originating in accordance with Chapter Four

(Rules of Origin)

under

this Agreement;

(c)

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

(d)

such other matters as the Parties may decide.

2.

A Party may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with

A Party may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with

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particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

3.

Each Party shall adopt or maintain procedures for issuing advance rulings which:

(a)

specify the information required to apply for an advance ruling;

(b)

provide that each Party may,

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

(c)

ensure that an advance ruling be based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and

(d)

ensure that the advance ruling includes the relevant facts and the basis for its decision.

4.

Each Party shall issue an advance ruling in the official language of the issuing Party or in the language it decides. The advance ruling shall be issued within 90 days to the applicant upon receipt of all necessary information. Each Party shall specify and make public such time period for the issuance of an advance ruling prior to

such an application. Should the

competent

authority have reasonable grounds to issue the advance ruling later than the specified period, after the receipt of the application, it shall notify the applicant of the ground for such a delay prior to the end of the specified period.

5.

A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances,

and the basis for its decision to decline to issue the advance ruling.

6.

A Party may reject applications for an advance ruling where the additional information requested, in writing, in accordance with paragraph 3(b) is not provided within a reasonable, specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.

7.

Each Party shall provide that advance rulings shall be valid

from the date they are issued, or another date specified in the ruling, provided that the laws, regulations, administrative rules, and facts and circumstances, on which the

from the date they are issued, or another date specified in the ruling, provided that the laws, regulations, administrative rules, and facts and circumstances, on which the

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ruling is based remain

unchanged. Subject to paragraph 8, an advance ruling shall be valid

for at least three years

unless a shorter period is provided for in the ruling due to the nature of the application,

which shall be clearly stated in the advance ruling

in accordance with

the respective laws and regulations

of the Parties.

8.

Where a Party revokes, modifies, or invalidates an

advance ruling, it shall promptly provide written notice to the applicant setting out the relevant facts and the basis for its decision, where:

(a)

there is a change in its laws, regulations,

or administrative rules;

(b)

incorrect information was provided or relevant information was withheld;

(c)

there is a change in a material fact or circumstances on which the advance ruling was based; or

(d)

the advance ruling was in error.

9.

Where a Party revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

10.

An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

11.

Each Party shall publish, at a minimum:

(a)

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

(b)

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

(c)

the length of time for which the advance ruling is valid.

12.

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

Article 5.11: Release of Goods

1.

Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This

Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This

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paragraph shall not require a Party to release a good if its requirements for release have not been met.

2.

Pursuant to paragraph 1, each Party shall adopt or maintain procedures that allow the goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs laws and regulations

and, to the extent possible, within 48 hours of the arrival of goods and lodgment

of all the necessary information for customs clearance.

3.

If any goods are selected for further examination, such an examination shall be limited to what is reasonable and

necessary, and undertaken and completed without undue delay.

4.

Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees, and charges if such determination is not done prior to, or upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

5.

Nothing in these provisions shall affect the right of a Party to examine, detain, seize,

confiscate,

or deal with the goods in any manner consistent with its laws and regulations.

6.

With a view to preventing avoidable loss or deterioration of perishable goods,2

and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods from customs control:

(a)

under normal circumstances in the shortest possible time, and to the extent

possible in less than six hours after the arrival of the goods and submission of

the information required for release; and

(b)

in exceptional circumstances where it would be appropriate to do so, outside

the business hours of its customs authority.

7.

Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

8.

Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may

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For purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular, in the absence of appropriate storage conditions.

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require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval,

where required, of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 5.12: Application of Information Technology

1.

The Parties shall,

to the extent possible, apply information technology to support customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.

2.

The Parties shall, to the extent possible, use information technology that expedites customs procedures for the release of goods, including the submission of data before the arrival of the shipment of those goods, as well as electronic or automated systems for risk management targeting.

3.

The Parties shall endeavor to make trade administration documents available to the public in electronic versions.

4.

The Parties shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.

5.

In developing initiatives which provide for the use of paperless trade administration, the Parties are

encouraged to take into account international standards or methods made under the auspices of international

organizations.

6.

The Parties shall cooperate to enhance the acceptance of trade administration documents submitted electronically.

Article 5.13: Trade Facilitation Measures for Authorized Operators

1.

Each Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

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10 -

2.

The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party's laws, regulations or procedures.

(a)

Such criteria, which shall be published, may include:

(i)

an appropriate record of compliance with customs and other related laws and regulations;

(ii)

a system of managing records to allow for necessary internal controls;

(iii)

financial solvency, including, where appropriate, provision of a

sufficient security or guarantee; and

(iv)

supply chain security.

(b)

Such criteria shall not:

(i)

be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii)

to the extent possible, restrict the participation of small and medium-sized enterprises.

3.

The trade facilitation measures provided pursuant to paragraph 1 shall

include at least three of the following measures:3

(a)

low documentary and data requirements, as appropriate;

(b)

low rate of physical inspections and examinations, as appropriate;

(c)

rapid release time, as appropriate;

(d)

deferred payment of customs duties, taxes, fees, and charges;

(e)

use of comprehensive guarantees or reduced guarantees;

(f)

a single customs declaration for all imports or exports in a given period; and

3

A measure listed in subparagraphs (a) through (g) will be deemed to be provided to authorized operators if it is generally available to all operators.

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(g)

clearance of goods at the premises of the authorized operator or another place authorized by a customs

authority.

4.

Each Party

is

encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5.

In order to enhance the trade facilitation measures provided to operators, a Party

shall afford to the other Party

the possibility of negotiating mutual recognition of authorized operator schemes.

6.

The Parties are encouraged to cooperate, where appropriate, in developing their respective authorized operator schemes using the contact points in Article 5.20 through the following:

(a)

exchanging of information on such schemes and on initiatives to introduce new schemes;

(b)

sharing of perspectives on business views and experiences, and best practices in business outreach;

(c)

sharing of information on approaches to mutual recognition of such schemes; and

(d)

considering ways to enhance the benefits of such schemes to promote trade, and,

in the first instance,

to designate customs officers as coordinators for authorized operators to resolve customs issues.

Article 5.14: Risk Management

1.

Each Party shall adopt or maintain a risk management system for customs control.

2.

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

3.

Each Party shall concentrate customs control and, to the extent possible,

other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

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4.

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

Article 5.15: Express Consignments

1.

Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and

selection4, by:

(a)

providing for pre-arrival processing of information related to express consignments;

(b)

permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;

(c)

minimizing the documentation required for the release of express consignments;

(d)

providing for express consignment to be released under normal circumstances as rapidly as possible, and within six hours when possible, after the arrival of the goods and submission of the information required for release;

(e)

endeavoring to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognizing that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided that the treatment is not

limited to low value goods such as documents; and

(f)

providing, to the extent possible, for a de minimis

shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports

4

In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedure.

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consistently with Article III of GATT 1994, are not subject to this provision.

2.

Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate,

or refuse the entry of goods, or to carry out post-clearance audit, including in connection with the use of risk management systems.

Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

Article 5.16: Post-clearance Audit

1.

With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

2.

Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved,

the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations,

and the reasons for the results.

3.

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

4.

The Parties shall,

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

Article 5.17: Time Release Studies

1.

Each Party

is

encouraged to measure the time required for the release of goods by the customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of

Goods

issued by World Customs Organization with a view to assessing their trade facilitation measures and considering opportunities for further improvement of the time required for the release of goods.

2.

Each Party

is

encouraged to share its

experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

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Article 5.18: Review and Appeal

1.

Each Party shall provide that any person to whom

its

customs

authority

issues an administrative decision5

has the right, within its territory,

to:

(a)

an administrative appeal to or review by an administrative authority

higher than or independent of the official or office that issued the decision; and

(b)

a judicial appeal or review of the decision.

2.

The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3.

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

4.

Each Party shall ensure that, in cases

where the decision on appeal or review under paragraph 1(a) is not given either:

(a)

within set periods as specified in its laws or regulations; or

(b)

without undue delay,

the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial

authority or any other recourse to the judicial authority.6

5.

Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review,

where necessary.

5

An administrative decision in this Article means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party's law and legal system. For addressing such failure, each Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under paragraph 1(a).

6

Nothing in this paragraph shall prevent a Party from recognizing administrative silence on appeal or review as a decision in favor of the petitioner in accordance with its laws and regulations.

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6.

Each Party shall ensure that the person referred to in paragraph 1 is not treated unfavorably

merely because that person seeks review of an administrative decision or omission referred to in paragraph 1.

7.

Each Party is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than its customs

authority.

8.

The decision, and the reasons for the decision, of an administrative or judicial review or appeal shall be provided in writing.

Article 5.19: Customs Cooperation

1.

The customs authority of each Party may, as deemed appropriate, assist the customs authority of

the

other Party, in relation to:

(a)

the implementation and operation of this Chapter;

(b)

developing and implementing customs best practice and risk management

techniques;

(c)

simplifying and harmonizing customs procedures;

(d)

advancing technical skills and the use of technology;

(e)

application of the Customs Valuation Agreement; and

(f)

such other customs issues as the Parties may mutually determine.

2.

Each Party shall, to the extent possible, provide the other Party with timely notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that govern importations or exportations, that is likely to substantially affect the operation of this Chapter. The notice can be made in English or the Party?s language.

3.

The customs authority of a Party may, as deemed appropriate, share with the other Party, information and experiences on development of customs administration.

4.

The customs authorities of the Parties shall actively cooperate to resolve difficulties arising during the import and export clearance

in each Party.

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Article 5.20: Consultation on Customs Procedures and Trade Facilitation

1.

A Party may at any time request consultations regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultation shall be conducted through the contact points and shall commence within 30 days following the date of the receipt of the request, unless the Parties determine otherwise.

2.

In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee

on Rules of Origin and Customs Procedures.

3.

A Party shall designate one or more contact points for purposes of this Chapter. Information on the contact points shall be provided to the other Party and any changes of the said information shall be notified promptly.

Article 5.21:

Committee on Rules of Origin and Customs Procedures

1.

The Parties hereby establish a Committee on Rules of Origin and Customs Procedures (hereinafter referred to as the ? Committee?), composed of the competent authorities and relevant government authorities7

of the Parties. The Committee shall be responsible for addressing rules of origin, origin procedures, trade facilitation, and customs matters.

2.

The Committee shall ensure the proper functioning of this Chapter and Chapter Four (Rules

of Origin).

3.

The functions of the Committee shall include:

(a)

ensuring the effective, uniform, and consistent administration of this Chapter and Chapter Four (Rules of Origin);

(b)

revising Annex 4-B (Product Specific Rules) on the basis of the transposition of the HS and national nomenclatures;

(c)

adopting customs practices and standards which facilitate commercial exchange between the Parties, according to the international standards;

7

For purposes of this Article, ?relevant government authorities? refers

to Philippine agencies responsible for monitoring, reviewing, analyzing, and developing policies on matters relating to Chapter Four

(Rules of Origin).

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(d)

resolving any issues relating

to

the

interpretation, application, and administration

of this Chapter and Chapter Four

(Rules of Origin), including tariff classification;

(e)

presenting proposals for the

approval

of the Joint Committee on the modifications of this Chapter and Chapter Four

(Rules of Origin), including Annex 4-B

(Product Specific

Rules of Origin), in the event a consensus is reached between the Parties;

(f)

working on the possible development of an electronic certification and

verification system;

(g)

regularly exchanging

statistics in order to assess the utilization of preference under this Agreement and holding

consultations

in respect of this matter;

(h)

advising the Joint Committee of proposed solutions to address issues relating to:

(i)

interpretation, application, and administration of this Chapter and Chapter Four (Rules of Origin);

(ii)

tariff classification and customs valuation;

(iii)

calculation of the regional value content; and

(iv)

issues arising from

the adoption by a Party of operational practices not

in conformity with this Chapter and Chapter Four (Rules

of Origin)

which

may adversely affect the flow of trade between the Parties; and

(i)

carrying out other functions as may be delegated by the Joint Committee or as necessary.

4.

The Committee may formulate resolutions, recommendations,

or opinions which it considers necessary for the attainment of the common objectives and the functions of the mechanisms established under this Chapter and Chapter Four (Rules of Origin).

5.

The Committee shall meet every year or as otherwise agreed.

6.

The Committee shall report to the Joint Committee on the results of each of its meetings.

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Chapter SIX. COMPETITION

Article 6.1: Definitions

For purposes of this Chapter:

Competition authority means:

(a)

for the Philippines, the Philippine Competition Commission, or its successor; and

(b)

for Korea, the Korea Fair Trade Commission, or its successor.

Competition laws means:

(a)

for the Philippines, the Philippine Competition Act and its implementing regulations, and any amendments thereto; and

(b)

for Korea, the Monopoly Regulation and Fair Trade Act

and its implementing regulations, and any amendments thereto;

Consumer protection

law

means:

(a)

for the Philippines, the Consumer Act of the Philippines

and its implementing regulations, and any amendments thereto; and

(b)

for Korea, the Framework Act on Consumer, the Fair Labelling and Advertising Act and their implementing regulations, and any amendments thereto.

Article 6.2: Objectives

The objectives of this Chapter are to promote competition in markets, and enhance economic efficiency and consumer welfare through the maintenance of competition laws to proscribe anti-competitive activities, and through bilateral cooperation on the development and implementation of competition laws between the Parties. The pursuit of these objectives will help secure the benefits of this Agreement, including the facilitation of trade and investment between the Parties.

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Article 6.3: Basic Principles

1.

Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.

2.

Acknowledging each Party?s rights and obligations under this Chapter, the Parties recognize:

(a)

the sovereign rights of each Party to develop, set, administer and enforce its own competition laws and competition policies; and

(b)

the significant differences that exist between the Parties in capacity and level of development in the area of competition law and competition policy.

Article 6.4: Appropriate Measures against Anti-competitive Activities

1.

Each Party shall maintain competition laws to proscribe anti-competitive activities1, and shall enforce those competition laws accordingly.

2.

Each Party shall maintain an authority or authorities to effectively implement its competition laws.

3.

Each Party shall ensure independence in decision-making by its authority or authorities in relation to the enforcement of its competition laws.

4.

Each Party shall apply and enforce its competition laws in a manner which does not discriminate on the basis of nationality.

5.

Each Party shall apply its competition laws to all persons or entities engaged in commercial activities. Any exclusions or exemptions from the application of each Party?s competition laws shall be transparent and based on grounds of public policy or public interest.

6.

Each Party shall make publicly available its competition laws, and any guidelines issued in relation to the administration of competition laws, excluding internal operating procedures.

1

Examples of such activities may include: a) anti-competitive agreements; b) abuses of dominant position; and c) anti-competitive mergers and acquisitions.

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7.

Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws, and any appeal therefrom subject to:

(a)

(i)

its laws and regulations;

(ii)

its need to safeguard confidential information; or

(iii)

its need to safeguard information on grounds of public policy or public interest; and

(b)

redactions from the final decision or order based on any of the grounds in subparagraphs (a)(i) through (iii) above.

8.

Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for the violation of its competition laws, such person or entity is given the reasons in writing, where possible, for the allegations that its competition laws have

been violated, and a fair opportunity to be heard and to present evidence.

9.

Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws available to the person or entity subject to that sanction or remedy.

10.

Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws has access to an independent

review of or appeal against that sanction or remedy.

11.

Each Party recognizes the importance of timeliness in the handling of competition cases.

Article 6.5: Cooperation

The Parties recognize the importance of cooperation between their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may cooperate on issues relating to competition law enforcement, through their competition authorities, in a manner compatible with their respective laws, regulations, and important interests, and within their available resources. Such cooperation includes:

(a)

notification by a Party to the other Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly and reasonably as possible;

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(b)

upon request, discussion between the Parties to address any matter relating to competition law enforcement that substantially affects the important interests of the requesting Party;

(c)

upon request, exchange of information between the Parties to foster

understanding or to facilitate effective competition law enforcement; and

(d)

upon request, coordination in enforcement actions between the Parties in relation to the same or related anti-competitive activities.

Article 6.6: Confidentiality of Information

1.

This Chapter shall not require the sharing of information by a Party which is contrary to that Party?s laws, regulations, and important interests.

2.

Where a Party requests confidential information under this Chapter, the requesting Party shall

notify the requested Party of:

(a)

the purpose of the request; and

(b)

the intended use of the requested information.

3.

The sharing of confidential information between the Parties and the use of such information shall be based on mutually agreed terms and conditions between the Parties.

4.

If information shared under this Chapter is shared on a confidential basis, then, the Party receiving that information shall:

(a)

maintain the confidentiality of the information received;

(b)

use it only for the purpose disclosed at the time of the request, unless otherwise authorized by the Party providing the information;

(c)

not use it as evidence in criminal proceedings carried out by a court or a judge unless, upon request of the Party receiving the information, such information was provided for such use in criminal proceedings through the diplomatic channel or other channel established in accordance with the laws of both

Parties;

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(d)

not disclose it to any other authority, person, or entity not authorized by the Party providing the information; and

(e)

comply with any other conditions required by the Party providing the information.

Article 6.7: Technical Cooperation and Capacity Building

The Parties agree that it is in their common interest to work together on technical cooperation activities to build necessary capacities to strengthen competition policy development and competition law enforcement, taking into account the availability of resources of the Parties. Technical cooperation activities may include:

(a)

sharing of relevant experiences and non-confidential information on development and implementation of competition law and competition policy;

(b)

exchange of consultants and experts on competition law and policy;

(c)

exchange of officials of competition authorities for training purposes;

(d)

participation of officials of competition authorities in advocacy programmes; and

(e)

other activities as agreed by the Parties.

Article 6.8: Non-Application of Dispute Settlement

Chapter Nine (Dispute Settlement) shall not apply to matters arising under this Chapter.

Article 6.9: Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, each Party shall, upon the request of the other Party, enter into consultations. In its request, the requesting Party shall indicate, if relevant, how the matter affects its important interests, including trade or investment between the Parties. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party.

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Article 6.10: Consumer Protection

1.

The Parties recognize the importance of consumer protection laws and enforcement of such laws as well as cooperation between the Parties on matters related to consumer protection, in order to achieve the objectives set out in Article 6.2.

2.

Each Party shall adopt or maintain laws or regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.

3.

Each Party also recognizes the importance of improving awareness of, and access to, consumer redress mechanisms.

4.

The Parties may cooperate on matters of mutual interest related to consumer protection. Such cooperation shall be carried out in a manner compatible with each Party?s laws and regulations and within their available resources.

Article 6.11: State Enterprises

1.

Nothing in this Chapter shall be construed to prevent a Party from establishing or maintaining a State enterprise, entrusting enterprises with special or exclusive rights, or maintaining such rights.

2.

With respect to State enterprises and enterprises entrusted with special rights2

or exclusive rights:

(a)

Neither Party shall adopt or maintain any measure contrary to the principles contained in Article 6.43,4; and

2

Special rights are granted by a Party when it designates or limits to two or more the number of enterprises authorized to provide goods or services, other than according to objective, proportional and non-discriminatory criteria, or confers on enterprises legal or regulatory advantages which substantially affect the ability of any other enterprise to provide the same goods or services.

3

Notwithstanding this paragraph, each Party understands that Article 6.4.4 shall only apply to laws and policies which are adopted after the date of entry into force of this Agreement.

4

For greater certainty, Articles 6.4.4 and 6.11.2(a) shall not be construed to prevent the Parties from adopting laws and policies regarding State enterprises in order to achieve legitimate public policy or public interest.

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(b)

The Parties shall ensure that such enterprises, specifically in relation to their commercial activities, are subject to their respective competition laws,

insofar as the application of these principles and competition laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

Chapter SEVEN. ECONOMIC AND TECHNICAL COOPERATION

Article 7.1:

Basic Principles

1.

Recognizing the importance of economic and technical cooperation in further strengthening trade, investments, and economic relations between the Parties and in support of the full utilization and implementation of this Agreement, the Parties shall undertake cooperation initiatives in areas of mutual interest and benefit in accordance with their domestic laws and regulations.

2.

The Parties shall undertake cooperation between their respective governments, where necessary and appropriate, and shall endeavor to encourage and facilitate the participation of the private sector, academe, and other relevant organizations in the identification and implementation of cooperation initiatives.

3.

Reaffirming the value of existing economic and technical cooperation mechanisms, other than those established under this Agreement, the Parties shall respect and encourage the continued implementation of their

existing cooperation mechanisms.

Article 7.2:

Scope

of Cooperation

1.

The Parties, on the basis of mutual benefit, shall explore and undertake cooperative activities focusing on

the following areas:

(a)

industrial development, including health and life sciences-related manufacturing and cooperation on processing of technology metals;

(b)

innovation and research and development;

(c)

micro, small and medium enterprises (MSMEs);

(d)

creative and cultural industries,

including cooperation on film;

(e)

intellectual property;

(f)

standards, technical regulations,

and conformity assessment procedures;

(g)

sanitary and phytosanitary measures;

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2 -

(h)

e-commerce; and

(i)

other areas as may be agreed by the Parties.

2.

The areas of cooperation shall cover priority sectors for trade and investment promotion as agreed by the Parties.

3.

The Parties shall also pursue cooperation as set out in Annex 7-A, Annex 7-B, and Annex

7-C.

Article 7.3: Forms of Cooperation

The forms of economic and technical cooperation may include, but are not limited to:

(a)

information exchange;

(b)

sharing of best practices;

(c)

training of human resources (HR);

(d)

exchange of experts;

(e)

trade and investment promotion;

(f)

business fora;

(g)

technical assistance;

(h)

joint research and development;

(i)

transfer of technology and new business models; and

(j)

other forms of cooperation as may be agreed by the Parties.

Article 7.4: Resources

1.

The Parties shall cooperate to employ the most effective means and endeavor to make available necessary

financial and other resources for the implementation of economic and technical cooperation under this Chapter in accordance with their respective laws and regulations.

2.

Taking into account the different levels of development and capacity,

Taking into account the different levels of development and capacity,

-

3 -

the Parties shall contribute appropriately to the cost of implementation, according to mutual agreement.

Article 7.5: Committee on Economic and Technical Cooperation

1.

For purposes of the effective implementation and operation of this Chapter, a Committee on Economic and Technical Cooperation (hereinafter referred to as the ?Committee?) shall be established to be co-chaired by senior officials from both Parties.

2.

The functions of the Committee include,

but are not limited to:

(a)

reviewing, evaluating,

and approving proposals for cooperation;

(b)

collecting and consolidating the work plans of cooperation developed by each of the committees formed within this Agreement;

(c)

agreeing on and developing areas of cooperation between the Parties and establishing a work plan for the development of cooperation;

(d)

monitoring and evaluating the progress of the implementation of cooperation projects and activities;

(e)

providing regular reports to the Joint Committee under Article 11.1

(Joint Committee)

of this

Agreement; and

(f)

carrying out other functions as may be agreed by the Parties.

3.

The Parties agree to employ efficient mechanisms and guidelines for the implementation of cooperation projects and activities under this Agreement, subject to their respective laws and regulations.

4.

The Parties recognize the role of the Joint Commission on Trade and Economic Cooperation (JCTEC) established under the Memorandum of Understanding between the Department of Trade and Industry of the Republic of the Philippines and the Ministry of Trade, Industry and Energy of the Republic of Korea on Trade and Economic Cooperation

in facilitating consultations, and promoting trade, investment, and economic cooperation between the private and public sectors of the Parties.

5.

Unless the Parties agree otherwise, the Committee shall meet at least once a year. The meeting may be conducted in person or by any technological means available to the Parties.

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6.

The Parties

agree on an Implementing Arrangement building upon and complementing existing bilateral and regional economic cooperation projects, initiatives,

and activities.

7.

The Committee may establish sub-committees, as may be necessary, to effectively implement the cooperation projects and activities under this Chapter and those in the Implementing Arrangement.

Article 7.6: Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

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Annex

7-A

Cooperation

to Alleviate

the Socioeconomic Impact of a

Public Health Emergency of International Concern and Pandemic

1

General Provisions

1.

The Parties recognize the right of each Party to institute measures necessary to secure national interests and safeguard public health, in accordance with GATT 1994, GATS,

and other WTO covered agreements.

2.

The Parties acknowledge that the Coronavirus disease 2019 (COVID-19) has presented a global challenge that

requires a coordinated response

to ensure the continued flow of goods, services,

and personnel in the global supply chains.

3.

The Parties recognize the potential for developing and undertaking appropriate activities in line with their development objectives to reinforce efforts to alleviate the socioeconomic impact of a Public Health Emergency of International Concern (PHEIC)

and pandemic,

including the COVID-19 pandemic.

4.

The Parties agree to cooperate in strengthening the capacities to address future PHEIC and

pandemics to facilitate an inclusive and sustainable economic recovery of both Parties, by working to ensure the flow of goods in global supply chains, facilitating the essential movement of people,

and implementing cooperation activities and programs on trade and investments.

Working to Ensure the Flow of Goods in Global Supply Chains

5.

The Parties acknowledge the importance of facilitating the flow of essential goods, particularly food, critical health and medical products including personal protection equipment and its raw materials, to the

extent possible, in accordance with the Trade Facilitation

Agreement

and domestic laws and regulations.

6.

The Parties shall endeavor to refrain from the introduction of export prohibitions or restrictions,

and non-tariff barriers on essential goods, including food, pharmaceuticals, critical medical supplies, and its raw materials ensuring that such measures are targeted, proportionate, transparent, temporary and consistent with WTO rules.

1

?Pandemic? means a disease which the World Health Organization (WHO) declares as a pandemic, such as the COVID-19 on 11 March 2020.

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6 -

Facilitating the Essential Movement of People

7.

The Parties acknowledge the importance of facilitating the essential movement of people, including cross-border business travel,

while ensuring to safeguard public health in line with their efforts to combat a PHEIC and pandemic as well as minimize its socioeconomic impacts.

8.

The Parties also acknowledge the benefit of establishing guidelines to provide support and assistance to each other and to facilitate movement of people, including essential cross-border travel for the purpose of minimizing supply chain disruptions and ensuring business continuity,

in accordance with domestic laws and regulations, and without undermining the efforts to prevent the spread of the virus.

9.

The Parties shall endeavor to enhance cooperation to provide appropriate and adequate assistance to nationals of each other, especially the most vulnerable, who stay, work, and study in the other country, working towards the dignity, health and well-being, safety and fair and effective treatment of those affected by the pandemic.

Minimizing the Negative Impacts on Trade and Investment arising from PHEIC and Pandemics

to Facilitate an Inclusive and Sustainable Economic Recovery

10.

The Parties may develop and implement cooperation activities and programs on trade and investments and share best practices on measures to facilitate an inclusive and sustainable economic recovery and minimize the negative impacts of PHEIC and pandemics, as mutually agreed by the Parties.

11.

The Parties shall endeavor to implement joint initiatives with the private sector for the socioeconomic recovery of both Parties that include strengthening efforts to stabilize

the manufacturing and supply of essential goods and services, including its raw

materials, such as vital medical supplies and critical agricultural and food products, facilitate digital transformation,

and improve access to finance.

12.

The Parties shall endeavor to make relevant information publicly available and share best practices in a timely manner when adopting a measure with a foreseeable impact on international trade and investment.

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7 -

Annex

7-B

Cooperation on Vaccine

General Provisions

1.

The Parties,

recognizing

the impact that

a pandemic such as COVID-19 has caused around the world, agree to cooperate in the area of vaccines

to end the pandemic and address future global health threats.

2.

The Parties also commit to work together, along with international institutions

including

the

COVAX

facility,

to expand vaccine production and related supplies and manufacturing innovations to address current and future global health threats.

Cooperative Activities

3.

The Parties will promote the collaboration between the enterprises

of the Parties to accelerate the production and global supply of vaccines in times of global vaccine shortages by combining each of their strengths in the following areas:

(a)

manufacture of vaccines;

(b)

supply of raw materials for vaccine production;

(c)

research and development for the joint development

of vaccines;

(d)

capacity building

and knowledge and technology transfer related to the development of vaccines; and

(e)

other forms of cooperation,

as may be agreed by the Parties.

4.

The Parties will exchange information on domestic regulations, practices, and application process with regard to clinical trials and full approval of

vaccines.

5.

The Parties will endeavor to adopt expedited customs procedure for vaccine and raw material to produce vaccine while maintaining appropriate customs control.

Annex

7-C

Cooperation on Climate Change

General Provisions

1.

The Parties recognize that climate change and its adverse effects are a common concern of humankind that require urgent and collective action.

2.

The Parties reaffirm that the United Nations Framework Convention on Climate Change

(hereinafter referred to as ?UNFCCC?) lays the firm foundation for international efforts to combat climate change, and acknowledge that the Kyoto Protocol

to the United Nations Framework Convention on Climate Change

and the Paris Agreement

have been instrumental in implementing the UNFCCC.

Cooperative Activities

3.

The Parties agree to develop and strengthen cooperation in enhancing capacities to adapt to and mitigate climate change in line with the implementation of their respective nationally determined contributions (NDCs).

4.

In coordination with competent authorities, the

Parties agree to promote public and private

adaptation and mitigation programs or projects to achieve their

NDC

targets

and to find means to use

the

internationally transferred mitigation outcomes (ITMOs)

to support climate mitigation investments and mutually explore the benefits of market and non-market mechanisms under Article 6 of the Paris Agreement.

5.

The Parties agree to cooperate on capacity building activities for the measurement, reporting and verification (MRV) of national inventories.

6.

The Parties agree to organize seminars, symposia, workshops,

and meetings on various topics of interest to both Parties to gain a deeper understanding of and exchange best practices and technological know-how on climate action.

Chapter EIGHT. TRANSPARENCY

Article 8.1: Definitions

For purposes of this Chapter:

administrative ruling of general application

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

(a)

a determination or ruling made in an administrative or quasi-judicial

proceeding that applies to a particular person, good, or service of the other Party in a specific case; or

(b)

a ruling that adjudicates with respect to a particular act or practice.

Article

8.2: Publication

1.

Each Party shall ensure that its laws, regulations, procedures,

and administrative rulings of general application relating to any matter covered by this Agreement are promptly published or otherwise made publicly available.

2.

To the extent possible, each Party, in accordance with its

laws and regulations,

shall:

(a)

publish in advance

the

measures

referred to in paragraph 1 that it proposes to adopt; and

(b)

provide interested persons and the other Party with a reasonable opportunity to comment on such proposed measures.

Article 8.3: Provision of Information

Upon the request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure referred to in Article 8.2

that the requesting Party considers might affect the operation of this Agreement.

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Article 8.4: Administrative Proceedings

With a view to administering in a consistent, impartial,

and reasonable manner its

laws, regulations, procedures,

and administrative rulings of general application

relating to any matter covered by this Agreement, each Party

shall ensure,

in its administrative proceedings, in which these

measures are applied to particular persons, goods,

or services of the other Party in specific cases, that:

(a)

wherever possible, in accordance with its

applicable laws and regulations, persons of the other Party

that

are directly affected by a proceeding are provided

reasonable notice, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated,

and a general description of any issues in controversy;

(b)

persons

of the other Party that are directly affected by a proceeding

are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when

time, the nature of the proceeding,

and the public interest permit; and

(c)

its procedures are in accordance with its

laws and regulations.

Article 8.5: Review and Appeal

1.

In accordance with its

laws and regulations, each Party shall establish or maintain judicial, quasi-judicial,

or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative actions

relating to

any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2.

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

(a)

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

(b)

a decision based on the evidence and submissions of record or, where required by its laws and regulations,

the record compiled by the administrative authority.

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3.

Each Party shall ensure, subject to appeal or further review as provided

for

in its laws and regulations, that any decision

referred to in subparagraph 2(b)

shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 8.6: Relation to other Chapters

In case of any inconsistency between the provisions of this Chapter and provisions relating to transparency in other Chapters, the latter shall prevail to the extent of the inconsistency.

Chapter NINE. DISPUTE SETTLEMENT

Article 9.1: Definitions

For purposes of this Chapter:

arbitration panel means a panel established under Article 9.7;

arbitrator means a member of an arbitration panel established under Article 9.7;

candidate means an individual who is under consideration for appointment as the third arbitrator under Article 9.9;

complaining Party

means a Party that requests the establishment of

an arbitration panel under Article 9.7; and

Party complained against means the Party that is alleged to be in violation of this Agreement, as referred to in Article 9.3.

Article 9.2: Objective

1.

The objective of this Chapter is to provide an effective, efficient and transparent process for the avoidance and settlement of disputes arising under this Agreement.

2.

The Parties shall, at all times, endeavor to agree on the interpretation and application of this Agreement and shall make every attempt

through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter raised in accordance with this Chapter.

Article 9.3: Scope

1.

Except as otherwise provided for in this Agreement, this Chapter shall apply with respect to the avoidance or settlement of

disputes between the Parties regarding the interpretation or application of this Agreement wherever a Party considers that:

(a)

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

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(b)

the other Party has otherwise failed to carry out its obligations under this Agreement.

2.

This Chapter shall not apply to the settlement of disputes arising from the following: Article 2.16 (Sanitary and Phytosanitary Measures), Chapter Six (Competition), and Chapter Seven (Economic and Technical Cooperation).

Article 9.4: Choice of Forum

1.

Where a dispute regarding any matter arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

2.

Once the complaining Party has requested the establishment of, or referred a matter to, a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of other fora.

Article 9.5: Consultations

1.

Each Party may request consultations with the other Party with respect to any matter relating to the interpretation and application of this Agreement, pursuant to Article 9.3.1.

2.

The Party requesting consultations shall make the request in writing and shall give the reasons for the request, including the identification of the specific measure at issue and an indication of the factual and legal basis for the complaint.

3.

The Party complained against shall reply within 10 days from the date of the receipt of the request for consultations.

4.

The Parties shall enter into consultations in good faith within 30 days, or within 15 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for consultations, with a view to reaching a mutually satisfactory solution. Unless the Parties otherwise agree, consultations shall take place in the territory of the Party complained against.

5.

During consultations, the Parties shall provide sufficient information to

enable a full examination of how the measure at issue might affect the implementation and application of this Agreement. The Parties shall treat any confidential information exchanged in the course of consultations on the same basis as the Party providing the information.

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6.

Consultations under this Article shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 9.6: Good Offices, Conciliation, or Mediation

1.

Good offices, conciliation, and mediation are procedures that may be undertaken voluntarily if the Parties to the dispute so agree.

2.

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

3.

If the Parties agree, good offices, conciliation, or mediation may continue while the proceedings of the arbitration panel provided for in this Chapter are in progress.

4.

Proceedings involving good offices, conciliation,

or mediation and, in particular, positions taken by the Parties during these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings.

Article 9.7: Establishment of the Arbitration Panel

1.

The complaining Party that made a request for consultations under Article 9.5 may request the establishment of an arbitration panel if:

(a)

the Party complained against does not reply within 10 days from the date of receipt of the request for consultations;

(b)

the Party complained against does not enter into consultations within 30 days, or within 15 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for such consultations; or

(c)

the Parties fail to resolve the dispute through consultations within 60 days, or within 30 days in cases of urgency, including those concerning perishable goods, from the date of receipt of the request for such consultations.

2.

The request for the establishment of an arbitration panel shall be made in writing to the Party complained against. The complaining Party shall identify in its request the specific measure at issue, and the factual and legal basis for

the complaint sufficient to present the problem clearly.

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Article 9.8: Terms of Reference of the Arbitration Panel

Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of an arbitration panel, the terms of reference of the arbitration panel 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 arbitration panel pursuant to Article 9.7, to make findings, determinations, and, if applicable, recommendations and to present written reports as provided in Articles 9.12 and 9.13.?

Article 9.9: Composition of the Arbitration Panel

1.

Unless otherwise agreed by the Parties, an arbitration panel shall consist of three arbitrators.

2.

The complaining Party and the Party complained against shall, within 30 days from the date of receipt of the request for the establishment of the arbitration panel, each appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitration panel. The candidates for the third arbitrator shall not be nationals of either Party, nor have their usual place of residence in the territory of either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

3.

The Parties shall endeavor to agree on and appoint the third arbitrator within 45 days from the date of receipt of the request for the establishment of the arbitration panel, taking into account the candidates proposed. If the Parties fail to agree upon and appoint the third arbitrator within 45 days, the Parties shall meet within seven days from the expiry of the 45 days and select the chair by lot from the list of candidates proposed by both

Parties.

4.

The date of the establishment of an arbitration panel shall be the date on which the third arbitrator is appointed.

5.

All arbitrators shall have expertise or experience in law, international trade, or other matters relating to this Agreement, or in the resolution of disputes arising under international trade agreements. Each arbitrator shall be independent, serve in his or her individual capacity, and not be affiliated with, nor take instructions from, either Party or organization related to the dispute, and shall comply with Annex 9-B.

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6.

Where a Party considers that an arbitrator does not comply with the requirements of Annex 9-B, the Parties shall consult and replace, if so agreed, that arbitrator in accordance with paragraph 7.

7.

If an arbitrator appointed under this Article resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6, a successor shall be selected within 15 days in accordance with the appointment method provided for in paragraphs 2 and 3, mutatis mutandis. The successor shall have all the powers and duties of the original arbitrator. The work of the arbitration panel shall be suspended for a period beginning on the date the arbitrator resigns or becomes unable to participate in the proceedings, or is to be replaced according to paragraph 6. The work of the arbitration panel shall resume on the date the successor is appointed.

Article 9.10: Proceedings of the Arbitration Panel

1.

The arbitration panel shall meet in closed sessions. The Parties shall be present at the meetings only when invited by the arbitration panel to appear before it.

2.

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 provided or written submissions made by a Party to the arbitration panel, including any comments on the interim report and responses to questions put by the arbitration panel, shall be made available to the other Party.

3.

A Party asserting that a measure of the other Party is inconsistent with this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

4.

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

5.

The arbitration panel shall interpret this Agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties.

6.

The arbitration panel shall make its decisions, including its reports, by consensus, provided that where an arbitration panel is unable to reach

consensus, the decisions may be made by majority vote.

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7.

Upon the request of a Party, or on its own initiative, the arbitration panel may seek information from any relevant source and may consult experts to obtain their opinion or technical advice on certain aspects of the matter. Before doing so, the panel shall seek the views of the Parties to the dispute, without prejudice to its right to seek information. The arbitration panel shall provide the Parties with a copy of any advice or opinion obtained and an opportunity to provide comments.

8.

The deliberations

of the arbitration panel and the documents submitted to it shall be kept confidential.

9.

Notwithstanding paragraph 8, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions delivered by the other Party to the arbitration panel which the other Party has designated as confidential. Where a Party has provided information or written submissions designated as confidential, that Party shall, within 20 days from the request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

10.

The reports of the arbitration panel shall be drafted without the presence of the Parties. The arbitration panel shall base its reports on the relevant provisions of this Agreement and the submissions and arguments of the Parties, and may take into account any other relevant information provided to the arbitration panel.

11.

The reports of the arbitration panel shall contain both the descriptive parts summarizing the submissions and arguments of the Parties, and the findings and determinations of the arbitration panel. If the Parties agree, the arbitration panel may make recommendations for the resolution of the dispute in its reports. The findings and determinations and, if applicable, any recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties provided for in this Agreement.

12.

The venue for the arbitration panel proceedings shall be decided by mutual agreement between the Parties. If there is no agreement, the venue shall alternate between the capitals of the Parties with the first meeting of the arbitration panel

proceedings to

be held in the capital of the Party complained against.

Article 9.11: Suspension or Termination of Proceedings

1.

Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon the request of a Party, the arbitration panel proceedings shall be resumed

Where the Parties agree, the arbitration panel may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Upon the request of a Party, the arbitration panel proceedings shall be resumed

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after such suspension. In the event of such suspension, the timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If the work of the arbitration panel has been continuously suspended for more than 12 months, the authority of the arbitration panel shall lapse unless the Parties otherwise agree.

2.

The Parties may agree to terminate the proceedings of an arbitration panel by jointly notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties.

3.

Before the issuance of the final report to the Parties,

the arbitration panel may, at any stage of the proceedings, propose to the Parties that the dispute be settled amicably.

Article 9.12: Interim Report

1.

Unless the Parties otherwise agree, the arbitration panel shall, within 90 days from the date of the establishment of the arbitration panel, issue to the Parties an interim report containing the descriptive parts, the findings and determinations, and, if applicable, any recommendations as to:

(a)

whether the measure at issue is inconsistent with the obligations of this Agreement; or

(b)

whether a Party has otherwise failed to carry out its obligations under this Agreement,

as well as the applicability of the relevant provisions and the basic rationale behind any findings.

2.

Where the arbitration panel considers that the deadline for the interim report cannot be met, it may extend the period with the consent of the Parties following a written notification stating the reasons for the delay and the date on which the panel plans to issue its interim report. Under no circumstances should the interim report be issued later than 120 days after the date of the establishment of the arbitration panel.

3.

Either Party may submit written comments to the arbitration panel on its interim report within 15 days from the issuance of the report. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report

and make any further examination it considers appropriate.

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Article 9.13: Final Report

1.

Unless the Parties otherwise agree, the arbitration panel shall issue a final report to the Parties within 30 days from the date of issuance of the interim report.

2.

Where the arbitration panel considers that the deadline for its final report cannot be met, it may extend the period with the consent of the Parties following a written notification stating the reasons for the delay and the date on which the panel plans to issue its final report. Under no circumstances should the final report be issued later

than 150 days after the date of the establishment of the arbitration panel.

3.

In cases of urgency, including those concerning perishable goods, the arbitration panel shall make every effort to issue its interim and final reports within half of the respective time periods under Article 9.12.1 and Article 9.13.1.

Article 9.14: Implementation of the Final Report

1.

The determinations set out in the final report of the arbitration panel shall be final and binding on the Parties.

2.

If, in its final report, the arbitration panel determines that the Party complained against has not conformed to its obligations under the relevant provisions of this Agreement, unless the Parties otherwise agree, the Party complained against shall eliminate the non-conformity immediately, or if this is not practicable, within a reasonable period of time.

3.

The reasonable period of time

referred to in paragraph 2 shall be mutually agreed upon by the Parties. Where the Parties fail to agree on the reasonable period of time within 45 days from the date of issuance of the final report of the arbitration panel, either Party may refer the matter to the original arbitration panel, which shall determine the reasonable period of time.

4.

The Party complained against shall notify the complaining Party of any measure that it has taken to comply with the determinations of the arbitration panel, before the expiry of the reasonable period of time agreed by the Parties or determined by the original arbitration panel in accordance with paragraph 3. Where there is disagreement between the Parties as to whether the Party complained against has eliminated

the non-conformity as determined in the final report of the arbitration panel within the reasonable period of time as determined pursuant to paragraph 3, either Party may refer the matter to the original arbitration panel.

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Article 9.15: Compensation and Suspension of Benefits

1.

If the Party complained against fails to notify the complaining Party of the implementing measures before the expiry of the reasonable period of time, or notifies the complaining Party that implementation is impracticable, or the arbitration panel to which the matter is referred pursuant to Article 9.14.4 determines that the Party complained against has failed to eliminate the non-conformity within the reasonable period of time, the Party complained against 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 agreement on satisfactory compensation within 20 days from the date of receipt of the request mentioned in paragraph 1, the complaining Party may, at any time, provide written notice to the Party complained against that it intends to suspend

the application of benefits under this Agreement to the Party complained against. The complaining Party may begin suspending benefits 30 days after the notification of such suspension. The notification of suspension shall not be made within 20 days from the date of receipt of the request mentioned in paragraph 1.

3.

The compensation referred to in paragraph 1 and the suspension referred to in paragraph 2 shall be temporary measures. Neither compensation nor suspension is preferred to full elimination of the

non-conformity as determined in the report of the arbitration panel. The suspension 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 pursuant to paragraph 2:

(a)

the complaining Party should first seek to suspend benefits with respect to the same sector or sectors as that in which the report of the arbitration panel referred to in Article 9.13 has found a failure to comply with the obligations under this Agreement;

(b)

if the complaining Party considers that it is not practicable or effective to suspend benefits with respect to the same sector or sectors, it may suspend benefits with respect to other sectors. The notification of such suspension pursuant to paragraph 2 shall indicate the reasons on which it is based; and

(c)

the level of suspension referred to in paragraph 2 shall be equivalent to the level of the nullification or impairment.

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5.

If the Party complained against considers that the requirements for the suspension of benefits by the complaining Party set out in paragraph 2, 3, or 4 have not been met, it may refer the matter to an arbitration panel.

6.

The arbitration panel that is established for purposes of this Article or Article 9.14 shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitration panel. If this is not possible, then the arbitrators of the arbitration panel that is established for purposes of this Article or Article 9.14

shall be appointed pursuant to Article 9.9. The arbitration panel established under this Article or Article 9.14 shall issue its report to the Parties within 20 days on the reasonable period of time and 45 days on the other issues after the date when the matter is referred to it. When the arbitration panel considers that it cannot issue its report within the aforementioned periods, the relevant period may be extended by the arbitration panel for a maximum of 30 days with the consent of the Parties. The report shall be binding on the Parties.

Article 9.16: Rules of Procedure

1.

Dispute settlement proceedings under this Chapter shall be governed by the Rules of Procedure set out in Annex 9-A. The Parties, in consultation with the arbitration panel, may agree to adopt additional rules of procedures not inconsistent with the provisions of the Annex.

2.

Any period of time or other rules of procedure for arbitration panel provided for in this Chapter or in Annex 9-A may be modified by mutual consent of the Parties.

Article 9.17: Expenses

1.

Unless the Parties otherwise agree, each Party shall bear the

costs of its appointed arbitrator and its own expenses and legal costs.

2.

Unless the Parties otherwise agree, the costs of the chair of the arbitration panel and other expenses associated with the conduct of its proceedings shall be borne in equal shares by the Parties.

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ANNEX

9-A

RULES

OF

PROCEDURE

Definitions

1.

For purposes of this Annex:

adviser means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceedings;

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to that arbitrator; and

representative of a Party means any person appointed by a Party according to its domestic laws and regulations.

Logistical Administration

2.

In case the arbitration panel proceedings are held in the territory of a Party, that Party shall be in charge of the logistical administration of the arbitration proceedings, in particular the organization of hearings, unless the Parties otherwise agree.

Notifications

3.

Any request, notice, written submissions, or other documents delivered by either Party or the arbitration panel shall be transmitted by delivery against receipt, registered post, courier, facsimile transmission, or any other means of telecommunication that provides a record of the sending thereof.

4.

A Party shall provide a copy of each of its written submissions to the other Party and to each of the arbitrators. A copy of the document shall also be provided in electronic format.

5.

All notifications shall be made and delivered to the Department of Trade and Industry of the Philippines and to the Ministry of Trade, Industry and Energy of Korea, respectively.

6.

Minor errors of a clerical nature in any request, notice, written submission, or other document related to the arbitration panel proceedings may be corrected by delivery of a new document clearly indicating the changes.

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7.

If the last day for delivery1

of a document falls on a legal holiday of either Party, the document may be delivered on the next business day.

First Submissions

8.

The complaining Party shall deliver its first written submission no later than 30 days after the date of the establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than 30 days after the date of receipt of the complaining Party?s first written submission.

Operation of Arbitration Panels

9.

The chair of the arbitration panel shall preside at all of its meetings. The arbitration panel may delegate to the chair the authority to make administrative and procedural decisions.

10.

Except as otherwise provided for in this Chapter, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions, or computer links.

11.

Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit assistants of the arbitrators to be present during such deliberations.

12.

The drafting of any decision and ruling shall remain the exclusive responsibility of the arbitration panel and shall not be delegated.

13.

Where a procedural question arises that is not covered by this Chapter, the arbitration panel, after consulting with the Parties, may adopt an appropriate procedure that is not inconsistent with this Chapter.

14.

When the arbitration panel considers that

there is a need to modify any time period set out in this Chapter applicable in the proceedings, or to make any other procedural or administrative adjustment in the proceedings, it shall inform the Parties in writing of the reasons for the modification or

adjustment with an indication of the period or adjustment needed.

15.

Unless the Parties otherwise agree, the remuneration and expenses to be paid to the arbitrators shall normally conform to WTO standards.

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For greater certainty, for purposes of this Annex, the delivery date is the date on which documents that have been

submitted arrive at the intended place.

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Hearings

16.

Unless the Parties otherwise

agree, the arbitration panel shall provide for at least one hearing for the Parties to present their case. The chair shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel. The chair of the arbitration panel shall notify the Parties of the date, time, and location of the hearing in writing. That information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings if the Parties decide

to make the hearings open to the public in accordance with paragraph 21 of this Annex.

17.

The arbitration panel may convene additional hearings if the Parties so agree.

18.

All arbitrators shall be present during the entirety of any hearing.

19.

Representatives of a Party, advisers to a Party, experts, administration staff, interpreters, translators, court reporters, and assistants of the arbitrators may attend the hearing(s), irrespective of whether the hearings are open to the public or not. Unless otherwise decided by the arbitration panel, only the representatives and advisers of a Party may address the arbitration panel.

20.

No later than five days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of those persons who will make oral arguments or presentations at the hearing on behalf of that Party and of the representatives, advisers, interpreters, and translators of that Party who will be attending the hearing.

21.

The hearings of the arbitration panels shall be closed to the public. However, the Parties may decide to open the hearings partially or completely to the public.

22.

Each hearing shall be conducted by the arbitration panel in a manner that ensures that the complaining Party and the Party complained against are afforded equal time for arguments, replies and counter-replies.

23.

The arbitration panel may direct questions to either Party or experts at any time during a hearing.

24.

The arbitration panel shall arrange for a transcript of each hearing to be prepared and shall, as soon as possible after it is prepared, deliver a copy of the transcript to the Parties. The Parties may comment on the transcript, and the arbitration panel shall decide whether to reflect those comments.

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25.

Within 10 days from the date of the hearing, each Party may deliver a supplementary written submission responding to any matter that arises during the hearing.

Questions in Writing

26.

The arbitration panel may, at any time during the proceedings, address questions in writing to a Party or both Parties. The arbitration panel shall deliver the written questions to the Party to whom the questions are addressed and shall send a copy of the questions to the other Party.

27.

The Party to whom the arbitration panel addresses written questions shall deliver a copy of any written reply to the other Party and to the arbitration panel. Each Party shall be given the opportunity to provide written comments on the reply within seven days from the date of receipt of the reply.

Ex Parte Communications

28.

There shall be no ex parte

communications with the arbitration panel concerning matters under consideration by the arbitration panel.

29.

No arbitrator may discuss any aspect of the subject matter of the proceedings with a Party or both Parties in the absence of the other arbitrators.

Suspension of Time Periods on Request of Technical Advice

30.

The arbitration panel, after consulting with the Parties and experts, may determine the time period in which the experts are to submit their opinion or advice. If the experts cannot submit their opinion or advice within the period established pursuant to the first sentence of this paragraph, the arbitration panel, after consulting with the Parties, may give additional time to experts. In no case shall this additional period exceed half of the period established pursuant to the first sentence of this paragraph.

31.

When a request is made for a written report of an expert, any time period applicable to the arbitration panel proceedings shall be suspended for a period beginning on the date of delivery of the request and ending on the date the report is delivered to the arbitration panel.

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Language

32.

Unless the Parties otherwise agree, the common working language for the proceedings of the arbitration panel shall be English. If a Party decides to use interpretation during the proceedings, the arrangement and the cost of such interpretation shall be borne by that Party.

33.

Any document submitted for use in any proceeding pursuant to this Chapter shall be in the English language. If any original document is not in the English language, the Party submitting it for use in the proceedings shall provide an English language translation of the document.

Computation of Time

34.

All periods of time laid down in this Chapter shall be counted in calendar days, the first day being the day following the act or fact to which they refer.

35.

Where, by reason of the operation of paragraph 7, a Party receives a document on a date other than the date on which the same document is received by the other Party, any period of time the calculation of which is dependent on such receipt shall be calculated from

the last date of receipt of such document.

Other Proceedings

36.

In accordance with Articles 9.14.3, 9.14.4, 9.15.5 and 9.15.6, the referring Party shall deliver its first written submission within 15 days from the date the referral is made, and the Party complained against shall deliver its written counter-submission within 15 days from the date of receipt of the first written submission.

37.

If appropriate, the arbitration panel shall fix the time periods for delivering any further written submissions, including rebuttal written submissions, so as to provide each Party with the opportunity to make an equal number of written submissions subject

to the time periods for arbitration panel proceedings set out in Articles 9.14 and 9.15 and this Annex.

38.

Unless otherwise provided, this Annex is also applicable to procedures established under Articles 9.14 and 9.15.

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ANNEX

9-B

CODE

OF

CONDUCT

FOR

ARBITRATORS

Definitions

1.

For purposes of this Annex:

assistant

means any person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator; and

staff

means persons under the direction and control of an arbitrator, other than assistants.

Responsibilities to the Process

2.

Every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflict of interest, and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement proceedings are preserved. Former arbitrators must comply with the obligations

established in paragraphs 15 through 18.

Disclosure Obligations

3.

Prior to the confirmation of his or her appointment as an arbitrator under Article 9.9, a candidate shall disclose any interest, relationship, or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships, and matters.

4.

Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships, or matters referred to in paragraph 3 and shall disclose them. The obligation to disclose is a continuing duty which requires an arbitrator to disclose any such interests, relationships, or matters that may arise at any stage of the proceedings. The arbitrator shall disclose such interests, relationships, or matters by communicating them in writing to the Joint Committee for consideration by the Parties.

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Duties of Arbitrators

5.

Upon appointment, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings.

6.

An arbitrator shall carry out all duties fairly and diligently.

7.

An arbitrator shall consider only those issues raised in the proceedings and necessary for a decision and shall not delegate the duty to decide to any other person.

8.

An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of and comply with paragraphs

2, 3, 4, 16, 17 and 18.

9.

An arbitrator shall not engage in ex parte

communications concerning the proceedings, in accordance with paragraphs 28 and 29 of Annex 9-A.

Independence and Impartiality of Members of Arbitration Panels

10.

An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner, shall avoid creating an appearance of impropriety or bias, and shall not be influenced by self-interest, outside pressure, political considerations, public clamor, loyalty to a Party, or fear of criticism.

11.

An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the arbitrator?s duties.

12.

An arbitrator shall not use his or her position on the arbitration panel to advance any personal or private interests. An

arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator.

13.

An arbitrator shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence the arbitrator?s conduct or judgement.

14.

An arbitrator shall avoid entering into any relationship, or

acquiring any financial interest, that is likely to affect the arbitrator?s impartiality or that might reasonably create an appearance of impropriety or bias.

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Obligations of Former Arbitrators

15.

All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from a decision or ruling of the arbitration panel.

Confidentiality

16.

An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceedings, or acquired during the proceedings, except for the purposes of those proceedings and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others, or to adversely

affect the interest of others.

17.

An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its publication.

18.

An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel,

or any arbitrator?s view.

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Chapter TEN. EXCEPTIONS

Article 10.1: General Exceptions

For purposes of Chapter Two (Trade in Goods), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

Article 10.2: Security Exceptions

1. Nothing in this Agreement shall be construed to:

(a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

(b) prevent a Party from taking any action 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 as carried on, directly or indirectly, for the purposes of supplying a military establishment;

(ii) relating to fissionable materials or the materials from which they are derived;

(iii) taken so as to protect critical public infrastructure from deliberate attempts intended to disable or degrade such

infrastructure; or

(iv) taken in time of national emergency, war, or other emergency in international relations; or

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

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

Article 10.3: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax

convention, the latter shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for jointly determining whether any inconsistency exists between this Agreement and that convention.

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where they are granted or imposed under Article 2.14 (National Treatment on Internal Taxation and Regulation) of Chapter Two (Trade in Goods), to the extent provided under Article III of GATT 1994.

4. For purposes of this Article:

(a) tax convention means a convention for the elimination of double taxation with respect to taxes on income and capital gains and the prevention of tax evasion and avoidance or any other international taxation agreement or arrangement to which both Parties are party;

(b) taxes and taxation measures do not include customs duties as defined in Article 1.5 (General Definitions) and the measures listed in the exceptions in subparagraphs (b), (c), (d), and (e) of that definition; and

(c) competent authorities means:

(i) for the Philippines, the Commissioner of the Bureau of Internal Revenue, Department of Finance, or his or her successor; and

(ii) for Korea, the Deputy Minister for Tax and Customs, Ministry of Economy and Finance, or his or her successor.

Article 10.4: Disclosure of Information

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

Article 10.5: Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to the other Party in accordance with this Agreement and designates such information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

Chapter ELEVEN. INSTITUTIONAL ARRANGEMENTS

Article 11.1: Joint Committee

1. The Parties hereby establish a Joint Committee composed of relevant government officials of each Party. It shall be co-chaired by ministerial level officials of the Department of Trade and Industry of the Philippines, and the Ministry of Trade, Industry and Energy of Korea, or their respective designees.

2. The Joint Committee shall:

(a) supervise the implementation of this Agreement;

(b) supervise and coordinate the work of all committees, working groups, and other bodies established under this

Agreement;

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

(d) consider ways to further enhance trade and investment relations between the Parties;

(e) without prejudice to the procedures under Chapter Nine (Dispute Settlement), seek to resolve problems or disputes that may arise relating to the interpretation or application of this Agreement; and

(f) carry out any other function relating to the areas covered by this Agreement as the Parties may agree.

3. The Joint Committee may:

(a) establish and delegate responsibilities to committees, working groups, or other bodies as it considers necessary to assist it in accomplishing its tasks;

(b) consider and adopt amendments to this Agreement, including its annexes and appendices, subject to the completion of the respective applicable legal procedures of the Parties;

(c) adopt interpretations of the provisions of this Agreement;

(d) adopt its own rules of procedure; and

(e) make recommendations to the Parties.

4. When a Party submits information considered as confidential under its laws and regulations to the Joint Committee, committees, working groups, or any other body, the other Party shall treat that information as confidential.

Article 11.2: Procedures of the Joint Committee

1. Unless the Parties otherwise agree, the Joint Committee shall meet within one year from the entry into force of this Agreement and, thereafter, convene:

(a) in regular session every year, with such sessions to be held alternately in the territory of each Party; and

(b) in special session within 30 days from the receipt of a request from either Party, with such sessions to be held in the territory of the other Party or at such other location as the Parties may agree.

2. The meetings of the Joint Committee may be held in person or, if agreed by the Parties, by any technological means available to them.

3. All decisions and recommendations of the Joint Committee shall be taken by mutual agreement.

Article 11.3: Committees and Working Groups

1. The following Committees, working groups, or any other bodies may be established under the auspices of the Joint Committee:

(a) Committee on Trade in Goods;

(b) Committee on Rules of Origin and Customs Procedures;

(c) Committee on Outward Processing Zones;

(d) Committee on Trade Remedies; and

(e) Committee on Economic and Technical Cooperation.

2. The composition, frequency of meetings, and functions of the committees, working groups, or any other bodies shall be in accordance with the relevant provisions of this Agreement or as determined by the Joint Committee consistent with this Agreement.

3. The committees, working groups, or any other bodies shall inform the Joint Committee of their schedules and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee.

4. The Joint Committee may decide to change or undertake the task assigned to a committee, working group or any other body or may dissolve a committee, working group, or any other body in accordance with the relevant provisions of this

Agreement.

Article 11.4: Contact Points

1. In order to facilitate communications between the Parties on any trade matter covered by this Agreement, the Parties hereby establish the following contact points:

(a) for the Philippines, the Department of Trade and Industry, or its successor; and

(b) for Korea, the Ministry of Trade, Industry and Energy, or its successor.

2. Upon request of either Party, the contact point of the other Party shall indicate the office or official responsible for any matter relating to the implementation of this Agreement and provide the required support to facilitate communications with the requesting Party. Each Party shall promptly notify the other Party of any change in its contact point.

Chapter TWELVE. FINAL PROVISIONS

Article 12.1: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall form an integral part of this Agreement.

Article 12.2: Amendments

The Parties may agree, in writing, to amend this Agreement. Any such amendments shall enter into force after the Parties exchange written notifications through diplomatic channels certifying that they have completed all necessary domestic legal procedures for the entry into force of the amendments, on such date as the Parties may agree. The amendments shall form an integral part of this Agreement.

Article 12.3: Amendments to the WTO Agreement

If any provision of the WTO Agreement that the Parties have incorporated into this Agreement is amended, the Parties shall enter into consultations to consider amending the relevant provisions of this Agreement, as appropriate, in accordance with Article 12.2.

Article 12.4: Review of the Agreement

Five years after the date of the entry into force of this Agreement, and at any time thereafter, this Agreement shall be subject to review, upon the request of a Party, with a view to furthering its objectives.

Article 12.5: Entry into Force

This Agreement shall enter into force on the first day of the second month, or on such other date as the Parties may agree, following the date of the exchange of the written notifications through diplomatic channels, by which the Parties inform each other that all necessary domestic legal procedures for the entry into force of this Agreement have been completed.

Article 12.6: Termination

Either Party may terminate this Agreement by written notification through diplomatic channels to the other Party. Such termination shall take effect six months after the date of the notification.

Article 12.7: Authentic Texts

The English and Korean texts of this Agreement are equally authentic.

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

DONE in duplicate at _____, this _____ day of _____, (year), in the English and Korean languages.

For the Government of the Republic of the Philippines:

For the Government of the Republic of Korea:

IMPLEMENTING ARRANGEMENT FOR ECONOMIC AND TECHNICAL COOPERATION PURSUANT TO CHAPTER SEVEN (ECONOMIC AND TECHNICAL COOPERATION) OF THE FREE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

Introduction

This Implementing Arrangement describes the economic and technical cooperation relating to Chapter Seven (Economic and Technical Cooperation) of the Free Trade Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Korea (hereinafter referred to as the "Agreement") without creating any additional legal rights and obligations to the Parties other than those specified in the Agreement. It includes information and project concepts regarding priority sectors which are agreed upon by the Government of the Republic of the Philippines and the Government of the Republic of Korea (hereinafter referred to as the "Parties").

It outlines the priority projects to be implemented consisting of, but not limited to, Industrial Development, Innovation and Research and Development, Micro, Small and Medium Enterprises (MSMEs), Creative and Cultural Industries including Cooperation on Film, Intellectual Property, Standards, Technical Regulations and Conformity Assessment Procedures, Sanitary and Phytosanitary Measures, and Electronic Commerce in line with the priority areas identified in Chapter Seven, and provides the objectives and indicative activities. The contents and details of the specific projects to be carried out will be determined by the Committee on Economic and Technical Cooperation established under Article 7.5 of the Agreement (hereinafter referred to as the ?Committee?). If deemed necessary, the Parties may agree to revise or add economic and technical cooperation projects and activities which are not set out in this Arrangement.

The Parties agree to carry out and endeavor to make available necessary financial and other resources for the implementation of the economic and technical cooperation activities under the Agreement, in accordance with their respective laws and regulations and subject to the approval of competent authorities of each Party.

The Parties agree to start consultations within six months after the date of entry into force of the Agreement to determine and consolidate projects, including its resource requirements and possible sources of funds. The Parties, in consultation with relevant stakeholders, agree to establish and operate regular channels of communications for purposes of new project development and project improvement.

Section A: Industrial Development

Article 1: Health and Life Sciences-Related Manufacturing

Objective

1. The Parties agree to cooperate, on the basis of mutual benefit, in the area of health and life sciences-related manufacturing including vaccine manufacturing, recognizing its important role in the social and economic development of the Parties.

Indicative Activities

2. The indicative activities are as follows:

(a) exchange of information and experience through policy dialogues;

(b) promotion of trade and investments through trade and investment missions and business fora;

(c) pursuit of collaborative projects on technology and knowledge transfer;

(d) undertaking capacity building activities for human resources development and quality management; and

(e) exchange of experts and benchmarking assistance in terms of new technologies.

Article 2: Cooperation on Processing of Technology Metals

Objective

1. The Parties agree to cooperate, on the basis of mutual benefit, in the area of processing of technology metals, recognizing its strategic role in supporting the manufacturing industry.

Indicative Activities

2. The indicative activities are as follows:

(a) exchange of information and experience through policy dialogues;

(b) promotion of trade and investments through trade and investment missions and business fora;

(c) pursuit of collaborative projects on technology and knowledge transfer;

(d) undertaking capacity building activities for human resources development and quality management; and

(e) exchange of experts and benchmarking assistance in terms of new technologies.

Article 3: E-vehicle Industry

Objective

1. The Parties agree to cooperate, on the basis of mutual benefit, in the area of e-vehicle industry, recognizing that it is an important factor to the social and economic development of the Parties.

Indicative Activities

2. The indicative activities involve undertaking collaborative projects to complement each other?s automotive industry with the end view of promoting trade and investments and establishing a competitive e-vehicle industry in both Parties through the institutionalization of a platform for cooperation, which may include, among others, policy dialogues, trade and investment missions and business fora.

Section B: Innovation and Research and Development

Article 4: Innovation Ecosystem

Objective

1. The Parties agree to cooperate, on the basis of mutual benefit, in the areas of innovation and research and development, recognizing their important role in social and economic development.

Indicative Activities

2. The indicative activities are as follows:

(a) development of an innovation ecosystem among priority industrial sectors such as electronics, auto, aerospace, chemicals, information and communication technology, and agribusiness through:

(i) promotion of the adoption of new technologies by industries and MSMEs which may relate to artificial intelligence, robotics, internet-of-things, smart manufacturing, data analytics, and business models in the above-stated priority sectors;

(ii) research and development (R&D) on industrial innovation, modernization and upgrading of sectors through the adoption of Industry 4.0 technologies; and

(iii) technical assistance to new and existing observatories or laboratories for MSMEs.

(b) development of a startup ecosystem through:

(i) technical assistance on policies and best practices on incubation, acceleration, and mentorship for startups;

(ii) technical assistance on upskilling and human capital development; and

(iii) exchange of experts and networks relative to startup development.

Article 5: Agriculture, Fishery and Forestry

Objective

1. The Parties agree to develop and implement cooperation initiatives, on areas of mutual interest, recognizing the high importance of agriculture, fishery and forestry.

Indicative Activities

2. The indicative activities are as follows:

(a) fostering of R&D in support of increasing the productivity and improving the quality of priority agricultural and fisheries products through:

(i) technical assistance and collaborative studies; and

(ii) exchange of experts and benchmarking assistance in terms of new technologies.

(b) promotion of the conservation and propagation of forest tree species and urban green networks through:

(i) facilitation of relevant R&D activities for the preservation and management of forest tree species; and

(ii) facilitation of research in the development of urban forests to ease urban heat island effects.

Section C: Micro, Small and Medium Enterprises

Article 6: Green Growth Initiatives

Objective

1. The Parties agree to explore ways to promote closer cooperation among relevant government entities, industries, organizations, and research institutions, recognizing that economic development and environmental protection are key pillars of sustainable development.

Indicative Activities

2. The indicative activities are as follows:

(a) promotion of low carbon emissions in industries and MSMEs through:

(i) development of a comprehensive framework for the promotion of resource-efficient, environment-friendly and climate-smart business practices among industries including MSMEs;

(ii) capacity building for the development of an industry-specific measurement, reporting, and verification (MRV) system on emissions, applied mitigation measures, and achievements; and

(iii) fostering partnership with large businesses in strengthening investments in climate technology, complying with international environment standards, and promoting low emission and resource-efficient practices within their MSME supply chains.

(b) pursuit of R&D on evaluating the effectiveness of re-using wastewater as an alternative source of fertilization and irrigation (fertigation) and its environmental impacts and assessing the environmental, economic, and social soundness of establishing waste-to-energy (WtE) technologies for household, municipal and agricultural waste, through:

(i) technical assistance and knowledge sharing and conduct of research study on the effects of re-using wastewater as source of fertigation; and

(ii) conduct of relevant assessment and analyses on the soundness of establishing WtE technologies.

Section D: Creative and Cultural Industries including Cooperation on Film

Article 7: Creative and Cultural Industries

Objective

1. The Parties agree to cooperate, for purposes of mutual interest and benefit, in the areas of creative and cultural industries, recognizing their contribution to better understanding, promotion, and development of the Parties' respective services industries towards driving creativity, innovation, and entrepreneurship.

Indicative Activities

2. The indicative activities involve jointly undertaking activities on the development, promotion, and protection of the outputs of creative and cultural industries, (1) such as game development, advertising, animation, and design sector through:

(1) Given the evolving nature of the concept of ?creative industries? and that there is no single definition for these industries, the specific

activities will be determined by the Committee. According to the resources from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Conference on Trade and Development (UNCTAD), these could include knowledge-based economic activities which build on the interplay between human creativity and ideas and intellectual property, knowledge and technology, and industries which produce and distribute cultural goods or services.

(a) capacity building on, among others, professional standards development, intellectual property protection;

(b) benchmarking activities on national and international creative and cultural industries;

(c) exchange of personnel including experts and information; and

(d) promotion of business exchange.

Article 8: Cooperation on Film

Objective

1. The Parties agree to undertake cooperation on film for purposes of mutual benefits, recognizing its contribution to the enhancement of understanding between the Parties and the development of their film industries.

Indicative Activities

2. The indicative activities are as follows:

(a) cooperation in the improvement of the quality of content and professional work outputs of both Parties through:

(i) exchange of experts on film;

(ii) research and development; and

(iii) collaboration on activities related to production, distribution, and archiving.

(b) improvement of mechanisms of support available in either country through:

(i) cooperation in holding and participating in film festivals and other related activities; and

(ii) information exchange and sharing of best practices.

Section E: Intellectual Property

Article 9: Intellectual Property

Objective

1. The Parties agree to further improve and develop their respective intellectual property systems, recognizing the important role of intellectual property rights in international trade.

Indicative Activities

2. The indicative activities are as follows:

(a) exchange of information on the latest developments in the intellectual property systems;

(b) cooperation in order to promote public awareness of intellectual property rights;

(c) exchange of experience and know-how in the intellectual property training for human resources and MSMEs;

(d) exchange of information on enhancing the capacity of patent examiners in search and examination of new and emerging technologies; and

(e) exchange of information on capacitating MSMEs on intellectual property commercialization and valuation.

Section F: Standards, Technical Regulations and Conformity Assessment Procedures

Article 10: Standards, Technical Regulations and Conformity Assessment Procedures

Objective

1. The Parties agree to undertake cooperation initiatives in the areas of standards, technical regulations, and conformity assessment procedures (STRACAP) with a view to preventing, eliminating, or reducing unnecessary obstacles to trade between the Parties.

Indicative Activities

2. The indicative activities are as follows:

(a) mutual cooperation and exchange of views and information on STRACAP in areas of mutual interest; and

(b) exchange of laws and regulations on standards and conformity assessment procedures, as mutually agreed by the Parties.

Section G: Sanitary and Phytosanitary Measures

Article 11: Sanitary and Phytosanitary Measures

Objective

1. The Parties, recognizing the importance of sanitary and phytosanitary (SPS) measures necessary to protect human, animal, or plant life or health, while minimizing their negative effects on trade in agricultural, fishery, animal, and food products, shall establish cooperation for mutual benefits.

Indicative Activities

2. The indicative activities involve the pursuit of cooperation projects and capacity building activities related to SPS measures through:

(a) joint actions such as research, seminars, and workshops; and

(b) exchange of information and experts related to the SPS measures.

Section H: Electronic Commerce

Article 12: Electronic Commerce

Objective

1. Recognizing the economic growth and opportunities provided by electronic commerce, the importance of frameworks that promote consumer confidence in electronic commerce, and the importance of facilitating its use and development, the Parties cooperate to develop electronic commerce for purposes of mutual benefits.

Indicative Activities

2. The indicative activities are as follows:

(a) working together to assist small and medium enterprises overcome obstacles in the use of electronic commerce;

(b) identification of areas for targeted cooperation between the Parties which will help Parties implement or enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance;

(c) sharing of information, experience, and best practices in addressing challenges relating to the development and use of electronic commerce;

(d) encouraging business sectors to develop methods or practices that enhance trust, accountability, and consumer confidence to foster the use of electronic commerce; and

(e) participation in regional and multilateral fora to promote development of electronic commerce.

Article 13: Entry into Force and Duration

1. This Arrangement shall enter into force on the same date as the entry into force of the Agreement.

2. Either Party may notify the other Party of its intention to terminate this Arrangement in writing through diplomatic channels. The termination will take effect six months after such notification.

3. The termination of this Arrangement shall not affect ongoing projects and activities, which have already commenced prior

to the termination of this Arrangement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Arrangement.

DONE in duplicate at , this day of , (year), in the English and Korean languages.

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES:

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA: