AGREEMENT ON COMPREHENSIVE ECONOMIC PARTNERSHIP AMONG MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND JAPAN

The Governments of Japan, and Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist

Southeast Asian Nations (hereinafter referred to as "ASEAN");

Recalling the Joint Declaration signed in Phnom Penh, Cambodia on 5 November 2002 and the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations signed in Bali, Indonesia on 8 October 2003;

Desiring to deepen the relationship between Japan and ASEAN, which is built on mutual confidence and trust in wide-ranging fields covering not only political and economic areas, but also social and cultural areas;

Inspired by the continuous development of ASEAN through economic activities among Japan and ASEAN Member States, and the significant progress in the relationship between Japan and ASEAN which has spanned thirty years of economic ties that have been expanding over a wide range of areas;

Confident that a comprehensive economic partnership between Japan and ASEAN (hereinafter referred to as "AJCEP") will strengthen their economic ties, create a larger and more efficient market with greater opportunities and larger economies of scale, and enhance their attractiveness to capital and talent, for mutual benefit;

Recognising that multi-layered and multi-faceted bilateral and regional efforts towards strengthening economic relations among Japan and ASEAN Member States will facilitate the realisation of such comprehensive economic partnership;

Sharing the view that such comprehensive economic partnership should benefit from, and be complementary to, the economic integration and integrity of ASEAN;

Recognising further the various stages of economic development among the ASEAN Member States;

Confident that this Agreement, covering areas such as trade in goods and services, and investment, would serve as an important building block towards economic integration in East Asia;

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

Recognising the role of regional trade agreements as a catalyst in accelerating regional and global liberalisation in the framework of the multilateral trading system;

Reaffirming the rights and obligations of each Party under the WTO Agreement and multilateral, regional and bilateral agreements and arrangements; and

Determined to establish a legal framework for such comprehensive economic partnership among the Parties,

HAVE AGREED as follows:

Chapter 1. General Provisions

Article 1. General Definitions

For the purposes of this Agreement, the term:

(a) "ASEAN Member States" means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam collectively;

(b) "customs authority" means the competent authority that is responsible for the administration and enforcement of customs laws and regulations;

(c) "days" means calendar days, including weekends and holidays;

(d) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

(e) "GATT 1994" means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement. For the purposes of this Agreement, references to articles in GATT 1994 include its Notes and Supplementary Provisions;

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

(g) "newer ASEAN Member States" means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(h) "Parties" means Japan and those ASEAN Member States for which this Agreement has entered into force collectively; and

(i) "Party" means either of Japan or one (1) of ASEAN Member States for which this Agreement has entered into force.

Article 2. Principles

The Parties reaffirm the importance of realising the AJCEP through both this Agreement and other bilateral or regional agreements or arrangements, and are guided by the following principles:

(a) the AJCEP shall involve Japan and all ASEAN Member States and includes a broad range of sectors focusing on liberalisation, facilitation and economic cooperation;

(b) the integrity, solidarity and integration of ASEAN shall be maintained in the realisation of the AJCEP;

(c) special and differential treatment is accorded to ASEAN Member States, especially the newer ASEAN Member States, in recognition of their different levels of economic development; additional flexibility is accorded to the newer ASEAN Member States;

(d) recognition shall be given to the provisions of the ministerial declarations of the World Trade Organization on measures in favour of leastdeveloped countries;

(e) flexibility should also be given to address the sensitive sectors in Japan and each ASEAN Member State; and

(f) technical assistance and capacity building are important elements of economic cooperation provided under this Agreement.

Article 3. Objectives

The objectives of this Agreement are to:

(a) progressively liberalise and facilitate trade in goods and services among the Parties;

(b) improve investment opportunities and ensure protection for investments and investment activities in the Parties; and

(c) establish a framework for the enhancement of economic cooperation among the Parties with a view to supporting ASEAN economic integration, bridging the development gap among ASEAN Member States, and enhancing trade and investment among the Parties.

Article 4. Transparency

1. Each Party shall, in accordance with its laws and regulations, make publicly available its laws, regulations, administrative

procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, that pertain to or affect the implementation and operation of this Agreement.

2. Each Party shall make publicly available the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures and administrative rulings, referred to in paragraph 1.

3. Each Party shall, upon the request by another Party, respond to specific questions from, and provide information to, the latter, in the English language, with respect to matters referred to in paragraph 1.

Article 5. Confidentiality

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

2. Nothing in this Agreement shall be construed to require a Party to provide information relating to the affairs and accounts of customers of financial institutions.

3. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided as confidential by another Party pursuant to this Agreement.

Article 6. Taxation

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

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

3. Articles 4 and 5 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 7. General Exceptions

For the purposes of Chapters 2 through 5, Article XX of GATT 1994 is incorporated into and forms part of this Agreement, mutatis mutandis.

Article 8. Security Exceptions

Nothing in this Agreement shall be construed:

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

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

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

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

(iii) taken so as to protect critical public infrastructure, including communications, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure;

(iv) Taken in time of domestic emergency, or war or other emergency in international relations; or

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

Article 9. Non-governmental Bodies

In fulfilling its obligations and commitments under this Agreement, each Party shall endeavour to ensure their observance by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities within the Party.

Article 10. Relation to other Agreements

1. Each Party reaffirms its rights and obligations vis-avis another Party under the WTO Agreement and/or other agreements to which these Parties are parties.

2. Nothing in this Agreement shall be construed to derogate from any obligation of a Party vis-a-vis another Party under agreements to which these Parties are parties, if such an obligation entitles the latter Party to treatment more favourable than that accorded by this Agreement.

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

4. In the event of any inconsistency between this Agreement and any agreement other than the WTO Agreement to which more than one (1) Party are parties, these Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

5. A Party which is not a party to the WTO Agreement shall abide by the provisions of the said Agreement in accordance with its accession commitments to the World Trade Organization.

Article 11. Joint Committee

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

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

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

(b) Submit a report to the Parties on the implementation and operation of this Agreement;

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

(d) Supervise and coordinate the work of all SubCommittees established under this Agreement;

(e) Adopt:

(i) the Implementing Regulations referred to Rule 11 of Annex 4; and in

(ii) any necessary decisions; and

(f) Carry out other functions as may be agreed by Parties.

The Joint Committee:

(a) Shall be composed of representatives of Japan ASEAN Member States; and

(b) May establish Sub-Committees and delegate its responsibilities thereto.

The Joint Committee shall meet at such venues and times as may be agreed by the Parties.

Article 12. Communications

Each Party shall designate a contact point to facilitate communications among the Parties on, except as otherwise provided for in Article 61, any matter relating to this Agreement. All official communications in this regard shall be done in the English language.

Chapter 2. Trade In Goods

Article 13. Definitions

For the purposes of this Chapter, the term:

(a) “customs duties” means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of GATT 1994, in respect of the like domestic goods or in respect of goods from which the imported goods have been manufactured or produced in whole or in part;

(ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; or

(iii) fee or any charge commensurate with the cost of services rendered;

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

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

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

(e) “originating goods” means goods that qualify as originating in accordance with the provisions of Chapter 3;

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

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

Article 14. Classification of Goods

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

Article 15. National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994, which to this end is incorporated into and forms part of this Agreement, mutatis mutandis.

Article 16. Elimination or Reduction of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall, in accordance with its Schedule in Annex 1, eliminate or reduce its customs duties on originating goods of the other Parties. Such elimination or reduction shall be applied to originating goods of all the other Parties on a non-discriminatory basis.

2. The Parties shall endeavour to take further steps towards liberalisation of trade in goods through unilateral, bilateral or regional efforts consistent with GATT 1994.

3. The Parties reaffirm that, as is provided for in Article 7, nothing in this Chapter shall be construed to prevent a Party which is a party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal or other relevant international agreements from adopting or enforcing any measure in relation to hazardous wastes or hazardous substances based on its laws and regulations, in accordance with such international agreements.

Article 17. Customs Valuation

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

Note: In the case of the Kingdom of Cambodia, the Agreement on Customs Valuation, as implemented in accordance with

the provisions of the Protocol on the Accession of the Kingdom of Cambodia to the World Trade Organization, shall apply, mutatis mutandis.

Article 18. Non-tariff Measures

1. Each Party shall not institute or maintain any non- tariff measures including quantitative restrictions on the importation of any good of the other Parties or on the exportation or sale for export of any good destined for another Party, except the same measures as those permitted under the WTO Agreement.

2. Each Party shall ensure transparency of its non-tariff measures permitted under paragraph 1, including quantitative restrictions. Each Party which is a member of the World Trade Organization shall ensure full compliance with the obligations under the WTO Agreement with a view to minimising possible distortions to trade to the maximum extent possible.

Article 19. Modification of Concessions

1. The Parties shall not nullify or impair any of the concessions under this Agreement, except in cases provided for in this Agreement.

2. Any Party may negotiate with any interested Party to modify or withdraw its concession made under this Agreement. In such negotiations, which may include compensatory adjustment with respect to other goods, the Parties concerned shall maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations. In reflecting the results of such negotiations to this Agreement, Article 77 shall apply.

Article 20. Safeguard Measures

1. A Party which is a member of the World Trade Organization may apply a safeguard measure to an originating good of the other Parties in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as “the Agreement on Safeguards”), or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as “Agreement on Agriculture”).

Any action taken pursuant to Article XIX of GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture shall not be subject to Chapter 9 of this Agreement.

2. Each Party shall be free to apply a safeguard measure provided for under this Article (hereinafter referred to as “an AJCEP safeguard measure”), to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment, if as an effect of the obligations incurred by that Party under this Agreement, including tariff concessions, or if as a result of unforeseen developments and of the effects of the obligations incurred by that Party under this Agreement, an originating good of the other Parties is being imported in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party that produces like or directly competitive goods in the importing Party.

3. An AJCEP safeguard measure shall not be applied against an originating good of a Party which is an ASEAN Member State, as long as its share of imports of the good concerned in the importing Party does not exceed three (3) per cent of the total imports from the other Parties, provided that those Parties with less than three (3) per cent import share collectively account for not more than nine (9) per cent of total imports of the good concerned from the other Parties.

4. A Party shall not apply an AJCEP safeguard measure to Anil originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

5. A Party applying an AJCEP safeguard measure may:

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

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

(i) the applied most-favoured-nation rate (hereinafter referred to as “applied MFN rate”) on the good in effect on the day when the AJCEP safeguard measure is applied; and

(ii) the applied MFN rate on the good in effect on the day immediately preceding the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

6. (a) A Party may apply an AJCEP safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards.

(b) The investigation referred to in subparagraph (a) shall be completed within one (1) year following its date of initiation.

7. The following conditions and limitations shall apply with regard to an AJCEP safeguard measure:

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

(i) initiating an investigation referred to in subparagraph 6(a) relating to serious injury, or threat of serious injury, and the reasons for it;

(ii) making a finding of serious injury or threat of serious injury caused by increased imports; and

(iii) taking a decision to apply or extend an AJCEP safeguard measure.

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

(i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of an originating good subject to the investigation and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, the period subject to the investigation and the date of initiation of the investigation; and

(ii) in the written notice referred to in subparagraphs (a)(ii) and (iii), the evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed safeguard measure and its heading or subheading of the Harmonized System, on which the Schedules in Annex 1 are based, a precise description of the AJCEP safeguard measure, the proposed date of its introduction and its expected duration.

(c) A Party proposing to apply or extend an AJCEP safeguard measure shall provide adequate opportunity for prior consultations with those Parties which would be affected by the AJCEP safeguard measure with a view to reviewing the information arising from the investigation referred to in subparagraph (a), exchanging views on the AJCEP safeguard measure and reaching an agreement on compensation set out in paragraph 8.

(d) No AJCEP safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of three (3) years. An AJCEP safeguard measure may be extended, provided that the conditions set out in this Article are met. The total duration of the AJCEP safeguard measure, including any extensions thereof, shall not exceed four (4) years. In order to facilitate adjustment in a situation where the expected duration of an AJCEP safeguard measure is over one (1) year, the Party maintaining the AJCEP safeguard measure shall progressively liberalise the AJCEP safeguard measure at regular intervals during the period of application.

(e) No AJCEP safeguard measure shall be applied again to the import of a particular originating good which has been subject to such an AJCEP safeguard measure, for a period of time equal to the duration of the previous safeguard measure or one (1) year, whichever is longer.

(f) Upon the termination of an AJCEP safeguard measure on a good, the rate of the customs duty for that good shall be the rate that, in accordance with the Schedule of the Party applying the AJCEP safeguard measure set out in Annex 1, would have been in effect had the AJCEP safeguard measure not been applied.

8. (a) A Party proposing to apply or extend an AJCEP safeguard measure shall provide to the other Parties mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement between the Party applying the AJCEP safeguard measure and the exporting Parties which would be affected by such a measure.

(b) In seeking compensation provided for in subparagraph (a), the Parties shall hold consultations in the Joint Committee. Any proceedings arising from such consultations shall be completed within thirty (30) days from the date on which the AJCEP safeguard measure was applied.

(c) If no agreement on the compensation is reached within the time frame specified in subparagraph (b), the Parties other than the one applying the AJCEP safeguard measure shall be free to suspend concessions of customs duties under this Agreement, which is substantially equivalent to the AJCEP safeguard measure, on originating goods of the Party applying the

AJCEP safeguard measure. The Parties may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the AJCEP safeguard measure is maintained. The right of suspension provided for in this subparagraph shall not be exercised for the first two (2) years that an AJCEP safeguard measure is in effect, provided that the AJCEP safeguard measure has been applied as a result of an absolute increase in imports and that such an AJCEP safeguard measure conforms to the provisions of this Article.

9. (a) A Party applying a safeguard measure in connection with an importation of an originating good of another Party in accordance with Article XIX of GATT 1994 and the Agreement on Safeguards, or Article 5 of the Agreement on Agriculture, shall not apply the AJCEP safeguard measure to that importation.

(b) The period of application of the AJCEP safeguard measure referred to in subparagraph 7(d) shall not be interrupted by the Party's non-application of the AJCEP safeguard measure in accordance with subparagraph (a).

10. (a) Within ten (10) years after the entry into force of this Agreement pursuant to paragraph 1 of Article 79, the Parties shall review this Article with a view to determining whether there is a need to maintain the AJCEP safeguard mechanism.

(b) If the Parties do not agree to remove the AJCEP safeguard mechanism during the review pursuant to subparagraph (a), the Parties shall thereafter conduct reviews to determine the necessity of the AJCEP safeguard mechanism, in conjunction with the general review pursuant to Article 75.

11. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional AJCEP safeguard measure, which shall take the form of the measure set out in subparagraph 5(a) or 5(b), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall give a written notice to the other Parties prior to applying a provisional AJCEP safeguard measure. Consultations by the Parties in the Joint Committee on the application of the provisional AJCEP safeguard measure shall be initiated immediately after the provisional AJCEP safeguard measure is applied.

(c) The duration of a provisional AJCEP safeguard measure shall not exceed two hundred (200) days. During that period, the pertinent requirements of paragraph 6 shall be met. The duration of the provisional AJCEP safeguard measure shall be counted as a part of the period referred to in subparagraph 7(d).

(d) Paragraph 3 and subparagraph 7(f) shall apply, mutatis mutandis, to the provisional AJCEP safeguard measure.

(e) The customs duty imposed as a result of the provisional AJCEP safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 6(a) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

12. All official communications and documentations exchanged among the Parties relating to an AJCEP safeguard measure shall be in writing and shall be in the English language.

Article 21. Measures to Safeguard the Balance of Payments

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

Article 22. Customs Procedures

1. Each Party shall endeavour to apply its customs procedures in a predictable, consistent and transparent manner.

2. Recognising the importance of improving transparency in the area of customs procedures, each Party, subject to its laws and regulations, and available resources, shall endeavour to provide information relating to specific matters raised by interested persons of the Parties pertaining to its customs laws. Each Party shall endeavour to supply not only such information but also other pertinent information which it considers the interested persons should be made aware of.

3. For prompt customs clearance of goods traded among the Parties, each Party, recognising the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavour to:

(a) simplify its customs procedures; and

(b) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council.

Chapter 3. Rules of Origin

Article 23. Definitions

For the purposes of this Chapter, the term:

(a) “exporter” means a natural or juridical person located in an exporting Party who exports a good from the exporting Party;

(b) “factory ships of the Party” or “vessels of the Party” respectively means factory ships or vessels:

(i) which are registered in the Party;

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

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

(iv) of which at least seventy-five (75) per cent of the total of the master, officers and crew are nationals of one or more of the Parties;

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

(d) “good” means any merchandise, product, article or material;

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

(f) “importer” means a natural or juridical person who imports a good into the importing Party;

(g) “materials” means any matter or substance used or consumed in the production of a good, physically incorporated into a good, or used in the production of another good;

(h) “originating good” or “originating material” means a good or material that qualifies as originating in accordance with the provisions of this Chapter;

(i) “packing materials and containers for transportation and shipment” means the goods used to protect a good during its transportation and shipment, different from those containers or materials used for its retail sale;

(j) “preferential tariff treatment” means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 16; and

(k) “production” means methods of obtaining a good including growing, mining, harvesting, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, processing or assembling.

Article 24. Originating Goods

For the purposes of this Agreement, a good shall qualify as an originating good of a Party if it:

(a) is wholly obtained or produced entirely in the Party as provided for in Article 25;

(b) satisfies the requirements of Article 26 when using non-originating materials; or

(c) is produced entirely in the Party exclusively from originating materials of one or more of the Parties, and meets all other applicable requirements of this Chapter.

Article 25. Goods Wholly Obtained or Produced

For the purposes of paragraph (a) of Article 24, the following shall be considered as wholly obtained or produced entirely in a Party:

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

Note: For the purposes of this paragraph, the term “plant” refers to all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants.

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

Note: For the purposes of paragraphs (b) and (c), the term “animals” covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.

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

(d) goods obtained from hunting, trapping, fishing, gathering or capturing conducted in the Party;

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

(f) goods taken from the waters, seabed or beneath the seabed outside the territorial waters of the Party, provided that the Party has the rights to exploit such waters, seabed and beneath the seabed in accordance with its laws and regulations and international law;

Note: Nothing in this Agreement shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea.

(g) goods of sea-fishing and other marine products taken by vessels of the Party from outside the territorial sea of any Party;

(h) goods processed and/or made on board factory ships of the Party exclusively from products referred to in paragraph (g);

(i) articles collected in the Party which can no longer perform their original purpose or be restored or repaired, and are fit only for disposal, for the recovery of parts or raw materials, or for recycling purposes;

(j) scrap and waste derived from manufacturing or processing operations, including mining, agriculture, construction, refining, incineration and sewage treatment operations, or from consumption, in the Party, and fit only for disposal or for the recovery of raw materials; and

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

Article 26. Goods Not Wholly Obtained or Produced

1. For the purposes of paragraph (b) of Article 24, a good shall qualify as an originating good of a Party if:

(a) the good has a regional value content (hereinafter referred to as “RVC”), calculated using the formula set out in Article 27, of not less than forty (40) per cent, and the final process of production has been performed in the Party; or

(b) all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification (hereinafter referred to as “CTC”) at the 4-digit level (i.e. a change in tariff heading) of Harmonized System.

Note: For the purposes of this subparagraph, “Harmonized System” is that on which the product specific rules set out in Annex 2 are based.

Each Party shall permit the exporter of the good to decide whether to use subparagraph (a) or (b) when determining whether the good qualifies as an originating good of the Party.

2. Notwithstanding paragraph 1, a good subject to product specific rules shall qualify as an originating good if it satisfies the applicable product specific rules set out in Annex 2. Where a product specific rule provides a choice of rules from a RVC-based rule of origin, a CTC-based rule of origin, a specific manufacturing or processing operation, or a combination of any of these, each Party shall permit the exporter of the good to decide which rule to use in determining whether the good qualifies as an originating good of the Party.

3. For the purposes of subparagraph 1(a) and the relevant product specific rules set out in Annex 2 which specify a certain RVC, it is required that the RVC of a good, calculated using the formula set out in Article 27, is not less than the percentage

specified by the rule for the good.

4. For the purposes of subparagraph 1(b) and the relevant product specific rules set out in Annex 2, the rules requiring that the materials used have undergone CTC, or a specific manufacturing or processing operation, shall apply only to non-originating materials.

5. For the purposes of this Chapter, Annex 3 shall apply.

Article 27. Calculation of Regional Value Content

1. For the purposes of calculating the RVC of a good, the following formula shall be used:

FOB - VNM

RVC = ---------- X 100 %

FOB

2. For the purposes of this Article:

(a) "FOB" is, except as provided for in paragraph 3, 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;

(b) "RVC" is the RVC of a good, expressed as a percentage; and

(c) "VNM" is the value of non-originating materials used in the production of a good.

3. FOB referred to in subparagraph 2(a) shall be the value:

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

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

4. For the purposes of paragraph 1, the value of non-originating materials used in the production of a good in a Party:

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

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

5. For the purposes of paragraph 1, the VNM of a good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

6. For the purposes of subparagraph 3(b) or 4(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply, mutatis mutandis, to domestic transactions or to the cases where there is no domestic transaction of the good or non- originating material.

Article 28. De Minimis

1. A good that does not satisfy the requirements of subparagraph 1(b) of Article 26 or an applicable CTC-based rule of origin set out in Annex 2 shall be considered as anoriginating good of a Party if:

(a) in the case of a good classified under Chapters 16, 19, 20, 22, 23, 28 through 49, and 64 through 97 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent of the FOB;

(b) in the case of a particular good classified under Chapters 18 and 21 of the Harmonized System, the total value of non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten (10) per cent or seven (7) per cent of the FOB, as specified in Annex 2; or

(c) in the case of a good classified under Chapters 50 through 63 of the Harmonized System, the weight of all non-originating materials used in the production of the good that have not undergone the required CTC does not exceed ten

(10) per cent of the total weight of the good, provided that it meets all other applicable criteria set out in this Chapter for qualifying as an originating good.

Note: For the purposes of this paragraph, subparagraph 2(a) of Article 27 shall apply.

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-based rule of origin for the good.

Article 29. Accumulation

Originating materials of a Party used in the production of a good in another Party shall be considered as originating materials of that Party where the working or processing of the good has taken place.

Article 30. Non-qualifying Operations

A good shall not be considered to satisfy the requirements of CTC or specific manufacturing or processing operation merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f).

Article 31. Direct Consignment

1. Preferential tariff treatment shall be accorded to an originating good satisfying the requirements of this Chapter and which is consigned directly from the exporting Party to the importing Party.

2. The following shall be considered as consigned directly from the exporting Party to the importing Party:

(a) a good transported directly from the exporting Party to the importing Party; or

(b) a good transported through one or more Parties, other than the exporting Party and the importing Party, or through a non-Party, provided that the good does not undergo operations other than transit or temporary storage in warehouses, unloading, reloading, and any other operation to preserve it in good condition.

Article 32. Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with the good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable CTC-based rule of origin for the good.

3. If a good is subject to a RVC-based rule of origin, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.

Article 33. Accessories, Spare Parts, Tools and Instructional or other Information

Materials

1. If a good is subject to the requirements of CTC or specific manufacturing or processing operation, the origin of accessories, spare parts, tools and instructional or other information materials presented with the good shall not be taken into account in determining whether the good qualifies as an originating good, provided that:

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

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

2. If a good is subject to a RVC-based rule of origin, the value of the accessories, spare parts, tools and instructional or other information materials shall be taken into account as the value of the originating or non- originating materials, as the case may be, in calculating the RVC of the originating goods.

Article 34. Indirect Materials

1. Indirect materials shall be treated as originating materials regardless of where they are produced.

2. For the purposes of this Article, the term “indirect materials” means goods used in the production, testing, or inspection of a good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(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;

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

(f) equipment, devices and supplies used for testing or inspecting the good;

(g) catalysts and solvents; and

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

Article 35. Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made by the use of generally accepted accounting principles of stock control applicable, or those of inventory management practised, in the exporting Party.

Article 36. Operational Certification Procedures

The operational certification procedures, as set out in Annex 4, shall apply with respect to procedures regarding certificate of origin and related matters.

Article 37. Sub-Committee on Rules of Origin

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Rules of Origin (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

(a) review and make appropriate recommendations, as needed, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annexes 2 and 3, and Attachment to Annex 4, proposed by any

Party; and

(iii) the Implementing Regulations referred to in Rule 11 of Annex 4;

(b) consider any other matter as the Parties may agree related to this Chapter;

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

(d) carry out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall be composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties with necessary expertise relevant to the issues to be discussed, upon agreement of all the Parties.

4. The Sub-Committee shall meet at such venues and timesas may be agreed by the Parties.

Chapter 4. Sanitary and Phytosanitary Measures

Article 38. Scope

This Chapter shall apply to all sanitary and phytosanitary (hereinafter referred to as “SPS”) measures of the Parties as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement (hereinafter referred to as “SPS Agreement”) that may, directly or indirectly, affect trade between the Parties.

Article 39. Reaffirmation of Rights and Obligations

The Parties reaffirm the rights and obligations relating to SPS measures under the SPS Agreement among those Parties that are parties to the said Agreement.

Article 40 . Sub-Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub- committee on Sanitary and Phytosanitary Measures (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

(a) exchange information on such matters as occurrences of SPS incidents in the Parties and non-Parties, and change or introduction of SPS- related regulations and standards of the Parties, which may, directly or indirectly, affect trade between Japan and more than one (1) ASEAN Member State which are the Parties;

(b) facilitate cooperation in the area of SPS measures, including capacity building, technical assistance and exchange of experts, subject to the availability of appropriated funds and the applicable laws and regulations of each Party;

(c) undertake science-based consultations to identify and address specific issues that may arise from the application of SPS measures and are shared by Japan and more than one (1) ASEAN Member State which are the Parties;

(d) review the implementation and operation of this Chapter; and

(e) report, where appropriate, its findings to the Joint Committee.

3. The Parties shall coordinate their undertakings with the activities conducted in the bilateral, regional and multilateral context, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties in this field.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee shall be:

(a) composed of government officials of the Parties with responsibility for SPS measures; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member

States which are the Parties.

Article 41. Enquiry Points

Each Party shall designate an enquiry point to answer all reasonable enquiries from another Party regarding SPS measures and, if appropriate, provide the latter with relevant information.

Article 42. Non-application of Chapter 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

Chapter 5. Standards, Technical Regulations and Conformity Assessment Procedures

Article 43. Objectives

The objectives of this Chapter are to promote trade among the Parties by:

(a) ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) promoting mutual understanding of the standards, technical regulations and conformity assessment procedures in each Party;

(c) strengthening information exchange and cooperation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(d) strengthening cooperation among the Parties in the work of international bodies related to standardisation and conformity assessments; and

(e) providing a framework to realise these objectives.

Article 44. Scope

1. This Chapter shall apply to standards, technical regulations and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement (hereinafter referred to as “TBT Agreement”).

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies and sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

3. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards and technical regulations, to the extent necessary, to fulfil a legitimate objective. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In pursuance of this, each Party retains all authority to interpret its laws, regulations and administrative provisions.

Article 45. Reaffirmation of Rights and Obligations

The Parties reaffirm the rights and obligations relating to standards, technical regulations and conformity assessment procedures under the TBT Agreement among those Parties that are parties to the said Agreement.

Article 46. Cooperation

1. For the purposes of ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade in goods among the Parties, the Parties shall, where possible, cooperate in the field of standards, technical regulations and conformity assessment procedures.

2. The forms of cooperation pursuant to paragraph 1 may include the following:

(a) conducting joint studies and holding seminars, in order to enhance mutual understanding of standards, technical

regulations and conformity assessment procedures in each Party;

(b) exchanging information on standards, technical regulations and conformity assessment procedures;

(c) developing and implementing joint programmes for building and/or upgrading capacity in the Parties for advancement of activities within the scope of the TBT Agreement;

(d) encouraging the bodies responsible for standards, technical regulations and conformity assessment procedures in each Party to cooperate on matters of mutual interest;

(e) contributing, where appropriate, jointly to the activities related to standards, technical regulations and conformity assessment procedures in international and regional fora; and

(f) jointly identifying work in the field of standards, technical regulations and conformity assessment procedures, where appropriate, to avoid unnecessary obstacle to trade among the Parties.

3. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

Article 47. Enquiry Points

1. Each Party shall designate an enquiry point which shall have the responsibility to coordinate the implementation of this Chapter.

2. Each Party shall provide the other Parties with the name of its designated enquiry point and the contact details of relevant officials in that organisation including information on telephone, facsimile and e-mail and other relevant details.

3. Each Party shall notify the other Parties promptly of any change of its enquiry point or any amendments to the information of the relevant officials.

Article 48. Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

(a) coordinate cooperation pursuant to Article 46;

(b) identify mutually agreed priority sectors for enhanced cooperation, including giving favourable consideration to any proposal made by a Party;

(c) establish work programmes in mutually agreed priority areas to facilitate the acceptance of conformity assessment results and equivalence of technical regulations;

(d) monitor the progress of work programmes;

(e) review the implementation and operation of this Chapter;

(f) facilitate technical consultations;

(g) report, where appropriate, its findings to the Joint Committee; and

(h) carry out other functions as may be delegated by the Joint Committee pursuant to Article 11.

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

4. The Parties shall coordinate their undertakings with the activities conducted in the bilateral, regional and multilateral context, with the objective of avoiding unnecessary duplication and maximising efficiency of efforts of the Parties in this field.

5. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member States, which are the Parties.

Article 49. Non-application of Chapter 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

Chapter 6. Trade In Services

Article 50. Trade In Services

1. Each Party shall endeavour to, in accordance with its laws, regulations and policies, take further steps towards the expansion of trade in services among or between the Parties consistent with GATS.

2. The Parties shall, with the participation of Japan and all ASEAN Member States, continue to discuss and negotiate provisions for trade in services with a view to exploring measures towards further liberalisation and facilitation of trade in services among Japan and ASEAN Member States and to enhance cooperation in order to improve the efficiency and competitiveness of services and service suppliers of Japan and the ASEAN Member States. For this purpose, a Sub-Committee on Trade in Services, which shall be composed of representatives of the Governments of Japan and all ASEAN Member States, shall be established in accordance with Article 11 within one (1) year from the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

3. The results of the negotiations referred to in paragraph 2, if any, shall be incorporated into this Chapter in accordance with Article 77.

Chapter 7. Investment

Article 51. Investment

1. Each Party shall endeavour to, in accordance with its laws, regulations and policies, create and maintain favourable and transparent conditions in the Party for investments of investors of the other Parties.

2. The Parties shall, with the participation of Japan and all ASEAN Member States, continue to discuss and negotiate provisions for investment, with a view to improving the efficiency and competitiveness of the investment environment of Japan and ASEAN Member States through progressive liberalisation, promotion, facilitation and protection of investment. For this purpose, a SubCommittee on Investment, which shall be composed of the representatives of the Governments of Japan and all ASEAN Member States, shall be established in accordance with Article 11 within one (1) year from the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

3. The results of the negotiations referred to in paragraph 2, if any, shall be incorporated into this Chapter in accordance with Article 77.

Chapter 8. Economic Cooperation

Article 52. Basic Principles

1. The Parties shall, subject to the availability of resources as well as their respective applicable laws and regulations, promote cooperation under this Agreement for their mutual benefits in order to liberalise and facilitate trade and investment among the Parties and to promote the well-being of the peoples of the Parties, taking into account the different levels of economic development among ASEAN Member States.

2. The Parties shall promote regional and sub-regional development through economic cooperation activities including capacity building, technical assistance, and other such activities as may be mutually agreed upon among the Parties.

Article 53.

Fields of Economic Cooperation

The Parties, on the basis of mutual benefit, shall explore and undertake economic cooperation activities in the following fields:

(a) Trade-Related Procedures;

(b) Business Environment;

(c) Intellectual Property;

(d) Energy;

(e) Information and Communications Technology;

(f) Human Resource Development;

(g) Small and Medium Enterprises;

(h) Tourism and Hospitality;

(i) Transportation and Logistics;

(j) Agriculture, Fisheries and Forestry;

(k) Environment;

(l) Competition Policy; and

(m) Other fields as may be mutually agreed upon among the Parties.

Article 54. Sub-committee on Economic Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Economic Cooperation (hereinafter referred to in this Article as "the Sub-Committee") shall be established in accordance with Article 11 on the date of entry into force of this Agreement pursuant to paragraph 1 of Article 79.

2. The functions of the Sub-Committee shall be to:

(a) modify and formulate relevant Work Programmes setting out areas and forms of each field of economic cooperation;

(b) make recommendations on existing and new economic cooperation activities under this Chapter in accordance with the priorities of the Parties;

(c) review and monitor the implementation and operation of this Chapter and the application and fulfilment of its basic principles; and

(d) report the findings and the outcome of its discussions to the Joint Committee.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of Japan and all ASEAN Member States; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of ASEAN Member States.

Article 55. Work Programmes for Economic Cooperation

1. Work Programmes setting out areas and forms of each field of cooperation activities shall be set forth in Annex

2. Any modification of existing Work Programmes or formulation of new Work Programmes shall be made in accordance with paragraph 2 of Article 54 and through amending Annex 5 pursuant to the procedures set out in Article 77.

Article 56. Resources for Economic Cooperation

Taking into account the different levels of economic development and capacity among the Parties, resources for economic cooperation under this Chapter shall be provided in such a manner as may be mutually agreed upon among the Parties.

Article 57. Implementation of Economic Cooperation Activities

1. Economic cooperation activities shall involve Japan and at least two (2) ASEAN Member States.

2. Notwithstanding paragraph 1, economic cooperation activities may also involve Japan and one (1) ASEAN Member State, provided that those activities are regional in nature and of benefit to other ASEAN Member States. Such activities shall aim at narrowing the gaps of economic development among ASEAN Member States or at promoting the well-being of the people of ASEAN Member States towards further integration of ASEAN.

3. The Parties shall undertake economic cooperation activities at mutually agreed time.

Article 58. Non-application of Chapter 9

The dispute settlement procedures provided for in Chapter 9 shall not apply to this Chapter.

Chapter 9. Settlement of Disputes

Article 59. Definitions

For the purposes of this Chapter, the term:

(a) "complaining party" means any Party or Parties that request consultations under paragraph 1 of Article 62;

(b) "party to a dispute" means any Party which is a complaining party or a party complained against;

(c) "party complained against" means any Party or Parties to which the request for consultations is made under paragraph 1 of Article 62; and

(d) "third party" means a Party, other than the parties to a dispute, that notifies its interest in writing in accordance with Article 66.

Article 60. Scope of Application

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of all disputes between the Parties concerning the interpretation or application of this Agreement.

2. This Chapter may apply to measures affecting a Party's observance of this Agreement taken by regional or local governments or authorities within the Party. When the arbitral tribunal has awarded that a provision of this Agreement has not been observed in accordance with Article 67, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. Paragraphs 3 and 4 of Article 71 shall apply in cases where it has not been possible for the Party to secure such observance.

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

4. Notwithstanding paragraph 3, once dispute settlement proceedings have been initiated under this Chapter or under any other international agreement to which all of the parties to a dispute are parties with respect to a particular dispute, the forum selected by the complaining party shall be used to the exclusion of any other fora for that particular dispute. However, this shall not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

5. For the purposes of paragraphs 3 and 4, the complaining party shall be deemed to have selected a forum when it has requested the establishment of, or referred a dispute to, an arbitral tribunal or a dispute settlement panel, in accordance with this Chapter or any other international agreement to which the parties to a dispute are parties.

Article 61. Contact Points

1. For the purposes of this Chapter, a Party may designate a contact point responsible for communications on all matters referred to in this Chapter. The submission of any request, notice or other document under this Chapter to the contact point so designated shall be deemed to have been made to that Party.

2. Where a Party chooses not to designate a contact point pursuant to paragraph 1, the submission of any request, notice or other document under this Chapter shall be made to the contact point which the Party designates in accordance with Article

12.

3. Any Party receiving any request, notice or other document under this Chapter shall acknowledge receipt in writing.

Article 62. Consultations

1. A Party or Parties may make a request in writing for consultations to other Party or Parties concerning any matter on the interpretation or application of this Agreement where the complaining party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the party complained against to carry out its obligations under this Agreement, or as a result of the application by the party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request for consultations shall be submitted in writing, containing the identification of the specific measures at issue and indication of the factual and legal basis (including the provisions of this Agreement alleged to have been breached and any other relevant provisions) of the complaint. The complaining party shall at the same time notify the rest of the Parties thereof.

3. Upon receipt of the request referred to in paragraph 1, the party complained against shall promptly acknowledge receipt of such request to the complaining party and the rest of the Parties at the same time.

4. If a request for consultations is made, the party complained against shall reply to the request within ten (10) days after the date of receipt of the request and shall enter into consultations in good faith within a period of not more than thirty (30) days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

5. The parties to a dispute shall make every effort to reach a mutually satisfactory resolution of any matter through consultations under this Article. To this end, the parties to the dispute shall provide each other with sufficient information to enable a full examination of the dispute.

6. Consultations shall be confidential between the parties to the dispute and are without prejudice to the rights of any Party in any further proceedings under this Chapter or in other proceedings. The parties to the dispute shall inform the rest of the Parties of the outcome of the consultations.

7. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall enter into consultations within a period of no more than ten (10) days after the date of receipt of the request by the party complained against.

8. In cases of urgency, including those which concern perishable goods, the parties to the dispute shall make every effort to accelerate the consultations to the greatest extent possible.

Article 63. Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.

2. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time by agreement of the parties to the dispute and be terminated at any time upon the request of any party to the dispute.

3. If the parties to the dispute agree, good offices, conciliation or mediation may continue while the proceedings of the arbitral tribunal provided for in this Chapter are in progress.

4. Proceedings involving good offices, conciliation or mediation, and, in particular, positions taken by the parties to the dispute during these proceedings, shall be kept confidential and without prejudice to the rights of any Party in any proceedings under this Chapter or in other proceedings.

Article 64. Establishment of Arbitral Tribunals

1. The complaining party may request in writing, to the party complained against, the establishment of an arbitral tribunal:

(a) if the party complained against does not respond within ten (10) days, or does not enter into such consultations within thirty (30) days after the date of receipt of the request for such consultations; or

(b) if the parties to the dispute fail to resolve the dispute through such consultations within sixty (60) days after the date of receipt of the request for such consultations, or within twenty (20) days after such date in cases of urgency including those

which concern perishable goods.

2. A copy of the request referred to in paragraph 1 shall also be communicated to the rest of the Parties.

3. Where more than one (1) complaining party request the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may, whenever feasible, be established by the parties to the dispute to examine the matter, taking into account the rights of each party to the dispute.

4. Where a single arbitral tribunal is established pursuant to paragraph 3, the arbitral tribunal shall organise its examination and present its findings to all the parties to the dispute in such a manner that the rights which the parties to the dispute would have enjoyed had separate arbitral tribunals examined the same matter are in no way impaired. If any of the parties to the dispute so requests, the arbitral tribunal may make separate awards on the dispute concerned as long as the timeframe for making the awards so permits. The written submissions by a party to the dispute shall be made available to the other parties to the dispute, and each party to the dispute shall have the right to be present when any other party to the dispute presents its views to the arbitral tribunal.

5. Where more than one (1) arbitral tribunal are established to examine the dispute related to the same matter, to the greatest extent possible, the same persons shall be appointed by the parties to the disputes to serve on each of the separate arbitral tribunals.

6. Any request for the establishment of an arbitral tribunal shall indicate whether consultations under Article 62 have been held, identify the factual basis for the complaint including the specific measures at issue and provide the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions.

Article 65. Composition of Arbitral Tribunals

1. An arbitral tribunal shall consist of three (3) arbitrators.

2. The complaining party and the party complained against shall, within thirty (30) days after the date of receipt of the request for the establishment of an arbitral tribunal, each appoint one (1) arbitrator who may be a national of any party to the dispute and propose up to three (3) candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of any party to the dispute, nor have his or her usual place of residence in any party to the dispute, nor be employed by any party to the dispute, nor have dealt with the dispute in any capacity.

3. The complaining party and the party complained against shall agree on and appoint the third arbitrator within forty-five (45) days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 2. If either the complaining party or the party complained against has not appointed an arbitrator pursuant to paragraph 2, or if the parties to the dispute fail to agree on and appoint the third arbitrator pursuant to this paragraph, the Director-General of the World Trade Organization shall immediately be requested to make the necessary appointments. In the event that the Director-General is a national of any party to the dispute, the Deputy Director-General or the officer next in seniority who is not a national of any party to the dispute shall be requested to make the necessary appointments. Appointments made pursuant to this paragraph other than that of the third arbitrator shall be deemed to have been made by the complaining party or the party complained against which has failed to make such an appointment.

4. The date of establishment of an arbitral tribunal shall be the date on which the third arbitrator is appointed pursuant to paragraph 3.

5. If an arbitrator appointed under this Article resigns or becomes unable to act, a succeeding arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the succeeding arbitrator shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended until the succeeding arbitrator is appointed.

6. Any person appointed as an arbitrator shall have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral tribunal proceedings. If a party to the dispute believes that an arbitrator is not adhering to the basis stated above, the parties to the dispute shall consult and if they agree, the arbitrator shall be removed and a new arbitrator shall be appointed in accordance with this Article.

Article 66. Third Parties

1. Any Party having a substantial interest in a dispute before an arbitral tribunal and having notified its interest in writing to the parties to the dispute and the rest of the Parties shall have an opportunity to make written submissions to the arbitral tribunal. These submissions shall also be given to the parties to the dispute and may be reflected in the award of the arbitral tribunal.

2. A third party shall receive the submissions of the parties to the dispute to the first meeting of the arbitral tribunal.

3. If a third party considers that a measure that is already the subject of any arbitral tribunal proceedings nullifies or impairs benefits accruing to it under this Agreement, such third party may have recourse to normal dispute settlement procedures under this Chapter.

Article 67. Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 64:

(a) should make an objective assessment of the matter before it, including an examination of the facts of the case and the applicability of and conformity with the Agreement;

(b) should consult with the parties to the dispute as appropriate and provide them with adequate opportunities for the development of a mutually satisfactory resolution;

(c) shall make its award in accordance with this Agreement and applicable rules of international law;

(d) shall set out, in its award, its findings of law and fact, together with the reasons therefor;

(e) may, apart from giving its findings, include in its award suggested implementation options for the parties to the dispute to consider in conjunction with Article 71; and

(f) cannot, in its award, add to or diminish the rights and obligations of any Party provided in this Agreement.

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

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by any party to the dispute, the arbitral tribunal may request advisory reports in writing from experts. The arbitral tribunal may, at the request of any party to the dispute or on its own initiative, select, in consultation with the parties to the dispute, no fewer than two (2) scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award. Any information and technical advice so obtained shall be made available to the parties to the dispute.

Article 68. Proceedings of Arbitral Tribunals

1. The rules and procedures as set out in this Article shall apply to the proceedings of an arbitral tribunal.

2. The parties to the dispute, in consultation with the arbitral tribunal, may agree to adopt additional rules and procedures not inconsistent with the provisions of this Article.

Terms of Reference for Arbitral Tribunals

3. An arbitral tribunal shall have the following terms of reference:

"To examine, in the light of (the relevant provisions in this Agreement to be cited by the parties to the dispute), the matter referred to in the request for the establishment of an arbitral tribunal pursuant to Article 64, and to issue awards including findings, determinations and suggested implementation options, if any, as provided for in Article 67."

Written Submissions and Other Documents

4. Each party to the dispute shall deliver to the other parties to the dispute a copy of its written submissions to the arbitral tribunal.

5. In respect of any request, notice or other documents related to the arbitral tribunal proceedings that is not covered by paragraph 4, each party to the dispute may deliver a copy of the documents to the other parties to the dispute by facsimile, e-mail or other means of electronic transmission.

6. Any party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other documents related to the arbitral tribunal proceedings by delivering a new document clearly indicating the changes.

Timetable

7. After consulting the parties to the dispute, the arbitral tribunal shall as soon as practicable and whenever possible within seven (7) days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The timetable fixed for the arbitral tribunal shall include precise deadlines for written submissions by the parties to the dispute. Modifications to such timetable may be made by the agreement of the parties to the dispute in consultation with the arbitral tribunal.

Operation of Arbitral Tribunals

8. An arbitral tribunal shall meet in closed session.

The parties to the dispute shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

9. All third parties which have notified their interest in the dispute shall be invited in writing to present their views during a session of the first meeting of the arbitral tribunal proceedings set aside for that purpose. All such third parties may be present during the entirety of this session.

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

11. Notwithstanding paragraph 10, any party to the dispute may make public statements of its positions and its views regarding the dispute, but shall treat as confidential, information and written submissions made by the other parties to the dispute to the arbitral tribunal which the other parties to the dispute have designated as confidential. Where a party to the dispute submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of another party to the dispute, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

12. The venue for the arbitral tribunal proceedings shall be decided by mutual agreement between the complaining party and the party complained against. If there is no agreement, the venue shall alternate among the capitals of the parties to the dispute with the first meeting of the arbitral tribunal proceedings to be held in one (1) of the capitals of the party complained against.

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

Article 69. Draft Award and Award

1. The award of the arbitral tribunal shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made in the proceedings. Opinions expressed in the award of the arbitral tribunal by its individual arbitrator shall be anonymous.

2. The arbitral tribunal shall, within ninety (90) days after the date of its establishment, issue to the parties to the dispute its draft award including both the descriptive part and its findings and conclusions for the purposes of enabling the parties to the dispute to review precise aspects of the draft award.

3. When the arbitral tribunal considers that it cannot issue its draft award within the ninety (90) day period referred to in paragraph 2, it shall inform the parties to the dispute in writing of the reasons for the delay together with the estimate of the period within which it will issue its draft award.

4. The parties to the dispute may submit comments in writing to the arbitral tribunal on the draft award within fifteen (15) days after the date of issuance of the draft award.

5. Where written comments by the parties to the dispute as provided for in paragraph 4 are received, the arbitral tribunal, on its own initiative or at the request of a party to the dispute, may reconsider its award and make any further examination that it considers appropriate.

6. The arbitral tribunal shall issue its award to the parties to the dispute within thirty (30) days after the issuance of the draft award.

7. The arbitral tribunal shall make its decisions, including its award, by consensus, failing which it may make its decisions by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the parties to the dispute.

9. The award of the arbitral tribunal shall be circulated to the Parties within ten (10) days after its issuance to the parties to the dispute.

Article 70. Suspension and Termination of Proceedings

1. Where the parties to the dispute agree, the arbitral tribunal may suspend its work at any time for a period not exceeding twelve (12) months from the date of the joint notification of such agreement to the chair of the arbitral tribunal by the parties to the dispute. Upon the request of any party to the dispute, the arbitral tribunal proceedings shall be resumed after such suspension. If the work of the arbitral tribunal has been suspended for more than twelve (12) months, the authority of the arbitral tribunal shall lapse unless the parties to the dispute agree otherwise.

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

3. Before the arbitral tribunal issues its draft award, it may, at any stage of the proceedings, propose to the parties to the dispute that the dispute be settled amicably.

Article 71. Implementation of Award

1. The party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 69.

2. The party complained against shall, within twenty (20) days after the date of issuance of the award, notify the complaining party of the period of time in which to implement the award. If the complaining party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal which then determines the reasonable implementation period. The arbitral tribunal shall inform the parties to the dispute of its determination within thirty (30) days after the date of the referral of the matter to it.

3. If the party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining party, with a view to developing mutually satisfactory compensation. If no satisfactory compensation has been agreed within twenty (20) days after the date of expiry of that implementation period, the complaining party may request an arbitral tribunal to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

4. If the complaining party considers that the party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining party may refer the matter to an arbitral tribunal to confirm the failure and to determine the appropriate level of any suspension of the application to the party complained against of concessions or other obligations under this Agreement.

5. The arbitral tribunal established under this Article shall, wherever possible, have as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators of such arbitral tribunal shall be appointed pursuant to paragraphs 2 and 3 of Article 65.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under paragraphs

3 and 4 shall issue its award within sixty (60) days after the date when the matter is referred to it.

7. The award of the arbitral tribunal established under this Article shall be binding on all the parties to the dispute.

Article 72. Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations under this Agreement are temporary measures available in the event that the award is not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations under this Agreement is preferred to full implementation of the award to bring a measure into conformity with this Agreement. Compensation, if granted, shall be consistent with this Agreement.

2. The application of concessions or other obligations under this Agreement shall not be suspended before the

commencement and during the course of the proceedings under paragraphs 3 and 4 of Article 71.

3. The suspension of the application of concessions or other obligations under paragraphs 3 and 4 of Article 71 may only be implemented after the complaining party notifies the party complained against and the rest of the Parties that the complaining party intends to suspend the application to the party complained against of concessions or other obligations under this Agreement. The party complained against and the rest of the Parties shall be informed of the commencement of the suspension and which concessions or other obligations under this Agreement would be suspended.

4. In considering what concessions or other obligations under this Agreement to be suspended under paragraphs 3 and 4 of Article 71, such suspension shall:

(a) be temporary, and be discontinued when the parties to the dispute reach a mutually satisfactory resolution or where compliance with the award is effected;

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

(c) be restricted to the same sector or sectors as those in which the arbitral tribunal has found the nullification or impairment, unless it is not practicable or effective to suspend the application of concessions or obligations in such sector or sectors, in which case, the complaining party may suspend concessions or benefits in other sectors under this Agreement.

5. If the party complained against considers that the suspension of concessions or other obligations under this Agreement by the complaining party is inconsistent with the provisions of paragraph 4, the matter shall be referred to an arbitral tribunal. For the purposes of the arbitral tribunal established under this Article, paragraph 5 of Article 71 shall apply, mutatis mutandis.

6. Unless the parties to the dispute agree to a different period, the arbitral tribunal established under this Article shall issue its award within sixty (60) days after the date when the matter is referred to it. Such award shall be binding on all the parties to the dispute.

Article 73. Expenses

1. The complaining party and the party complained against shall respectively bear the costs of the arbitrators which they appointed, and their own expenses and legal costs.

2. Unless the parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of the proceedings of the arbitral tribunal shall be borne in equal parts by the parties to a dispute.

3. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to their assistants, designated note takers or other individuals that it retains.

Chapter 10. Final Provisions

Article 74. Table of Contents, Headings and Subheadings

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

Article 75. Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force pursuant to paragraph 1 of Article 79, and every five (5) years thereafter, unless otherwise agreed by the Parties.

Article 76. Annexes and Notes

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

Article 77. Amendments

1. This Agreement may be amended by agreement among the Parties.

2. The Government of each Party shall notify the Governments of the other Parties in writing that its legal procedures necessary for entry into force of the amendment have been completed. Such amendment shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, which is a Party, in relation to those Parties whose Governments have made such notifications by that date.

3. Where an ASEAN Member State, which is a Party, makes the notification referred to in paragraph 2 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, which is a Party, as referred to in paragraph 2, the amendment referred to in paragraph 1 shall enter into force in relation to that ASEAN Member State on the first day of the second month following the date on which it makes the notification.

4. Notwithstanding paragraphs 2 and 3, the number of ASEAN Member States referred to in paragraph 2 which is necessary for entry into force of the amendment may be increased by agreement among the Parties.

5. Notwithstanding paragraph 2, amendments relating only to:

(a) Annex 1 (provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change on tariff rates applied to the originating goods of the other Parties in accordance with Annex 1);

(b) Annex 2;

(c) Attachment to Annex 4; or

(d) Annex 5,

May be made by diplomatic notes exchanged among the Governments of the Parties. Such amendments shall enter into force in relation to all the Parties on the date specified in such diplomatic notes.

Article 78. Depositary

For the ASEAN Member States, this Agreement including its amendments shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof, to each ASEAN Member State.

Article 79. Entry Into Force

1. The Government of each signatory State shall notify the Governments of other signatory States in writing that its legal procedures necessary for entry into force of this Agreement have been completed. This Agreement shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State, in relation to those signatory States that have made such notifications by that date.

2. In relation to an ASEAN Member State making the notification referred to in paragraph 1 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State as referred to in paragraph 1, this Agreement shall enter into force on the first day of the second month following the date on which that ASEAN Member State makes the notification. That ASEAN Member State shall be bound by the existing terms and conditions of this Agreement, including any amendments that may have entered into force pursuant to Article 77 by the time of such notification.

For the purposes of Annex 1, the staging of tariff elimination or reduction of that ASEAN Member State shall also commence from the date of entry into force of this Agreement pursuant to paragraph 1.

Article 80. Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving one (1) year's advance notice in writing to the other Parties.

2. This Agreement shall terminate either when all ASEAN Member States which are Parties withdraw in accordance with paragraph 1 or when Japan does so.

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

DONE in duplicate in the English language and SIGNED at Bandar Seri Begawan on the third day of April in the year 2008, at Phnom Penh on the seventh day of April in the year 2008, at Jakarta on the thirsty-first day of March in the year 2008, at Vientiane on the fourth day of April in the year 2008, at Kuala Lumpur on the fourteenth day of April in the year 2008, at Nay Pyi Taw on the tenth day of April in the year 2008, at Manila on the second day of April in the year 2008, at Singapore on the twenty-sixth day of March in the year 2008, at Bangkok on the eleventh day of April in the year 2008, at Hanoi on the first day of April in the year 2008, and at Tokyo on the twenty-eight day of March in the year 2008.

For the Government of Brunei Darussalam:

For the Government of Japan:

For the Government of the Kingdom of Cambodia:

For the Government of the Republic of Indonesia:

For the Government of the Lao People's Democratic Republic:

For the Government of Malaysia:

For the Government of the Union of Myanmar:

For the Government of the Republic of the Philippines:

For the Government of the Republic of Singapore:

For the Government of the Kingdom of Thailand:

For the Government of the Socialist Republic of Viet Nam:

FIRST PROTOCOL TO AMEND THE AGREEMENT ON COMPREHENSIVE ECONOMIC PARTNERSHIP AMONG JAPAN AND MEMBER STATES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Governments of Japan and Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN");

Recalling the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations (hereinafter referred to as the "AJCEP Agreement"), which entered into force on 1 December 2008;

Encouraged by the achievements of the relationship between Japan and ASEAN for more than 40 years, particularly in the economic field;

Desiring to further enhance the competitiveness of Japan and the Member States of ASEAN (hereinafter referred to collectively as "ASEAN Member States" or individually as "ASEAN Member State") by using the AJCEP Agreement as the main vehicle;

Recalling further the Vision Statement on ASEAN-Japan Friendship and Cooperation (Shared Vision, Shared Identity, Shared Future) adopted by the Heads of State or Government of Japan and ASEAN Member States to commemorate the 40th Year of ASEAN-Japan Friendship and Cooperation where they expressed their commitment to further enhancing comprehensive economic partnership through, among others, strengthening cooperation in areas of mutual interest related to trade in goods, trade in services and investment, including enhancing the utilisation of the AJCEP Agreement and the implementation of the ASEAN-Japan 10-Year Strategic Economic Cooperation Roadmap;

Noting Articles 50 and 51 of the AJCEP Agreement, which reflect the intention of Japan and ASEAN Member States to discuss and negotiate provisions for trade in services and investment, and incorporate the results of the negotiations into the AJCEP Agreement;

Seeking to incorporate into the AJCEP Agreement robust Chapters on trade in services, movement of natural persons and

investment and confident that the incorporation of these Chapters will strengthen the partnership between Japan and ASEAN, and support economic integration in the East Asian region; and

Noting further that Article 77 of the AJCEP Agreement provides for amendments thereto to be agreed upon by the Parties;

HAVE AGREED as follows:

1. References to the Union of Myanmar

The references to "the Union of Myanmar" in the AJCEP Agreement shall be deemed to read "the Republic of the Union of Myanmar".

2. Incorporation of New Annexes and Amendment to the Table of Contents of the AJCEP Agreement

1. Appendices 1 through 5 of this Protocol shall constitute an integral part of this Protocol.

2. The table of contents of the AJCEP Agreement shall be replaced by the new table of contents as set out in Appendix 1 of this Protocol.

3. Appendices 2 through 5 of this Protocol shall be incorporated into the AJCEP Agreement as Annexes 6 through 9 of the AJCEP Agreement, respectively.

3. Amendment to Chapter 1 (General Provisions) of the AJCEP Agreement

1. Article 8 of the AJCEP Agreement shall be replaced by the following:

8. Security Exceptions

1. For the purposes of this Agreement, nothing in this Agreement shall be construed:

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

(b) to 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 or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;

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

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

(iv) taken to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures; or

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

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

2. Subparagraph 2(e) of Article 11 of the AJCEP Agreement shall be replaced by the following:

"(e) adopt:

(i) the Implementing Regulations referred to in Rule 11 of Annex 4;

(ii) procedures on the implementation of Annex 2 by the Parties after its amendment, upon recommendation of the Sub-Committee on Rules of Origin referred to in Article 37. These procedures shall address, inter alia,the date(s) on which the amended Annex 2 shall be applicable to applications for, and the issuance of, Certificates of Origin in accordance with Annex 4;

(iii) amendments to this Agreement pursuant to paragraph 5 of Article 77; and

(iv) any necessary decisions; and"

4. Amendment to Chapter 6 (Trade In Services) of the AJCEP Agreement

Chapter 6 of the AJCEP Agreement shall be replaced by the following:

Chapter 6. Trade In Services

50.1. Definitions

For the purposes of this Chapter, the term:

(a) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

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

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

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

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

(d) "computer reservation system services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;

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

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

(g) "juridical person of another Party" means a juridical person which is either:

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

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

(A) natural persons of that other Party; or

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

(h) A juridical person is:

(i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

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

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

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

Note: "measure" shall include taxation measures to the extent covered by the GATS.

(j) “measures by a Party” means measures taken by:

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

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

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

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

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

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

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

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

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

(ii) has the right of permanent residence in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified to all other Parties after the entry into force of the First Protocol to Amend the Agreement on Comprehensive Economic Partnership Among Japan and Member States of the Association of Southeast Asian Nations (hereinafter referred to as “the First Protocol”), provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

Note: In the case of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Chapter shall not apply to the permanent residents of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan. Once any of these Parties enacts its laws on the treatment of permanent residents of another Party or non-Party, there shall be negotiations among the Parties on the issue of whether to include permanent residents in the coverage of natural person under this Chapter in respect of that Party.

(n) “person” means either a natural person or a juridical person;

(o) “sector” of a service means:

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule of Specific Commitments; or

(ii) otherwise, the whole of that service sector, including all of its subsectors;

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

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

(r) “service consumer” means any person that receives or uses a service;

(s) “service of another Party” means a service which is supplied:

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

use in whole or in part; or

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

(t) “service supplier” means any person that supplies a service;

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

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

(v) “trade in services” means the supply of a service:

(i) from the territory of a Party into the territory of any other Party (“crossborder supply”);

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

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

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

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

50.2. Scope

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

2. This Chapter shall not apply to:

(a) government procurement;

(b) cabotage in maritime transport services;

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

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services; and

(d) measures by a Party affecting natural persons of another Party seeking access to the employment market of the former Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.

3. The Annex A to Chapter 6 provides for supplementary provisions to this Chapter on financial services, including scope and definitions.

4. The Annex B to Chapter 6 provides for supplementary provisions to this Chapter on telecommunications services, including scope and definitions.

50.3. Most-Favoured-Nation Treatment

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

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in Annex 7.

3. Notwithstanding paragraphs 1 and 2, the Parties listed in Annex 8 shall be exempted from paragraphs 1 and 2 and shall endeavour to consider according to services and service suppliers of another Party treatment no less favourable than that they accord to like services and service suppliers of any other Party or a non-Party. Any decision of a Party with regard to this paragraph shall not be subject to dispute settlement procedures provided for in Chapter 9.

50.4. Transparency

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Party shall promote regulatory transparency in trade in services.

Publication

2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:

(a) all relevant measures of general application affecting trade in services; and

(b) all international agreements pertaining to, or affecting, trade in services to which

that Party is a party.

3. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in paragraph 2 available on the internet.

4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information shall be made otherwise publicly available.

5. To the extent possible and required under its laws and regulations, each Party shall provide a reasonable opportunity for comments by interested persons of the Parties on any regulation of general application affecting trade in services that it proposes to adopt, amend or repeal, before adoption, amendment or repeal, and publish the comments received from the public and results of its consideration to the comments.

Note: For greater certainty, a Party may consolidate the comments and the results, and may publish them in a separate document from the one that sets forth the final text of the proposed regulation.

Contact Points

6. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the request of another Party, the contact point shall:

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

7. Each Party shall respond promptly to all requests by any other Party for specific information on:

(a) any measures referred to in subparagraph 2(a) or international agreements referred to in subparagraph 2(b); and

(b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Party's specific commitments under this Chapter, whether or not that other Party has been previously notified of the new or changed law, regulation or administrative guideline.

8. Each Party shall, to the extent possible and required under its laws and regulations, respond to enquiries from interested persons of the Parties regarding any relevant measure of general application of the Party relating to the subject matter of this Chapter.

9. Each Party shall prepare a non-legally binding list (transparency list) on laws and, to the extent possible, other measures at the central government level, which are inconsistent with the obligations under Articles 50.3, 50.17 and 50.18. Such a list shall cover (i) the sectors where specific commitments are undertaken in this Agreement and/or in any other agreements in force on the date of entry into force of the First Protocol pertaining to or affecting trade in services to which the Party preparing the list is a party and (ii) to the extent possible, other sectors that are not included in the sectors referred to in (i), shall be exchanged among the Parties and made public within six (6) years for newer ASEAN Member States and four (4) years for the remaining Parties, from the date of entry into force of the First Protocol, and may be subject to future review and revision as necessary. This list shall not form an integral part of this Agreement and shall not be subject to dispute settlement procedures provided for in Chapter 9. The list shall include the following elements:

(a) sector and sub-sector or matter;

(b) type of inconsistency (i.e. Most-Favoured-Nation Treatment, Market Access and/or National Treatment);

(c) legal source or authority of the measure; and

(d) succinct description of the measure.

Note: Nothing in this paragraph shall be construed to oblige any Party to enter into negotiations with any other Party in respect of any matter relating to the list. The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. For greater certainty, the information contained in this list will also not prevent Parties from introducing new measures or changes. Any review or revision under this paragraph will be solely for the purposes of updating such list.

10. In preparation of such list, a Party, upon request of another Party, may provide technical assistance to the requesting Party, subject to the available resources.

50.5. Domestic Regulation

1. In sectors where specific commitments are undertaken under Articles 50.17 through 50.23, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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

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

3. Where authorisation is required for the supply of a service on which a specific commitment under this Chapter has been made, the competent authorities of each Party shall:

(a) in the case of an incomplete application, at the request of the applicant, identify, where practicable, all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

(b) at the request of the applicant, provide, without undue delay, information concerning the status of the application; and

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

4. The competent authorities of a Party shall endeavour, in accordance with the laws and regulations of the Party, to establish standards for taking administrative decisions in response to submitted applications. The competent authorities shall endeavour to:

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

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

5. The competent authorities of a Party shall endeavour, in accordance with the laws and regulations of the Party, to:

(a) establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to submitted applications; and

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

6. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements of service suppliers of another Party do not constitute unnecessary barriers to trade in services, each Party shall aim to ensure that such requirements are, inter alia:

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

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

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

7. (a) In sectors in which a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Chapter in a manner which:

(i) does not comply with the criteria outlined in subparagraph 6(a), (b) or

(c); and

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

(b) In determining whether a Party is in conformity with the obligation under subparagraph 7(a), account shall be taken of international standards of relevant international organisations applied by that Party.

Note: The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of at least all the Parties.

8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

9. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, this Article shall be amended, as appropriate, after consultations among the Parties, to bring those results into effect under this Agreement.

50.6. Administrative Guidance

1. Where a competent authority of the central government of a Party renders administrative guidance with regard to any matter covered by this Chapter, such competent authority is encouraged to ensure that the administrative guidance does not exceed the scope of its competence. The competent authority is also encouraged to ensure that the administrative guidance does not require the person concerned to comply with the administrative guidance without voluntary cooperation of such person.

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

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

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

50.7. Recognition

1. For the purposes of the fulfilment, in whole or in part, of its respective standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in another Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the Parties concerned or may be accorded autonomously.

2. Two (2) or more Parties may enter into, or encourage their relevant competent bodies to enter into, negotiations on recognition of qualification requirements, qualification procedures, licensing and/or registration procedures for the purposes of fulfilment of their respective standards or criteria for the authorisation, licensing or certification of service suppliers.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licences, or certifications obtained or

requirements met in the territory of that other Party should be recognised.

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

5. Where a Party recognises, by an agreement or arrangement between the Party and another Party or a non-Party or unilaterally, the education or experience obtained, requirements met, or licences or certifications granted in that other Party or the non-Party, nothing in Article 50.3 shall be construed to require the former Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the other Parties.

50.8. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 50.3 and specific commitments.

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

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

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

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

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

50.9. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 50.8, may restrain competition and thereby restrict trade in services.

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

50.10. Safeguards

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

2. In the event that the implementation of the commitments made in this Chapter causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1, the affected Party may request consultations with the Party or Parties concerned. The requested Party or Parties shall enter into consultations with the requesting Party on the commitments that the requested Party or Parties consider may have caused substantial adverse impact and on the possibility of the requesting Party adopting any measure to alleviate such impact. The requesting Party shall notify all the other Parties of its request for consultations under this paragraph.

3. Any measures taken pursuant to paragraph 2 shall be mutually agreed by the consulting Parties.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Sub-Committee on Trade in Services referred to in Article 50.24 following the conclusion of consultations.

50.11. Payments and Transfers

1. Except under the circumstances envisaged in Article 50.12, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to as "IMF") under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "Articles of Agreement of the IMF"), including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 50.12 or at the request of the IMF.

50.12. Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments including on payments or transfers for transactions related to such commitments.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate among Parties;

(b) shall be consistent with the Articles of Agreement of the IMF;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

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

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Parties.

5. Where a Party has adopted restrictions pursuant to paragraph 1 and if consultations in relation to the restrictions adopted by it are not taking place at the World Trade Organization, the Party, upon request, shall promptly commence consultations with any requesting Party in order to review those restrictions adopted by the former Party.

50.13. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) inconsistent with Article 50.18, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Parties; or

Note: Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the territory of the Party;

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the territory of the Party;

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the territory of the Party;

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this subparagraph and this Note are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

(e) inconsistent with Article 50.3, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

50.14. Subsidies

1. Except where provided in this Article, this Chapter shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Chapter, any Party may request consultations with a view to an amicable resolution of this matter. The requested Party shall accord sympathetic consideration to such request.

2. Pursuant to this Chapter, the Parties shall:

(a) on request, provide information on subsidies related to trade in services committed under this Chapter to any requesting Party; and

(b) review the treatment of subsidies when relevant disciplines are developed by the World Trade Organization.

50.15. Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements in accordance with Chapter 8. The Parties are encouraged to discuss and mutually agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

50.16. Increasing Participation of Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with Articles 2, 3 and 52, the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

(a) strengthened domestic services capacity and its efficiency and competitiveness, inter alia, through access to technology on a commercial basis;

(b) improved access to distribution channels and information networks;

(c) commitments in sectors of export interest to newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

50.17. Market Access

1. With respect to market access through the modes of supply identified in subparagraph (v) of Article 50.1, a Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 6.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v)(i) of Article 50.1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v)(iii) of Article 50.1, it is thereby committed to allow related transfers of capital into its territory.

2. In sectors where market-access commitments are undertaken, the measures, which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of Specific Commitments in Annex 6, are defined as:

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

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

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

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

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

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

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

50.18. National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

Note: For greater certainty, no specific commitments in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

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

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

4. A Party shall not invoke the preceding paragraphs under Chapter 9 with respect to a measure of any other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation.

50.19. Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 50.17 and 50.18, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 6.

50.20. Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 50.17, 50.18 and 50.19. With respect to sectors or subsectors where such commitments are undertaken, each Schedule of Specific Commitments in Annex 6 shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate the timeframe for implementation of such commitments.

2. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications referred to in subparagraphs 1(a) and (b), other than those based on measures pursuant to immigration laws and regulations, shall be limited to existing non-conforming measures.

Note: For the purposes of this paragraph, "existing" means in effect on the date of entry into force of the First Protocol.

3. Measures inconsistent with both Articles 50.17 and 50.18 shall be inscribed in both the columns relating to Articles 50.17 and 50.18.

50.21. Application and Extension of Commitments

Each Party shall make its individual Schedule of Specific Commitments under Article 50.20 and shall apply such Schedule to other Parties.

50.22. Progressive Liberalisation

The Parties may enter into successive rounds of negotiations so as to progressively liberalise trade in services among the Parties.

50.23. Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule of Specific Commitments, at any time after three (3) years from the date on which that commitment has entered into force provided that:

(a) it notifies the other Parties as well as the ASEAN Secretariat of its intention to modify or withdraw a commitment no later than three (3) months before the intended date of implementation of the modification or withdrawal; and

(b) it enters into negotiations with any affected Party to agree to the necessary compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than provided for in the Schedules of Specific Commitments prior to such negotiations.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all the Parties.

4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be settled by arbitration under Chapter 9. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Articles 50.3 and50.21, such a modification or withdrawal may be implemented solely with respect to the modifying Party.

50.24. Sub-Committee on Trade In Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

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

(b) review commitments, with respect to measures affecting trade in services, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;

(c) discuss any issues related to this Chapter;

(d) report the outcome of discussions of the Sub-Committee to the Joint Committee; and

(e) carry out other functions as may be delegated by the Joint Committee in accordance with Article 11 of this Agreement.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of Japan and all ASEAN Member States; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member States.

4. The Sub-Committee, based on the consensus of the Parties, may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed to participate in the Sub-Committee's discussions.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

50.25. Review

1. With the objective of further liberalising trade in services among the Parties, including the possibility of the re-negotiation of the format of schedules, the Parties shall undertake a review of this Chapter with Annexes A and B to this Chapter and Annexes 6 through 8 at the occasion of a general review pursuant to Article 75 or other occasions as may be otherwise agreed by the Parties.

2. If, after the entry into force of the First Protocol, a Party has undertaken further liberalisation autonomously in any of services sectors, subsectors or activities, pursuant to Article 50.22, it may consider any requests by the other Parties for the possible incorporation into this Agreement of such autonomous liberalisation.

50.26. Denial of Benefits

A Party may deny the benefits of this Chapter:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;

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

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

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

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party.

Annex A to Chapter 6. Financial Services

A.1. Scope and Definitions

1. This Annex shall apply to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in subparagraph (u) of Article 50.1.

2. (a) For the purposes of this Annex, the term:

(i) "financial service" means any service of a financial nature offered by a financial service supplier of a Party.

Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(A) direct insurance (including coinsurance):

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency;

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(E) acceptance of deposits and other repayable funds from the public;

(F) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(G) financial leasing;

(H) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(I) guarantees and commitments;

(J) trading for own account or for account of customers, whether on an exchange, in an over-thecounter market or otherwise, the following:

(1) money market instruments (including cheques, bills, certificates of deposits);

(2) foreign exchange;

(3) derivative products including, but not limited to, futures and options;

(4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(5) transferable securities; and

(6) other negotiable instruments and financial assets, including bullion;

(K) participation in issues of all kinds of securities, including underwriting and placement as agent, whether publicly or privately, and provision of services related to such issues;

(L) money broking;

(M) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(N) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(O) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(P) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (E) through (O), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(ii) “financial service supplier” means any natural or juridical person of a Party wishing to supply or supplying financial services but “financial service supplier” does not include a public entity;

(iii) “public entity” means:

(A) a government, a central bank or monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(B) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(iv) "self-regulatory organisation" means:

(A) in the case of Japan, any nongovernmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association that exercises delegated regulatory or supervisory authority over financial service suppliers; and

(B) in the case of an ASEAN Member State, any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or any other organisation or association that is recognised by legislation as a self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers pursuant to legislation or delegation from central, regional or local governments or authorities;

(b) For the purposes of subparagraph (q) of Article 50.1, "services supplied in the exercise of governmental authority" means the following:

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

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government;

(c) For the purposes of subparagraph (q) of Article 50.1, if a Party allows any of the activities referred to in subparagraph (b) (ii) or (iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities; and

(d) The term "a service supplied in the exercise of governmental authority" as defined in subparagraph (a) of Article 50.1 shall not apply to services covered by this Annex.

A.2. Transparency

1. The Parties recognise that regulatory transparency in financial services is important in facilitating the ability of financial service suppliers to gain access to and operate in each other's market.

2. Each Party shall endeavour to take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations in the Party are promptly published or otherwise made publicly available.

3. Each Party shall, to the extent possible, maintain or establish appropriate mechanisms for responding to enquiries from interested persons of another Party regarding measures of general application to which this Annex applies.

Note: The Parties confirm their shared understanding that interested persons in this Article should only be persons whose direct financial interest could be potentially affected by the adoption of the regulations of general application.

4. Competent authorities of each Party shall use their best endeavours to make available to interested persons of another Party their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant in writing, competent authorities of a Party shall inform the applicant of the status of its application. If an authority requires additional information from the applicant, it shall notify the applicant within a reasonable period of time.

6. (a) A competent authority of each Party shall make administrative decisions on a completed application of a financial service supplier of another Party seeking to supply a financial service in that Party's territory within one hundred eighty (180) days and shall notify the applicant of the decision within a reasonable period of time. An application shall not be considered complete until all relevant proceedings are conducted and the competent authority considers all necessary information is received.

(b) Where it is not practicable for a decision to be made within one hundred eighty (180) days, the competent authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable period of time thereafter.

7. On the request of an unsuccessful applicant in writing, a competent authority of a Party that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application.

A.3. Transfers of Information and Processing of Information

1. A Party shall not take measures that prevent:

(a) transfers of information including transfers of data by electronic means necessary for the conduct of the ordinary business of a financial service supplier;

(b) the processing of financial information including transfers of data by electronic means necessary for the conduct of the ordinary business of a financial service supplier; or

(c) transfers of equipment necessary for the conduct of the ordinary business of a financial service supplier, subject to importation rules consistent with international agreements.

2. Nothing in paragraph 1:

(a) restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations so long as such right shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement;

(b) prevents a competent authority of a Party for regulatory or prudential reasons from requiring a financial service supplier in its territory to comply with domestic regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records; or

(c) shall be construed to require a Party to allow the cross-border supply or the consumption abroad of services in relation to which it has not made specific commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in subparagraph 2(a)(i)(O) of Article A.1.

A.4. Domestic Regulation

1. Notwithstanding any other provisions of Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the Party's financial system. Where such measures do not conform with the provisions of Chapter 6, they shall not be used as a means of avoiding the commitments or obligations of the Party under that Chapter.

2. Nothing in Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

A.5. Recognition of Prudential Measures

Where a Party recognises, by an agreement or arrangement, prudential measures of a non-Party or of any international regulatory body in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for the other Parties to negotiate their accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords such recognition autonomously, it shall afford adequate opportunity for the other Parties to demonstrate that such circumstances exist.

A.6. Settlement of Disputes

Arbitral tribunals established under Article 64 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Annex B to Chapter 6. Telecommunications Services

B.1. Scope

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications transport networks and services.

2. This Annex shall not apply to measures affecting broadcasting services as defined in the laws and regulations of each Party.

3. Nothing in this Annex shall be construed to:

(a) require a Party to authorise a service supplier of another Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in its Schedule of Specific Commitments in Annex 6; or

(b) require a Party (or require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

B.2. Definitions

For the purposes of this Annex, the term:

(a) “cost-oriented” means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) “end user” means a subscriber to or a final consumer of public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;

(c) “essential facilities” means facilities of a public telecommunications transport network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(d) “leased circuits” means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;

(e) “major supplier” means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications transport networks or services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(f) “non-discriminatory” means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

(g) “personal data” means any information about an identified or identifiable natural person;

(h) “public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

(i) “public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer’s information;

(j) “telecommunications” means the transmission and reception of signals by any electromagnetic means;

(k) “telecommunications regulatory body” means any body or bodies in the territory of a Party which is or are responsible, under the laws and regulations of the Party, for the regulation of telecommunications; and

(l) “users” means end users or suppliers of public telecommunications transport networks or services.

B.3. Access and Use

1. Each Party shall ensure that any service supplier of another Party is accorded access to and use of public telecommunications transport networks and services in a timely fashion and on transparent, reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule of Specific Commitments in Annex 6. This obligation shall be applied, inter alia, through paragraphs 2 through 6.

2. Each Party shall ensure that service suppliers of another Party have access to and use of any public telecommunications transport network or service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such suppliers are permitted:

(a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;

(b) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and

(c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Party shall ensure that service suppliers of another Party may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary:

(a) to ensure the security and confidentiality of messages; or

(b) to protect the personal data of end users of public telecommunications transport networks or services subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

(a) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally; or

(b) to protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;

(b) requirements, where necessary, for the inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article B.17;

(c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;

(d) restrictions on interconnection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or

(e) notification, permit, registration and licensing.

B.4. Number Portability

Each Party shall endeavour to ensure that suppliers of public telecommunications transport networks or services in its territory provide number portability for mobile services in accordance with its laws and regulations, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

B.5. Competitive Safeguard

1. Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:

(a) engaging in anti-competitive crosssubsidisation;

(b) using information obtained from competitorswith anti-competitive results; and

(c) not making available to other suppliers of public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

B.6. Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications transport networks and services of another Party treatment no less favourable than that such major supplier accords in like circumstances to its subsidiaries and affiliates, or any non-affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; and

(b) the availability of technical interfaces necessary for interconnection.

B.7. Resale

Each Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of the public telecommunications transport services by suppliers of public telecommunications transport networks or services of another Party.

B.8. Interconnection

1. Each Party shall ensure that suppliers of public telecommunications transport networks in its territory provide interconnection with the suppliers of public telecommunications transport networks or services of another Party to the extent provided for in its laws and regulations.

2. Each Party shall ensure that a major supplier which has control over essential facilities in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications transport networks and services of another Party at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) in a timely fashion and on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications transport networks or services of another Party need not pay for network components or facilities that it does not require for the services to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications transport networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that suppliers of public telecommunications transport networks or services of another Party may interconnect their facilities and equipment with those of major suppliers which have control over essential facilities in its territory pursuant to at least one of the following options:

(a) a reference interconnection offer, approved by the Party’s telecommunications regulatory body, containing the rates, terms and conditions that the major supplier which has control over essential facilities offers generally to suppliers of public telecommunications transport services;

(b) the terms and conditions of an existing interconnection agreement; or

(c) a new interconnection agreement through commercial negotiation.

4. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or reference interconnection offer.

6. Each Party shall ensure that a major supplier which has control over essential facilities does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its interconnection business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.

B.9. Provisioning and Pricing of Leased Circuit Services

Each Party shall ensure that a major supplier which has control over essential facilities in its territory provides suppliers of public telecommunications transport networks and services of another Party with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

B.10. Co-location

Each Party shall ensure, in accordance with its laws and regulations, that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications transport networks or services of another Party to locate their equipment within the major supplier's buildings on terms and conditions, including technical feasibility and space availability where applicable, and at cost-oriented rates, that are reasonable, nondiscriminatory (including with respect to timeliness) and transparent.

B.11. Independent Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of telecommunications services.

Note: For greater certainty, "supplier of telecommunications services" is not limited to a supplier of public telecommunications transport networks or services.

2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

B.12. Universal Service

Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anticompetitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Party.

B.13. Licensing

1. Where a licence, concession, permit, registration or other type of authorisation is required for the supply of public telecommunications transport networks or services, each Party shall make publicly available:

(a) all the licensing or other authorisation criteria and procedures, and the period of time normally required to reach a decision concerning an application for a licence, concession, permit, registration or other type of authorisation; and

(b) the terms and conditions of individual licences, concessions, permits, registrations or other type of authorisations it has issued.

2. The competent authority of a Party shall notify an applicant of the outcome of its application without undue delay after a decision has been taken. In case a decision is taken to deny an application for a licence, concession, permit, registration or other type of authorisation, the competent authority of the Party shall make known to the applicant, upon request, the reason for the denial.

B.14. Allocation and Use of Scarce Resources

1. Each Party shall carry out its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies, and numbers in an objective, timely, transparent and nondiscriminatory manner.

2. Each Party shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article 50.17. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner consistent with other provisions of Chapter 6. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

B.15. Transparency

Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, permit, registration or licensing requirements, if any.

B.16. Settlement of Disputes

1. Each Party shall ensure that suppliers of public telecommunications transport networks or services of another Party may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes arising under this Annex in accordance with its laws and regulations.

2. Each Party shall ensure, in accordance with its laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. No Party shall permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body unless an appropriate authority suspends or withdraws such determination or decision.

3. Each Party shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain review of such determination or decision in accordance with its laws and regulations.

B.17. Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

B.18. Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under the GATS, a Party may delay the application of the following Articles as indicated in the Attachment to this Annex on Transitional Arrangements:

(a) Article B.5 Competitive Safeguard;

(b) Article B.7 Resale;

(c) Article B.8 Interconnection;

(d) Article B.9 Provisioning and Pricing of Leased Circuit Services;

(e) Article B.10 Co-location;

(f) Article B.11 Independent Telecommunications Regulatory Body;

(g) Article B.13 Licensing; and

(h) Article B.14 Allocation and Use of Scarce Resources.

5. Incorporation of Chapter 6 Bis (Movement of Natural Persons) Into the AJCEP Agreement

The following Chapter on Movement of Natural Persons shall be inserted into the AJCEP Agreement as Chapter 6 bis:

Chapter 6bis. Movement of Natural Persons

50 bis.1. Objectives

The objectives of this Chapter are to:

(a) provide the rights and obligations in relation to the movement of natural persons between the Parties for the purposes of trade in services and investment;

(b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties; and

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

50 bis.2. Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the territory of another Party and who fall under one of the categories referred to in paragraph 1 of Article 50 bis.4.

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry and temporary stay of natural persons of another Party in its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to another Party under the terms of the specific commitments.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of specific commitments set out in Annex 9.

50 bis.3. Definitions

For the purposes of this Chapter, the term:

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

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

(ii) has the right of permanent residence in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified to all other Parties after the entry into force of the First Protocol, provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

Note: In the case of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Chapter shall not apply to the permanent residents of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic

of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan. Once any of these Parties enacts its laws on the treatment of permanent residents of another Party or non-Party, there shall be negotiations among the Parties on the issue of whether to include permanent residents in the coverage of natural person under this Chapter in respect of that Party.

(b) "short-term business visitor" means: in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person seeking to enter or stay in the territory of an ASEAN Member State temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of that ASEAN Member State:

(i) as a representative of a goods seller/service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller/service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public;

(ii) as an employee of a juridical person as defined in subparagraphs (f)(i) through (iii) only for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of that ASEAN Member State;

(iii) for the purpose of participating in business negotiations or meetings; or

(iv) for the purpose of establishing an investment or setting up a commercial presence in the territory of that ASEAN Member State; and in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of a short-term business visitor allowed in Japan are described in the terms of the specific commitments set out in Annex 9;

(c) "contractual service supplier" means: in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person who is an employee of a juridical person established in the territory of another Party which has no commercial presence in the territory of that ASEAN Member State where services will be provided, who:

(i) enters the territory of that ASEAN Member State temporarily in order to supply a service pursuant to a contract or contracts between his or her employer and a service consumer or service consumers in the territory of that ASEAN Member State;

(ii) is either an executive, manager, or specialist as defined in subparagraphs (f)(i) through (iii), who receives remuneration from his or her employer;

(iii) must possess the appropriate educational and professional qualifications relevant to the service to be provided; and

(iv) as may be applicable, has been an employee of the juridical person for a period as may be specified in the terms of specific commitments set out in Annex 9; and

in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of contractual service supplier allowed in Japan are described in the terms of the specific commitments set out in Annex 9;

(d) "granting Party" means a Party who receives an application for entry and temporary stay from a natural person of another Party who is covered by Article 50 bis.2;

(e) "immigration formality" means: with respect to an ASEAN Member State, a visa, permit, pass or other documents or electronic authority in accordance with the laws and regulations of that ASEAN Member State granting a natural person of another Party the right to temporarily enter, stay, work, or to establish commercial presence in the territory of the granting Party; and with respect to Japan, only visa, which grants entry and temporary stay in accordance with the laws and regulations of Japan;

(f) "intra-corporate transferee" means: in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person who is an employee of a juridical person established in the territory of another Party, who is transferred temporarily for the supply of a service through commercial presence (either through a representative office, branch, subsidiary or affiliate) in the territory of that ASEAN Member State, and who has been an employee of the juridical person for a period as may be specified in the terms of specific commitments set out in Annex 9, and who is:

(i) an "executive": being a natural person within the organisation who primarily directs the management of the organisation, exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation;

(ii) a "manager": being a natural person within the organisation who primarily directs the

organisation/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff. It does not include first line supervisors unless employees supervised are professionals; and it does not include employees who primarily perform tasks necessary for the provision of the service; or

(iii) a "specialist": being a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and it may include, but is not limited to, members of a licensed profession; and

in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of intra-corporate transferee allowed in Japan are described inthe terms of the specific commitments set out in Annex 9; and

(g) "entry and temporary stay" means entry into and stay in the territory of a Party by a natural person of another Party, without the intent to establish permanent residence.

50 bis.4. Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of another Party in accordance with this Chapter including the terms of the categories in Annex 9, provided that the natural persons comply with the laws and regulations, including prescribed application procedures for the immigration formality sought and eligibility requirements, of the former Party related to movement of natural persons applicable to entry and temporary stay, which are not inconsistent with the provisions of this Chapter.

Such natural persons may include:

(a) short-term business visitors;

(b) intra-corporate transferees;

(c) contractual service suppliers;

(d) investors; and

(e) other categories as may be specified in Annex 9.

2. A Party may deny entry and temporary stay to natural persons of another Party that do not comply

with paragraph 1.

3. No Party shall impose or maintain any limitations on the total number of visas to be granted in that Party to natural persons of another Party unless otherwise specified in Annex 9.

50 bis.5. Processing of Applications

1. Each Party shall process without undue delay complete applications for immigration formalities or extensions thereof received from an applicant who is a natural person of another Party covered by Article 50 bis.2 or his or her employer.

2. If the competent authorities of a Party require additional information in order to process the application for an immigration formality, they shall, where applicable, endeavour to notify the applicant without undue delay.

3. Each Party shall, upon request and within a reasonable period of time after receiving a complete application for an immigration formality, notify the applicant of:

(a) the receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application including, if approved, the period of stay and other conditions.

4. Each Party shall endeavour to simplify the requirements including required documentation, and to facilitate and expedite the procedures, relating to entry and temporary stay, in accordance with its laws and regulations.

5. Any fees imposed by a Party in respect of the processing of an application referred to in paragraph 1 shall be reasonable and in accordance with its laws and regulations.

50 bis.6. Transparency

Each Party shall:

(a) publish or otherwise make publicly available explanatory material and relevant forms and documents on all relevant immigration formalities which pertain to or affect the operation of this Chapter;

(b) maintain or establish contact points or other appropriate mechanisms to respond to enquiries from interested persons regarding its laws and regulations relating to entry and temporary stay of natural persons;

(c) to the extent possible, allow reasonable time between publication of new regulations affecting entry and temporary stay of natural persons and their effective date. Such publication may be made electronically available; and

(d) upon modifying or amending any immigration measure that affects the entry and temporary stay of natural persons, ensure that the information published or otherwise made available pursuant to subparagraph (a) is updated as soon as possible.

50 bis.7. Recognition

1. For the purposes of smooth movement of natural persons under this Chapter, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in another Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of natural persons of that other Party.

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

3. Where a Party recognises by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licences or certifications granted in the non-Party, the Party shall accord to the other Parties an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Parties should also be recognised.

50 bis.8. Application of Chapter 9

1. Without prejudice to Chapter 9, the Parties shall endeavour to resolve any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 9 regarding a refusal to grant entry and temporary stay under this Chapter unless:

(a) the matter involves a pattern of practice on the part of the granting Party; and

(b) the natural persons of the Party concerned have exhausted the domestic remedies, where available, regarding the particular matter.

50 bis.9. General Exceptions

For the purposes of this Chapter, Article 50.13 shall apply mutatis mutandis.

50 bis.10. Measures Pursuant to Immigration Laws and Regulations

Except for this Chapter and Chapters 1, 9 and 10, nothing in this Agreement shall impose any obligation on each Party regarding measures affecting the movement of natural persons of another Party.

Note: For greater certainty, the measures affecting the movement of natural persons of another Party include immigration formalities.

6. Amendment to Chapter 7 (Investment) of the AJCEP Agreement

Chapter 7 of the AJCEP Agreement shall be replaced by the following:

Chapter 7. Investment

51.1. Scope and Coverage

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

(a) investors of another Party; and

(b) covered investments.

2. This Chapter shall not apply to:

(a) any measure that a Party adopts or maintains with respect to government procurement;

(b) subsidies or grants provided by a Party;

(c) services supplied in the exercise of governmental authority, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service suppliers; and

(d) claims arising out of events which occurred prior to the date of entry into force of the First Protocol.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapters 6 and 6 bis.

4. Notwithstanding paragraph 3, Articles 51.4, 51.9, 51.10, 51.11, 51.12 and 51.13 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

Note: For greater certainty, paragraph 4 shall not preclude a Party from applying Articles 8, 51.14, 51.15, 51.19, 51.20, 51.21 or other relevant provisions of this Chapter to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

51.2. Definitions

For the purposes of this Chapter, the term:

(a) “covered investment” means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of the First Protocol or established, acquired or expanded thereafter, and which, where applicable, has been admitted, according to its laws, regulations and national policies;

Note 1: For greater certainty, “national policies” means those policies affecting an investment that are endorsed and announced by the Government of a Party, and made publicly available in a written form. Each Party shall, upon request by another Party, respond to specific questions from, and provide information to, the latter Party, in the English language, with respect to such national policies.

Note 2: In the case of the Kingdom of Thailand, this Chapter shall apply to covered investments which, where applicable, have been specifically approved in writing for protection by the competent authorities, in accordance with its laws, regulations and national policies.

Note 3: In the case of the Kingdom of Cambodia and the Socialist Republic of Viet Nam, “has been admitted” means “has been specifically registered or approved in writing, as the case may be”.

(b) “freely usable currency” means any currency designated as such by the IMF under the Articles of Agreement of the IMF as may be amended;

(c) “investment” means every kind of asset that an investor owns or controls, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk, including:

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

(ii) shares, stocks, bonds, debentures, loans and other forms of debt or equity participation in a juridical person, including rights or interests derived therefrom;

(iii) intellectual property rights that are conferred pursuant to the laws and regulations of a Party in whose territory the investment is made, including, where applicable, copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications, undisclosed information, and goodwill;

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

(v) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration and exploitation of natural resources; and

(vi) claims to money and to any performance under contract having a financial value, but the term "investment" does not include claims to money that arise solely from:

(A) commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of another Party; or

(B) the extension of credit in connection with a commercial transaction, such as trade financing;

The term "investment" also includes returns, which are the amounts yielded by or derived from an investment, in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments;

Note: The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(d) "investor of a Party" means:

(i) a natural person of a Party; or

(ii) a juridical person of a Party,

that seeks to make, is making, or has made investments in the territory of another Party;

Note: The Parties understand that an investor of a Party that "seeks to make" investments refers to an investor of a Party that has taken active steps to initiate a notification or approval process, where applicable, for making an investment for a permit or licence which authorises the investor to establish investments.

(e) "juridical person of a Party" means any legal entity duly constituted or otherwise organised under a Party's applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association or organisation;

(f) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, affecting investors or investments;

(g) "measure by a Party" means any measure adopted or maintained by:

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

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

(h) "natural person of a Party" means, for the purposes of subparagraph (d), a natural person who under the law of that Party:

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

(ii) has the right of permanent residence in that Party, where both that Party and another Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.

51.3. National Treatment

Each Party shall accord to investors of another Party and to their covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to establishment, acquisition,

expansion, management, conduct, operation and sale or other disposition of investments in its territory.

Note: The application of this Article is subject to Article 51.23.

51.4. General Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with customary international law.

2. For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under the customary international law referred to in paragraph 1, and do not create additional substantive rights.

3. The Parties understand that:

(a) “fair and equitable treatment” requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law; and

(b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment.

4. A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.

51.5. Prohibition of Performance Requirements

1. No Party shall impose or enforce as a condition for establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of another Party any of the following requirements:

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

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

(c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from a person or any other entity in its territory;

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

(e) to restrict sales of goods in its territory that the investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with investment activities in its territory of an investor of another Party, on compliance with any of the following requirements:

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

(b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods from a person or any other entity in its territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or

(d) to restrict sales of goods in its territory that investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

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

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

Note: The application of this Article is subject to Article 51.23.

51.6. Senior Management and Boards of Directors

1. A Party shall not require a juridical person of that Party that is a covered investment to appoint to senior management positions natural persons of any particular nationality.

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

Note: The application of this Article is subject to Article 51.23.

51.7. Reservations and Exceptions

1. Articles 51.3, 51.5 and 51.6 shall not apply to:

(a) any existing non-conforming measure that is maintained by the following, as set out in the Schedule of each Party in Annex 10-I:

(i) the central government of the Party; or

(ii) a prefecture of Japan or a regional government of an ASEAN Member State;

(b) any existing non-conforming measure that is maintained by a local government of a Party other than those referred to in subparagraph (a)(ii);

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

(d) an amendment or modification to any nonconforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed at the date of entry into force of the Party's Schedule in Annex 10-I, with Articles 51.3, 51.5 and 51.6.

2. Articles 51.3, 51.5 and 51.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II.

3. No Party shall, under any measure adopted and covered by its Schedule in Annex 10-II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time that the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

4. In cases where a Party makes an amendment or a modification pursuant to subparagraph 1(d) to any existing non-conforming measure set out in its Schedule in Annex 10-I, or adopts any new or more restrictive measure with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

(a) notify the other Parties of detailed information on such amendment or modification, or such measure; and

(b) respond, upon request of another Party, to specific questions from another Party, with respect to such amendment or modification, or such measure.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in its Schedules in Annexes 10-I and 10-II respectively.

6. Article 51.3 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the Agreement on the Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "TRIPS Agreement") as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

Note: The application of this Article is subject to Article 51.23.

51.8. Public Comments

Each Party shall, to the extent provided for under its domestic legal framework, endeavour to provide, except in cases of emergency, a reasonable opportunity for comments by the public before the adoption of regulations of general application that affect any matter covered by this Chapter.

51.9. Expropriation and Compensation

1. No Party shall expropriate or nationalise covered investments, or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”), except:

(a) for a public purpose;

(b) in accordance with due process of law;

(c) on a non-discriminatory basis; and

(d) upon payment of prompt, adequate and effective compensation.

2. For the purposes of subparagraph 1(d), the compensation shall:

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

Note: In the case of the Republic of the Philippines, the time when the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

(b) not reflect any change in value occurring because the intended expropriation had become publicly known earlier;

(c) be settled and paid without undue delay; and

Note: The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(d) be effectively realisable and freely transferable.

3. The compensation shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

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

5. Notwithstanding paragraphs 1 through 4, any measure of expropriation relating to land shall be as defined in the existing domestic laws and regulations of the expropriating Party on the date of entry into force of the First Protocol, and shall be, for the purposes of and upon payment of compensation, in accordance with the aforesaid laws and regulations.

Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

6. This Article shall not apply to the issuance of compulsory licences concerning intellectual property rights in accordance with the TRIPS Agreement.

51.10. Compensation for Losses or Damages

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

51.11. Transfers

1. Each Party shall allow all transfers relating to covered investments to be made freely and without delay into and out of its territory. Such transfers shall include:

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

(b) profits, interest, capital gains, dividends, royalties, technical assistance fees, management fees and other current income accruing from covered investments;

(c) payments made under a contract, including payments made under a loan agreement in connection with covered investments;

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

(e) earnings and other remuneration of personnel engaged in activities in connection with covered investments;

(f) payments made in accordance with Articles 51.9 and 51.10; and

(g) payments arising out of the settlement of an investment dispute under Article 51.13.

2. Each Party shall allow transfers referred to in paragraph 1 to be made in a freely usable currency at the market rate of exchange prevailing in its territory on the date of the transfer.

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

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

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

(c) criminal or penal offences;

(d) obligations arising from social security, public retirement or compulsory savings scheme;

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

(f) severance entitlement of employees;

(g) reports or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

(h) the requirement to register and satisfy any other formalities imposed by the central bank and any other relevant authorities of a Party.

Note: For greater certainty, by virtue of paragraph 1 of Article 6, each Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to taxation measures.

4. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF.

51.12. Subrogation

1. Where a Party or an agency authorised by that Party has granted a contract of insurance or any form of financial guarantee with regard to a covered investment by one of its investors in the territory of another Party and when payment has been made under such contract or financial guarantee by the former Party or the agency authorised by it, the latter Party shall recognise the subrogation or transfer of any right or claim with regard to such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency authorised by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency authorised by the Party making the payment, pursue those rights and claims against the other Party.

3. In the exercise of subrogated rights or claims, a Party or an agency authorised by the Party exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party referred to in paragraph 2.

4. Articles 51.9, 51.10 and 51.11 shall apply mutatis mutandis as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such subrogation or transfer of rights or claims, and the transfer of such payment.

51.13. Settlement of Investment Disputes between a Party and an Investor of Another Party

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

2. For the purposes of this Chapter, the term:

(a) “disputing investor” means an investor of a Party that makes a claim against another Party under this Article;

(b) “disputing Party” means a Party against which a claim is made under this Article;

(c) “disputing parties” means a disputing investor and a disputing Party;

(d) “disputing party” means either a disputing investor or a disputing Party;

(e) “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;

(f) “ICSID Additional Facility Rules” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

(h) “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 15 December 1976; and

(i) “UNCITRAL Conciliation Rules” means the conciliation rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 4 December 1980.

3. Subject to subparagraph 10(c), nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the territory of the disputing Party.

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

5. Any investment dispute shall, as far as possible, be settled amicably through consultations between the disputing parties.

6. In the event that an investment dispute cannot be settled by consultation as provided for in paragraph 5, the disputing investor may, subject to this Article, submit to courts or administrative tribunals of the disputing Party or to conciliation or arbitration under this Article a claim:

(a) that the disputing Party has breached an obligation under Article 51.3, Article 51.4, subparagraphs 1(a) through (d) of Article 51.5, Article 51.6, Article 51.9, Article 51.10 and Article 51.11 relating to the management, conduct, operation, or sale or other disposition of a covered investment; and

(b) that the disputing investor or its covered investment has incurred loss or damage by reason of, or arising out of, that breach.

7. (a) A disputing investor may submit a claim referred to in paragraph 6 at the choice of the disputing investor to one of the following alternatives:

(i) courts or administrative tribunals of the disputing Party, provided that such courts or administrative tribunals have jurisdiction over such claim;

(ii) conciliation or arbitration under the ICSID Convention and the ICSID Rules of Procedure for Conciliation Proceedings and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

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

(iv) conciliation under the UNCITRAL Conciliation Rules or arbitration under the UNCITRAL Arbitration Rules; or

(v) if agreed with the disputing Party, any other arbitration institution or arbitration under any other arbitration rules.

(b) For the purposes of subparagraph 7(a), a disputing investor may submit a claim to conciliation or arbitration under subparagraphs (a)(ii) through (v), only if the investment dispute cannot be resolved as provided for in paragraph 5 within one hundred and eighty (180) days from the date of receipt by the disputing Party of a written request for consultation and negotiation.

8. Once the disputing investor has submitted the claim to the courts or administrative tribunals of the disputing Party, the choice of forum shall be final.

9. (a) Each Party hereby consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7 in accordance with the procedures set out in this Article.

Note 1: Notwithstanding subparagraph 9(a), in the event of an investment dispute between the Republic of Indonesia and an investor of another Party or the Republic of the Philippines and an investor of another Party, consent to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a separate written agreement between the disputing parties. For greater certainty, the institution of proceedings, commencement of conciliation proceedings, or reference to arbitration under subparagraphs 7(a)(iii) and (iv) shall be governed by the applicable arbitration or conciliation rules. For the avoidance of doubt, the aforementioned separate written agreement applies only to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

Note 2: Notwithstanding subparagraph 9(a), in the case of an investment dispute between the Kingdom of Thailand and an investor of another Party or between another Party and an investor of the Kingdom of Thailand, the disputing Party consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7, provided that the Kingdom of Thailand and the other Party had consented to submission of a claim to the conciliation or arbitration in existing international agreements to which both the Kingdom of Thailand and that other Party are parties. Such consent shall be subject to the same conditions and limitations as stipulated in such international agreements.

(b) The consent given under subparagraph 9(a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to an investment dispute; and

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

10. The submission of a claim to conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v) in accordance with the provisions of this Article shall be conditional upon:

(a) the submission of the claim to such conciliation or arbitration taking place within three (3) years from the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 6(a) causing loss or damage to the disputing investor or its covered investment;

(b) the disputing investor providing written notice, which shall be submitted at least ninety (90) days before the claim is submitted, to the disputing Party of the disputing investor's intent to submit the claim to such conciliation or arbitration.

The notice shall:

(i) specify either subparagraph 7(a)(ii), (iii), (iv) or (v) as the forum for dispute settlement and, in the case of subparagraphs 7(a)(ii) through (iv), whether conciliation or arbitration is being sought; and

(ii) briefly summarise the alleged breach of the disputing Party under this Chapter, including the Articles alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or its covered investment; and

(c) the written request or invitation to conciliate or notice of arbitration being accompanied by the disputing investor's written waiver of any right to initiate or continue before any court or administrative tribunal under the law of either Party or other dispute settlement mechanisms including investment dispute settlement mechanisms under any other bilateral or multilateral agreement to which both the disputing Party and the Party of the disputing investor are parties, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 6. Accordingly, once the disputing investor has submitted the claim to any of the conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v), the choice of forum shall be final.

11. Notwithstanding subparagraph 10(c), the disputing investor may initiate or continue an action that seeks interim injunctive relief for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute before a court or an administrative tribunal under the law of the disputing Party.

12. No Party shall give diplomatic protection, nor bring an international claim, in respect of an investment dispute which one of its investors and any one of the other Parties shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

13. An arbitral tribunal established under paragraph 7 shall decide the issues in dispute in accordance with this Chapter, and applicable rules of international law and, where applicable, relevant domestic laws of the disputing Party.

Note: The arbitral tribunal does not have jurisdiction to determine the legality of a measure alleged to constitute a breach of this Chapter under the domestic law of the disputing Party.

14. An arbitral tribunal shall address and decide on any objection by the disputing Party that a claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, provided that the disputing Party so requests as soon as possible after the arbitral tribunal is established, and in no event later than the date that the arbitral tribunal fixes for the disputing Party to submit its counter-memorial.

15. Notwithstanding paragraph 14, the arbitral tribunal may on its initiative consider, at any stage of the proceeding, whether the claim is admissible, or within the jurisdiction or competence of the arbitral tribunal.

16. In general, the arbitral tribunal should decide on the objection referred to in paragraph 14 as a preliminary question. However, the arbitral tribunal may join it to the merits of the claim. In considering whether to join the objection to the merits of the claim, the arbitral tribunal shall, as far as possible, obtain the consent of the disputing parties.

17. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, a disputing Party may, no later than ninety (90) days after the constitution of the arbitral tribunal, and in any event before the first session of the arbitral tribunal, file an objection that a claim is manifestly without legal merit. The disputing Party shall specify as precisely as possible the basis for the objection. The arbitral tribunal, after giving the disputing parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the disputing parties of its decision on the objection. The decision of the arbitral tribunal shall be without prejudice to the right of a disputing Party to file an objection pursuant to paragraph 14 or to object, in the course of the proceeding, that a claim lacks legal merit.

18. If the arbitral tribunal decides that the claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, or that the claim is manifestly without legal merit, it shall render an award to that effect.

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

20. (a) The arbitral tribunal shall at the request of a disputing Party, or may on its own account, request a joint interpretation of any provision of this Chapter that is in issue in an investment dispute. The Parties shall submit in writing any joint decision declaring their interpretation made by consensus to the arbitral tribunal within sixty (60) days from the date of receipt of the request. Without prejudice to subparagraph (b), if the Parties fail to issue such a decision within sixty (60) days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the arbitral tribunal, which shall decide the issue on its own account.

(b) A joint decision of the Joint Committee on the interpretation of any provision of thisChapter under subparagraph 2(e)(iv) of Article 11 shall be binding on an arbitral tribunal, and any decision or award issued by an arbitral tribunal must be consistent with that joint decision.

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

22. Each Party shall provide for the enforcement of an award in its territory.

23. An award made by an arbitral tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

51.14. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or their investors where like conditions prevail, or a disguised restriction on investors or investments made by investors of another Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

(a) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

51.15. Special Formalities and Information Requirements

1. Nothing in Article 51.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or comply with registration requirements, provided that such formalities do not materially impair the rights afforded by a Party to investors of another Party and investments pursuant to this Chapter.

2. Notwithstanding Article 51.3, a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for information or statistical purposes. The Party shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests of particular juridical persons, public or private, or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good-faith application of its law.

51.16. Special and Differential Treatment for the Newer ASEAN Member States

In order to increase benefits of this Chapter for the newer ASEAN Member States, and in accordance with Articles 2, 3 and 52, special and differential treatment should be accorded to the newer ASEAN Member States under this Chapter, through:

(a) access to information on the investment policies of other Parties, business information, relevant databases and contact point for investment promotion;

(b) technical assistance to strengthen their capacity in relation to investment policies and promotion including in areas such as human resource development;

(c) commitments in areas of interest to the newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

51.17. Promotion of Investment

1. Each Party should further promote investment in order to strengthen the economic relationship among Parties.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate in promoting and increasing awareness of ASEAN-Japan as an investment area, where possible, through, among others:

(a) organising investment promotion activities;

(b) promoting business matching events;

(c) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and

(d) conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation.

51.18. Facilitation of Investment

1. Each Party shall endeavour to further create stable, favourable and transparent conditions in order to encourage greater investment by investors of another Party in its territory.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate to facilitate investments among Japan and ASEAN Member States, where possible, through, among others:

(a) creating the necessary environment for all forms of investment;

(b) simplifying procedures for investment applications and approvals;

(c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and

(d) establishing one-stop investment centres in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

51.19. Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 51.3 relating to cross-border capital transactions and Article 51.11:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the IMF;

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

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

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

(e) be applied such that any one of the other Parties is treated no less favourably than any other Party or non-Party.

3. Any measures adopted or maintained under paragraph 1 shall be promptly notified to the other Parties.

51.20. Prudential Measures

1. Notwithstanding any other provisions in this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an entity supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Chapter, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Chapter.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

51.21. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party and to its investments if the juridical person is owned or controlled by an investor of a non-Party and the denying Party:

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

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

2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party

and to its investments if the juridical person is owned or controlled by an investor of a non-Party or of the denying Party and the juridical person has no substantive business operations in the territory of that latter Party.

Note: The denying Party shall endeavour to notify the other Parties of its decision to deny the benefits of this Chapter to an investor of another Party.

3. For the purposes of this Article, a juridical person is:

(a) “owned” by an investor if more than fifty (50) per cent of the equity interest in it is beneficially owned by the investor; and

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

4. Following notification, and without prejudice to paragraphs 1 through 3, the Republic of the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled “An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges”, as amended by Presidential Decree No. 715, otherwise known as “The Anti-Dummy Law”, as may be amended.

51.22. Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as “Sub-Committee”) shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

(a) discuss and review the implementation and operation of this Chapter;

(b) review the exceptional measures maintained, amended, modified or adopted pursuant to paragraph 1 of Article 51.7 for the purpose of contributing to the reduction or elimination of such exceptional measures;

(c) discuss the exceptional measures adopted or maintained pursuant to paragraph 2 of Article 51.7 for the purpose of encouraging favourable conditions for investors of the Parties;

(d) discuss any other investment-related matters concerning this Chapter; and

(e) report, where appropriate, its findings to the Joint Committee.

3. The Sub-Committee shall be:

(a) composed of representatives of the Governments of Japan and ASEAN Member States; and

(b) co-chaired by an official of the Government of Japan and an official of one of the Governments of ASEAN Member States.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee may, upon mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

51.23. Work Programme

1. The Parties shall, immediately after the date of entry into force of the First Protocol, enter into consultations on the Schedules of Reservations as referred to in Article 51.7 with the participation of Japan and ASEAN Member States. The Sub-Committee on Investment referred to in Article 51.22 shall function as the forum to discuss the matter.

2. The consultations referred to in paragraph 1 shall be concluded within two (2) years from the date of entry into force of the First Protocol, unless the Parties agree otherwise.

3. The Schedules of Reservations of the Parties as a result of the consultations referred to in paragraph 1 shall enter into force and be incorporated into this Agreement as Annexes 10-I and 10-II in accordance with Article 77.

4. Article 51.7 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3. Japan and ASEAN Member States shall enter into further discussions to review subparagraph 1(d) of that Article with a view to examining a possibility for promoting further liberalisation of investment.

5. Article 51.3 shall not affect the right of each Party to adopt, maintain or apply measures that set out conditions and qualifications for admission of investment, including, but not limited to, those with regard to foreign ownership and control. Upon entry into force of the Schedules of Reservations referred to in paragraph 3, this paragraph shall cease to be effective.

6. Article 51.3 shall not apply to any measures that a Party adopts or maintains with respect to establishment, acquisition and expansion of investments until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

7. Pending entry into force of the Schedules of Reservations referred to in paragraph 3:

(a) an ASEAN Member State may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that:

(i) with respect to investors of Japan or their investments, such measures comply with any other international investment agreement to which both Japan and that ASEAN Member State are parties;

(ii) with respect to investors of another ASEAN Member State or their investments, such measures comply with any other international investment agreement among ASEAN Member States and to which that ASEAN Member State is a party; and

(b) Japan may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that, with respect to investors of an ASEAN Member State or their investments, such measures comply with any other international investment agreement, to which both Japan and that ASEAN Member State are parties.

Note 1: For the purposes of subparagraphs 7(a)(i) and (b), the term “other international investment agreement” means any of the following agreements, as relevant and as may be amended:

(i) Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, done at Singapore, 13 January 2002;

(ii) Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership, done at Kuala Lumpur, 13 December 2005;

(iii) Agreement between Japan and the Republic of the Philippines for an Economic Partnership, done at Helsinki, 9 September 2006;

(iv) Agreement between Japan and the Kingdom of Thailand for an Economic Partnership, done at Tokyo, 3 April 2007;

(v) Agreement between Japan and the Kingdom of Cambodia for the Liberalization, Promotion and Protection of Investment, done at Tokyo, 14 June 2007;

(vi) Agreement between Japan and Brunei Darussalam for an Economic Partnership, done at Tokyo, 18 June 2007;

(vii) Agreement between Japan and the Republic of Indonesia for an Economic Partnership, done at Jakarta, 20 August 2007;

(viii) Agreement between Japan and the Lao People’s Democratic Republic for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 16 January 2008;

(ix) Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, done at Tokyo, 25 December 2008; and

(x) Agreement between the Government of Japan and the Government of the Republic of the Union of Myanmar for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 15 December 2013.

Note 2: For the purposes of subparagraph 7(a)(ii), the term “other international investment agreement” means any of the following agreements, as relevant and as may be amended:

(i) ASEAN Comprehensive Investment Agreement, done at Cha-am, 26 February 2009;

(ii) Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Chaam, 27 February 2009;

(iii) Agreement on Investment 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, done at Jeju-do, 2 June 2009;

(iv) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People’s Republic of China, done at Bangkok, 15 August 2009;

(v) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, done at Nay Pyi Taw, 12 November 2014; and

(vi) Agreement on Investment among the Governments of the Hong Kong Special Administrative Region of the People's Republic of China and the Member States of the Association of Southeast Asian Nations, done at Ha Noi, 18 May 2018.

8. Articles 51.5 and 51.6 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

9. The Parties shall also enter into discussions with a view to agreeing on the application of Most-Favoured-Nation treatment to this Chapter, including the Schedules of Reservations.

10. The Parties shall also enter into consultations to seek agreement on the application of Articles 51.9 and 51.13 to taxation measures that constitute expropriation.

Annex A to Chapter 7. Expropriation and Compensation

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 51.9 addresses two situations:

(a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is where an action or a series of related actions by a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b) requires a case-bycase, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that such action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) whether the government action breaches the government's prior binding written commitment to the investor, whether by contract, licence or any other legal document; and

(c) the character of the government action, including its objective and whether such action is disproportionate to the public purpose.

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in subparagraph 2(b).

7. Amendment to Chapter 10 (Final Provisions) of the AJCEP Agreement

Paragraph 5 of Article 77 of the AJCEP Agreement shall be replaced by the following:

"5. Notwithstanding paragraph 2, amendments relating only to:

(a) Annex 1 (provided that the amendments are made in accordance with the methodologies and procedures adopted by the Joint Committee for updating Annex 1 to reflect the amendment of the Harmonized System);

(b) Annex 2;

(c) Attachment to Annex 4; or

(d) Annex 5,

may be adopted by the Joint Committee. Such amendments shall enter into force in relation to all the Parties and be implemented from such date as agreed by the Joint Committee.

Note: For greater certainty, paragraph 5 is without prejudice to the completion of any necessary internal procedures by the

Government of each Party."

8. Entry Into Force

1. The Government of each signatory State shall notify the Governments of other signatory States in writing that its legal procedures necessary for entry into force of this Protocol have been completed. This Protocol shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State in relation to those signatory States that have made such notifications by that date.

2. In relation to an ASEAN Member State making the notification referred to in paragraph 1 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State as referred to in paragraph 1, this Protocol shall enter into force on the first day of the second month following the date on which that ASEAN Member State makes the notification.

3. The ASEAN Member State referred to in paragraph 2 shall be bound by any amendment that may have been adopted by the Joint Committee and takes effect pursuant to paragraph 5 of Article 77 of the AJCEP Agreement by the time of entry into force of this Protocol for it. This paragraph shall not prevent the Parties of the AJCEP Agreement for which this Protocol has entered into force from applying such amendment to that ASEAN Member State before the date of entry into force of this Protocol for it.

4. This Protocol shall remain in force as long as the AJCEP Agreement remains in force.

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

DONE in duplicate in the English language and SIGNED at Tokyo on the twenty-seventh day of February in the year 2019, at Siem Reap, Cambodia on the second day of March in the year 2019, and at Hanoi on the twenty-fourth day of April in the year of 2019.

For the Government of Japan:

For the Government of Brunei Darussalam:

Amin

For the Government of the Kingdom of Cambodia:

Sorasak

For the Government of the Republic of Indonesia:

Enggar

For the Government of the Lao People's Democratic Republic:

K.P

For the Government of Malaysia:

Darell

For the Government of the Republic of the Union of Myanmar:

Thaung Tun

For the Government of the Republic of the Philippines:

RmL

For the Government of the Republic of Singapore:

CS

For the Government of the Kingdom of Thailand:

Chutima Bunyapraphasara

For the Government of the Socialist Republic of Viet Nam:

Tuan Anh

Appendix 5. Annex 9 Specific Commitments for the Movement of Natural Persons

Schedule of Brunei Darussalam

Brunei Darussalam may require a natural person of Japan seeking entry and temporary stay under the terms set out in each Section of this Specific Commitments of Brunei Darussalam to obtain an appropriate visa or its equivalent prior to entry.

Section 1. Short-term Business Visitors of Japan

Entry and temporary stay of a period not exceeding ninety (90) days, which may be extended, shall be granted to a short-term business visitor of Japan.

Section 2. Intra-corporate Transferees

Entry and temporary stay for intra-corporate transferees is limited to three (3) year period that may be extended for up to two additional years for a total term not to exceed five (5) years for the following categories:

Managers:

Definition: Natural persons within the organisation who primarily directs the organisation/department/ subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff. It does not include first line supervisors unless employees supervised are professionals; and it does not include employees who primarily perform tasks necessary for the provision of the service.

Executives:

Definition: Natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organisation.

Specialists:

Definition: Natural persons within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation’s service, research equipment, techniques or management; may include, but is not limited to, members of a licensed profession.

Section 3. Investors

Entry and temporary stay shall be granted to an investor of another Party for up to three (3) months which can be extended for up to twelve (12) months.

Investors in Brunei Darussalam is defined as a business person who seeks to make an investment or has made investments in Brunei Darussalam and seeking entry and temporary stay for the purpose of dealing with any matters concerning to that investment.

Schedule of the Kingdom of Cambodia

1. Cambodia’s commitments under the Movement of Natural Persons Chapter, and under Articles 50.18 and 50.17 of the Trade in Services Chapter, in relation to the supply by a service supplier of one Party through presence of natural persons of a Party in the territory of another Party apply only in relation to the categories of persons set out below.

2. In accordance with Articles 50.18, 50.17 and 50.20 of the Trade in Services Chapter, for the categories of persons set out in this Schedule, Cambodia specifies below any terms, conditions, limitations or qualifications in relation to the supply of a service by a service supplier of a Party through the presence of natural persons of a Party in the territory of Cambodia.

Business visitors Definition: A natural person who:

- enters Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services and/or other similar activities;

- stays in Cambodia without receiving income from within Cambodian sources;

- does not engage in making direct sales to the general public or supplying services.

Conditions: Entry visa for business visitors shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended.

Persons responsible for setting up of a commercial establishment

Definition: Persons working in an executive or managerial position, receiving remuneration from an entity as defined below, who are responsible for the setting up, in Cambodia, of a commercial presence of a service provider of a Party, that will support employment of persons described in categories a, b, and c of the intra- Corporate Transferees.

Conditions: The subject persons are not subject to a maximum duration of stay.

Intra-Corporate Transferees

Definition: Natural persons who have been employed by a juridical person of another Party for a period of not less than 1 year and who seek temporary entry to provide services through a branch, subsidiary and affiliate in Cambodia and who are:

a) Executives: without requiring compliance with labour market tests, persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organization.

b) Managers: without requiring compliance with labour market tests, natural persons employed by a juridical entity and who possess knowledge at an advanced level of expertise or proprietary knowledge of a juridical entity product, service, research, equipment, techniques, or management, and who primarily direct the organization or a department of the organization; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service.

c) Specialists: Natural persons, within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization’s services, research equipment, techniques, or management.

Conditions: Temporary residency and work permit is required for the natural persons in the categories defined under intra-corporate transferees. Such permits are issued for two years and may be renewed annually up to maximum of total five years.

3. The commitments set out above apply to all services sectors/subsectors specified in the Cambodia’s schedule of specific commitments under Annex 6 except Restaurants (CPC 642, 643) and International Transport under Maritime Services (Freight and Passengers) excluding Cabotage.

4. With respect to Tourist Guides Services (CPC 7472), notwithstanding the commitments set out above, Cambodian Nationality is required for Tourist Guides.

5. Cambodia remains unbound in relation to National Treatment Limitations applicable to Subsidies, including for Research and Development.

6. All the commitments in respect of presence of natural persons made in the Cambodia’s schedule of specific commitments under Annex 6 including any commitments, regulations and additional commitments, apply to the service suppliers of the other Parties.

Schedule of the Republic of Indonesia

Section 1. Short-term Business Visitors

Entry and temporary stay for a period not exceeding 30 days, which may be extended to a maximum of 60 days, shall be granted to short-term business visitors of another Party who will stay in Indonesia.

Section 2. Intra-corporate Transferees

Entry and temporary stay for a period of one year, which may be extended for not more than two year each time and not more than two times, shall be granted to an inter- corporate transferee of another Party who:

(a) has been employed by a juridical person that supplies services or invests in Indonesia, for a period not less than one year immediately preceding the date of his or her application for the entry and temporary stay in Indonesia; and

(b) is being transferred either as executive, manager (except human resource manager) or specialists as defined in Article 50 bis.3 of Chapter 6 bis.

Schedule of the Lao People's Democratic Republic

Lao PDR may require a natural person of Japan seeking entry and temporary stay under the terms and conditions set out in each section of this Annex to obtain an appropriate visa prior to entry.

Section 1. Short-term Business Visitors

Entry and temporary stay shall be granted to a short- term business visitor of a natural person of Japan. 30 days is for an initial stay and 90 days is the maximum period allowed in accordance with the visa for short-term business visitors.

Section 2. Intra-corporate Transferees

Entry and temporary stay shall be granted to an intra- corporate transferee of Japan for 1 year which may be renewed every 6 months for up to 3 years provided that the natural person has been employed by a juridical person of another Party outside Lao PDR for a period of not less than 1 year immediately preceding the request for transfer to Lao PDR the categories defined under intra-corporate transferees.

Section 3. Investors

Entry and temporary stay for investors shall be granted 30 days is for an initial stay and can be extended for up to 90 days is the maximum.

Investor in Lao PDR is defined as a business person who seeks to make an investment or has made investments in Lao PDR and seeking temporary entry for purpose of entry for purpose of dealing with any matters concerning to that investment.

Section 4. Accompanying Spouse and Children

1. Entry and temporary stay shall be granted to a spouse and children accompanying a natural person of the parties of Japan who has been granted entry stay pursuant to section (2), in principle for same period as the period of temporary stay granted to the natural person, provided that such spouse and children obtain maintenance from the natural person and engage in daily activities recognised under the status of residence of "Dependant" in accordance with Law on Entry-Exit, And the Management of Foreigners in Lao PDR No: 59/NA. Dated: 26.12.2014 and Labor Law (Amended) of Lao PDR No: 43/NA; Dated 24 December 2013.

2. A spouse who has been granted entry and temporary stay pursuant to para 1 may, upon application, have his or her status of residence change to that under which he or she is allowed to work, subject to the approval of the Government of Lao PDR in accordance with Law on Entry-Exit, And the Management of Foreigners in Lao PDR No:59/NA. Dated: 26.12.2014 and Labor Law (Amended) of Lao PDR No: 43/NA; Dated 24 December 2013.

Note: For the purposes of this section, the term "spouse" or "children" means spouse or children recognised as such in accordance with the Laws and regulation of Lao PDR.

Schedule of Malaysia

Malaysia may require a natural person of the other Parties seeking entry and temporary stay under the terms and conditions set out in each section of this Annex to obtain an appropriate visa prior to entry.

Section 1. Intra-Corporate Transferees

1. Notwithstanding the definitions set out in Article 50 bis.3, entry and temporary stay shall be granted to natural persons of the other Parties who are:

a) senior managers being persons within a juridical person having proprietary information of the juridical person and who exercise wide latitude in decision making relating to the establishment, control and operation of the juridical person being directly responsible to the CEO and receive only general supervision or direction from the board of directors or partners of the juridical person; and

b) specialists or experts being persons within the juridical person who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the juridical person's new goods and service products and technology, research equipment and techniques or management:

i) three (3) specialists or experts per juridical person are allowed; and

ii) additional specialists or experts may be allowed subject to market test and the training of Malaysians through an acceptable training programme in the relevant sector or subsector.

2. Provided that such persons are employees of the foreign juridical person for a period of not less than one

(1) year immediately preceding the date of application for a work permit and he is to serve in at least a similar capacity.

3. Entry and temporary stay of natural persons defined in categories 1(a) and 1(b) is up to a period of 10 years.

Section 2. Others

1. Entry and temporary stay shall be granted to natural persons of the other Parties who are:

a) specialists or experts being persons who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the juridical persons' products and services, subject to market test and the employment of Malaysians as counterparts and/or training of Malaysians through acceptable training programmes in the relevant sector or subsector;

b) professionals being persons who possess necessary academic credentials, professional qualifications, experience and/or expertise which have been duly recognised by the professional bodies in Malaysia and registered with those respective professional bodies and are carrying out respective professional activities; and

c) business visitors being persons not based within Malaysia, receiving no remuneration from any source within Malaysia, who has been employed for at least one (1) year by a foreign juridical person, whose entry and temporary stay is for the purposes of negotiating for the sale of goods or services or entering into agreements to sell goods or services for that juridical person and who will not engage in direct sales to the general public.

2. Entry and temporary stay of natural persons defined in categories 1(a) and 1(b) is up to a period of 10 years. For category 1(c), the period of stay is up to a period of 90 days.

Schedule of the Republic of the Union of Myanmar

Myanmar may require a natural person of another Party seeking entry and temporary stay under the terms and conditions set out in the following section of this Annex to obtain an appropriate visa prior to entry.

Section 1. Short-term Business Visitors

Entry and temporary stay shall be granted for a period not exceeding seventy (70) days when applied for, to short-term business visitors of another Party.

Section 2. Intra-corporate Transferees

In sectors committed in Myanmar's Schedule of Specific Commitments in Annex 6, entry and temporary stay shall be granted for a period not exceeding seventy (70) days from the date of arrival, which may be extended on application for a further three (3) months, then for a further six (6) months and then for up to one (1) year, subject to a recommendation from concerned Ministries/ authorities and final approval by the Ministry of Immigration and Population. This applies to Intra-corporate transferees of another Party who are executives, managers and specialists.

SCHEDULE OF THE REPUBLIC OF THE UNION OF MYANMAR

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
HORIZONTAL COMMITMENTS			
All Sectors; For a service supplier of another Party who is natural person of that Party but is not national of that Party in mode 1, 2, 3, 4: Unbound			
All Sectors	4) (a) Subject to the Myanmar Investment Law (2016), its implementing rules and any notification issued under that law, Myanmar Immigration (Emergency Provisions) Act 1947, The Foreigners Act 1864, The Registration of Foreigners Act 1940, The Registration of Foreigners Rules 1948 and Immigration rules and regulations, management level is allowed to stay up to one year and may be extendable there on subject to the approval of concerned agencies.	4) - Any expatriate engage in joint venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority. - Any expatriate entering into Myanmar shall abide by The Myanmar Immigration (Emergency Provisions) Act 1947, The Foreigners Act 1864, The Registration of Foreigners Act 1940, The Registration of Foreigners Rules 1948, The Permanent Residence of a Foreigner Rules and Immigration rules, regulations and procedures of Myanmar - Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour, the Ministry of Labour, Immigration and Population.	
	(b) All foreign enterprises and foreign workers shall abide by		

	Business Visa Period for Permission of Visa 70 days Period for Permission of Stay Extension - up to 3 months** - over 3 months – up to one year** (**with recommendation of Ministry concerned, Application Form, Passport (original & copy), Stay Form, (2) Recent Photos, FRC, Company Registration Card, Export & Import License) (Remark: In accordance with permission of Visa Confirming Board, Ministry of Labour, Immigration and Population has been obligating)	- The Department of Labour, under the Ministry of Labour, Immigration and Population performs registration for foreign workers who have been given the permission to stay in work by the Myanmar Investment Commission	
	(c) The Department of Labour, under the Ministry of Labour, Immigration and Population performs registration for foreign workers who have been given the permission to stay in work by the Myanmar Investment Commission.	- Regarding the recognition of the educational certificates and technical standard certificate, Myanmar only determines equivalent factor depend on syllabus, contents, volume, time frame. Myanmar needs syllabus, contents, volume, time frame in English of respective countries.	
SPECIFIC COMMITMENTS			
1. Business Services			
A. Professional Services			
			- Foreign practising accountant holds an Accountancy Certificate or Degree conferred by any foreign country and

1. Accounting, auditing and bookkeeping Services (CPC 862)	4) None	4) As indicated in market access	recognized by the Myanmar Accountancy Council-MAC. - He/she is registered in the list of practising accountants managed by his/her country. - Subject to MAC's licensing requirement. - Not allowed to engage in CPC 8621Accounting and Auditing Services.
2. Architectural Services (CPC 8671)	4) Unbound	4) Unbound	
3. Engineering Services (CPC 8672)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
4. Integrated Engineering Services (CPC 8673)	4) Unbound	4) Unbound	
5. Urban Planning Services (CPC 86741)	4) Unbound	4) Unbound	
6. Landscape Architectural Services (CPC 86742)	4) Unbound	4) Unbound	
B. Computer and Related Services			
7.Consultancy services related to the installation of computer hardware (CPC 841)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
8. Software implementation services (CPC 842) (i) System software consulting services (CPC 8421)(ii) System analysis services (CPC 8422)	4) As indicated in the	4) As indicated in the Horizontal	

(iii) System design services (CPC 8423) (iv) Programming services (CPC 8424) (v) System maintenance services (CPC 8425)	Horizontal Commitments	Commitments	
9. Data processing services (CPC 843) (i) Input processing services (CPC 8431) (ii) Data-processing and tabulation services (CPC 8432) (iii) Time-sharing services (CPC 8433) (iv) Other data processing services (CPC 8439)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
10. Data base services (CPC 844)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
11. Other (CPC 845-849) (i) Maintenance and repair services of office machinery (CPC 845) (ii) Other computer services (CPC 849) - Data-processing services (CPC 8491) - Other computer services (CPC 8499) - System integration services - Software development services	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
E. Rental/Leasing Services without Operator			
12. Rental and Leasing of Studio Recording equipment (CPC 83109)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
F. Other Business Services			

13. Advertising Services (CPC 871)	4) Unbound	4) Unbound	
14. Printing and Publishing (CPC 88442)	4) Unbound	4) Unbound	
15. Translation and Interpretation Services (CPC 87905)	4) Unbound	4) Unbound	
2. COMMUNICATION SERVICES			
C. Telecommunication Services			
16. Telex Services (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
17. Telegraph Services (CPC 7522)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
18. Electronic Mail services (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
19. Voice Mail Services (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
20. Electronic Data Interchange (EDI) Services (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
21. On Line information and data base retrieval (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
22. Code and protocol conversion (CPC 7523**)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
23. On Line information and/or data base	4) As indicated in the Horizontal	4) As indicated in the Horizontal	

processing (CPC 843**)	Commitments	Commitments	
24. Paging Services (CPC 75291)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
25. Telecommunication equipment maintenance Services (CPC 75450)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
D. Audio Visual Services			
26. Motion Picture and Video Tape Production and Distribution Services (CPC 9611)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
27. Cinema Theatre Services (CPC 9615)	4) Unbound	4) Unbound	
28. Motion Picture Projection Services (CPC 9612)	4) Unbound	4) Unbound	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
29. Pre-erection Work at Construction Site (CPC 511)	4) Unbound	4) Unbound	
30. Construction Work for Buildings (CPC 512)	4) Unbound	4) Unbound	
31. Construction Work for Civil Engineering (CPC 513)	4) As indicated in the Horizontal Commitments	4) As indicated in the Horizontal Commitments	
32. Assembly and Erection of Prefabricated Construction (CPC 514)	4) Unbound	4) Unbound	

33. Special Trade Construction (CPC 515)	4) Unbound	4) Unbound	
34. Installation Work (CPC 516)	4) Unbound	4) Unbound	
35. Building Completion and Finishing Work (CPC 517)	4) Unbound	4) Unbound	
36. Renting Services Related to Equipment for Construction or Demolition of Building or Civil Engineering Work with Operator (CPC 518)	4) Unbound	4) Unbound	
5. EDUCATIONAL SERVICES			
37. Primary Education Services (CPC 921) - Preschool education services (CPC 9211) - Other primary education services (CPC 9219)	4) Unbound	4) Unbound	Due to existing Regulations of education, Primary Education services are to be regulated by Ministry of Education. Pre-school Education services are to be regulated by Ministry of Education as well as Ministry of Social Welfare Relief and Resettlement.
38. Secondary education services (CPC 922) - General secondary education services (CPC 9221) - Technical & vocational			Due to existing Regulations of education, General Secondary Education Services and Technical and Vocational Secondary

secondary education services (CPC 9223) - Technical & vocational secondary school type education services for handicapped students (CPC 9224)	4) Unbound	4) Unbound	Education Services are to be regulated by Ministry of Education. Other secondary Education Services are to be regulated by Ministry of Social Welfare Relief and Resettlement.
39. Higher education services (CPC 923) - Post-secondary education services (CPC 9231/92310) - Other higher education services (CPC 9239/92390)	4) Unbound	4) Unbound	Due to existing Regulations of education, Higher Education Services are to be regulated by Ministry of Education as well as other 4 Concerned Ministries.
40. Adult education services (CPC 924) Professional and / or short courses education services - Language courses and training - Business courses	4) Unbound	4) Unbound	Due to existing Regulations of education, Language courses and training are to be regulated by Ministry of Education. Business courses are to be regulated by concerned Ministries.
41. Other education services (CPC 929/9290/92900) - Skills training services covering the provision of training for technical, supervisory & production related functional levels in new and emerging technologies as follows:(1)	4) Unbound	4) Unbound	Due to existing Regulations of education, other education services are to be regulated by Ministry of Education as

automated manufacturing technology; (2) advanced materials technology; (3) biotechnology; (4) electronic; (5) Other services information technology; (6) avionics			well as other Concerned Ministries.
7. FINANCIAL SERVICES			
A. All insurance and insurance related services			
42. Average and loss adjustment services (CPC 81403)	4) Only senior managerial personnel, specialists and technical assistants with the approval of the Insurance Business Regulatory Board.	4) None	
43. Actuarial Services	4) None	4) According to existing laws & regulations and subject to the permission of Insurance Business Regulatory Board.	
B. Banking and other financial services			
44. Foreign Bank's Representative Offices Services (CPC 811) Foreign Bank's Branches Services(CPC 811)	4) Subject to CBM's approval	4) Subject to CBM's approval	
45. Provision of financial information, and financial data processing and related software by suppliers of other financial services (CPC 8131)	4) Presence of natural person is allowed temporarily if there is a commercial presence, and subject to the approval from the Central Bank of Myanmar according to existing domestic laws.	4) Presence of natural person is allowed temporarily if there is a commercial presence, and subject to the approval from the Central Bank of Myanmar according to existing domestic laws.	
	4) Presence of natural person is allowed	4) Presence of natural person is	

46. Guarantee and Commitments (CPC 81199)	temporarily if there is a commercial presence, and subject to the approval from the Central Bank of Myanmar according to existing domestic laws.	allowed temporarily if there is a commercial presence, and subject to the approval from the Central Bank of Myanmar according to existing domestic laws.	
9. TOURISM AND TRAVEL RELATED SERVICES			
47. Hotel and Other Lodging Services (CPC 6411/ 64110)	4) None	4) Unbound	
48. Meal serving services with full restaurant services (CPC 6421/64210)	4) None	4) Unbound	
49. Meal serving services in self-service facilities (CPC 6422)	4) None	4) Unbound	
50. Caterer services, providing meals to outside (CPC 6423)	4) None	4) Unbound	
51. Beverage serving services without entertainment (CPC 64310)	4) None	4) Unbound	
52. Beverage serving services with entertainment (CPC 64320)	4) None	4) Unbound	
53. Travel Agencies and Tour Operators Services (CPC 7471)	4) Unbound	4) Unbound	
11. TRANSPORT SERVICES			
A. Maritime Transport Services			
54. International Passenger			

Transport Services (excluding Cabotage)	4) Unbound	4) Unbound	
55. International Freight Transport Services (excluding Cabotage)	4) Unbound	4) Unbound	
56. Classification Societies	4) Unbound	4) Unbound	
57. Cargo Handling Services	4) Unbound	4) Unbound	
58. Maritime Storage and Warehousing Services	4) Unbound	4) Unbound	
59. Maintenance and Repair of Vessels	4) Unbound	4) Unbound	
60. Maritime Freight Forwarding Services (CPC 7480)	4) Unbound	4) Unbound	
C. Air Transport Services			
61. Aircraft Repair and Maintenance Services	4) Unbound	4) Unbound	
62. Selling and Marketing of Air Transport Services	4) Unbound	4) Unbound	
63. Computer Reservation System Services	4) Unbound	4) Unbound	

Schedule of the Republic of the Philippines

Notes

1. This schedule applies only to sectors covered in the Philippine Schedule of Commitments under the Trade in Services Chapter of the ASEAN-Japan Comprehensive Economic Partnership (AJCEP).

2. Philippines' commitments under the AJCEP on Movement of Natural Persons, and under National Treatment and Market Access, in relation to the supply of services through presence of natural persons of Japan and ASEAN Member States (AMS) in the Philippine territory, apply only in relation to the categories of persons set out below.

3. In accordance with Article 50 bis.4, Schedule of Commitments for the Temporary Entry and Temporary Stay of Natural Persons, Philippines specifies below any terms, conditions, limitations or qualifications in relation to the supply of services

through the presence of natural persons of Japan and AMS in the Philippine territory.

a) Pursuant to the Philippine Immigration Act of 1940, as amended, the Philippines shall require a covered natural person of Japan and AMS seeking entry and temporary stay under the terms and conditions set out in each category below to obtain an appropriate visa prior to entry in the Philippine territory.

b) Pursuant to the provisions of Article 40 of the Labor Code, as amended and its implementing rules and regulations, non-resident aliens may be admitted to the Philippines after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application, to perform the services for which the alien is desired.

c) Pursuant to Section 14, Article XII of the Philippine Constitution, the practice of profession in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law. If the position of the natural person constitutes the practice of a regulated profession under the laws and regulations of the Philippines, the natural person must secure a special permit to practice the regulated profession from the Professional Regulation Commission (PRC) pursuant to Section 7(j) of Republic Act No. 8981, and obtain an AEP from DOLE pursuant to Article 40 of the Labor Code as amended. The natural person shall likewise comply with the requirements relative to practice of profession by a foreign national as provided for in the appropriate professional regulatory law.

d) For professional services, upon recommendation of the concerned Professional Regulatory Board (PRB), the PRC may approve registration of and authorise issuance of certificate of registration/license and professional identification card with or without examination to a foreigner who is registered under the laws of his state/country and whose certificate of registration issued therein has not been suspended/revoked, provided:

1. Requirements for registration/licensing in said foreign state/country are substantially the same as those required/contemplated by laws of the Philippines and that the laws of such foreign state/country allow citizens of the Philippines to practice the profession on the same basis and grant the same privileges as those enjoyed by subjects or citizens of such foreign country/state;

2. That the Commission may, upon recommendation of the Board concerned, authorise the issuance of a certification/ license or special temporary permit to:

- Foreign professionals who desire to practice their professions in the country under reciprocity and other international agreements.

- Consultants in foreign funded, joint- venture or foreign assisted projects of the government

- Employees of Philippine/foreign private firms/institutions pursuant to law, or health professionals engaged in humanitarian mission for a limited period of time.

3. Agencies/organisations/individuals whether public or private, who secure the services of a foreign professional for reasons aforementioned shall be responsible for securing a special permit from the PRC.

e) Pursuant to the Constitution and other relevant laws, in activities expressly reserved to citizens of the Philippines or corporation or association where foreign equity participation is limited to a maximum of 40 percent, all executive and managing officers must be citizens of the Philippines. A non-Filipino citizen as officer or assigned to do technical functions shall have two (2) Filipino understudies.

f) For Transport sector, in case of specialized vessels, aliens may be employed as supernumeraries only for a period of six (6) months.

g) All measure relating to permanent residents are unbound.

Business visitor

Sector: Applies to all services sectors covered in the Philippine AJCEP Schedule of Commitments under Trade in Services Chapter.

Definition: 1) Business Visitor means a natural person seeking to enter or stay in the territory of another Party temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of that other Party;

i) as a representative of a goods seller/service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller/service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public;

ii) as an employee of a juridical person as defined in subparagraphs e(i), e(ii) and e(iii) of Article 3 of the ASEAN Agreement

on the Movement of Natural Persons only for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of another Party;

iii) for the purpose of participating in business negotiations or meetings; or

iv) for the purpose of establishing an investment or setting up a commercial presence in the territory of another Party.

Conditions and Limitations: Entry and temporary stay (Including Period of Stay) shall be granted to a natural person of each Party, who stays in the Philippines for an initial period of fifty nine (59) days, which may be extended every two (2) months thereafter for a total period of stay of one

(1) year pursuant to the Philippine Immigration Act of 1940, as amended.

Intra–Corporate Transferee (ICT)

Sector: Applies to all services sectors covered in the Philippine AJCEP Schedule of Commitments under Trade in Services.

Definitions: Intra–Corporate Transferee (ICT) means a natural person who is an employee of a juridical person established in the territory of a Party, who is transferred temporarily for the supply of a service through commercial presence (either through a joint venture, representative office, branch, subsidiary or affiliate) in the territory of another Party, and who has been an employee of the juridical person, and who is:

i) an Executive: a natural person within the organisation who primarily directs the management of the organisation and exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation;

ii) a Manager: a natural person within the organisation who primarily directs the organisation/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff; does not include first line supervisors unless employees supervised are professionals; does not include employees who primarily perform tasks necessary for the provision of the service; or

iii) a Specialist: a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; may include, but is not limited to, members of a licensed profession.

Conditions and Limitations: Temporary stay for one (1) (Including Period of Stay) year, which may be extended pursuant to the Philippine Immigration Act of 1940, as amended.

Investors

Sector: Applies to all services sectors covered in the Philippine AJCEP Schedule of Commitments under Trade in Services

Definition: Investors engaged in the following:

(a) activities to invest in business in the Philippines and manage such business;

(b) activities to manage business in the Philippines on behalf of a person other than that of the Philippines who has invested in such business; or

(c) conduct of business in the Philippines in which a person other than that of the Philippines has invested.

Conditions and Limitations: Temporary stay for a period (Including Period of Stay) of one (1) year, which may be extended, shall be granted to a natural person of each Party who engages in any of these activities.

Schedule of the Republic of Singapore

Singapore's commitments under Chapter 6 bis. (Movement of Natural Persons), in relation to the supply by a service supplier of one Party through presence of natural persons of a Party in the territory of another Party apply only in relation to the categories set out below.

In accordance to Chapter 6 bis. (Movement of Natural Persons), for the categories of persons set out in this Schedule, Singapore specifies below any terms, conditions, limitations of qualifications in relation to the supply of a service by a service supplier of a Party through the presence of natural persons of a Party in the territory of Singapore.

Section 1. Intra-corporate Transferees

Entry for intra-corporate transferees is limited to a three year period that may be extended for up to two additional years for a total term not to exceed five years. Intra-corporate transferees refers to managers, executives and specialists, as defined below, who are employees of firms that provide services within Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following.

(a) Managers - persons within an organization who primarily direct the organization, or a department or sub- division of the organization, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorization), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.

(b) Executives - persons within the organization who primarily direct the management of the organization, exercise wide latitude in decision- making, and receive only general supervision or direction from higher- level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organization.

(c) Specialists - persons within an organization who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organization’s service, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions).

Section 2. Other Clarifications

Notwithstanding the above, Singapore remains unbound with respect to National Treatment and ships’ crew.

Schedule of the Kingdom of Thailand

Thailand may require a natural person of another Party seeking entry and temporary stay in the territory of Thailand under the terms and conditions set out in each section of this Annex to obtain an appropriate visa prior to entry.

Section 1. Short-term Business Visitors

Entry and temporary stay for a period not exceeding ninety (90) days shall be granted, when applied for, to a short-term business visitor.

Section 2. Intra-corporate Transferees

1. Entry and temporary stay for an initial period not exceeding one (1) year from the arrival date shall be granted, when applied for, to an intra-corporate transferee who has been employed by a juridical person concerned outside Thailand for a period of not less than one (1) year immediately preceding the date of his application for admission.

2. Such temporary stay may be extended for a further three (3) terms of not more than one (1) year each.

Schedule of the Socialist Republic of Viet Nam (1)

Section 1. Service Sales Person

Persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that supplier where: (i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service. The stay of these salespersons is limited to a 90-day period.

Section 2. Intra-corporate Transferees

1. Managers, executives and specialists, as defined hereunder, of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra-corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least one year, shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. At least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise.

2. Managers and executives are those who primarily direct the management of the foreign enterprises which have established commercial presence in Viet Nam, receiving only general supervision or direction from the board of directors or stockholders of the business or their equivalent, including directing the establishment or a department or subdivision of the establishment, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and fire or recommend hiring, firing or other personnel actions, and who do not directly perform tasks concerning the actual supply of the services of the establishment.

3. Specialists are natural persons working within an organization who possess knowledge at an advanced level of expertise and with knowledge of the organization's services, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of skills or qualification referring to a type of work or trade requiring specific technical knowledge. Specialists may include, but are not limited to, members of licensed professions.

Section 3. Other Personnel

Managers, executives and specialists, as defined in Section 2, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam with a view to participating in the foreign enterprise's activities in Viet Nam, shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.

Section 4. Persons Responsible for Setting Up a Commercial Presence

Managers and executives (as defined in Section 2) within a juridical person, who are responsible for the setting up, in Viet Nam, of a commercial presence of a service provider of a Party when (i) these people are not engaged in making direct sales or supplying services; and

(ii) the service provider has its principal place of business in the territory of a Party other than Viet Nam and has no other commercial presence in Viet Nam. The stay of these persons is limited to a 90-day period.

Section 5. Contractual Service Suppliers (CSS)

Natural persons who are employees of a foreign enterprise having no commercial presence in Viet Nam may enter and stay in Viet Nam for a period of 90 days or for the duration of the contract, whichever is less provided that the following conditions and requirements shall be applied:

1. The foreign enterprise has obtained a service contract from a Vietnamese enterprise engaged in business operation in Viet Nam. The competent authority of Viet Nam must be able to establish the necessary procedures to guarantee the bona fide character of the contract.

2. These persons must possess: (a) a university degree or a technical qualification document demonstrating knowledge of an equivalent level; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; and (c) at least 5 years of professional experience in the sector.

3. The number of these persons covered by the service contract shall not be larger than necessary to fulfill the contract, as it may be decided by the laws and regulations and requirement of Viet Nam.

4. These persons have been employed by the foreign enterprise having no commercial presence in Viet Nam for a period of no less than 2 years and have met the requirements prescribed for "specialist" in Section 2.

The entry of these persons is allowed for computer and related services (CPC 841-845, 849) and engineering services (CPC 8672).

(1) Viet Nam's Specific Commitments for the Movement of Natural Persons are limited to the sectors/sub-sectors included in the Schedule of Specific Commitments of Viet Nam in Annex 6.

Schedule of Japan

Japan may require a natural person of an ASEAN Member State seeking entry and temporary stay under the terms and conditions set out in each Section of this Schedule of Japan to obtain an appropriate visa or its equivalent prior to entry.

Section 1. Short-Term Business Visitors of ASEAN Member States

Entry and temporary stay for a period not exceeding 90 days, which may be extended, shall be granted to a natural person of an ASEAN Member State who will stay in Japan without acquiring remuneration from within Japan and without engaging in making direct sales to the general public or in supplying services himself or herself, for the purposes of participating in business contacts including negotiations for the sale of goods or services, or other similar activities including those to prepare for establishing commercial presence in Japan.

Section 2. Intra-Corporate Transferees of ASEAN Member States

1. Entry and temporary stay for a period of up to five years, which may be extended, shall be granted to a natural person of an ASEAN Member State who:

(a) has been employed by a public or private organisation that supplies services or invests in Japan, for a period not less than one year immediately preceding the date of his or her application for the entry and temporary stay in Japan;

(b) is being transferred to a branch or representative office of that public or private organisation in Japan, or another public or private organisation constituted or organised in Japan owned or controlled by or affiliated with the former public or private organisation; and

(c) will engage in one of the following activities during his or her temporary stay in Japan:

(i) activities to direct the branch or representative office as its head;

(ii) activities to direct the latter public or private organisation as its board member or auditor;

(iii) activities to direct one or more departments of the latter public or private organisation; or

(iv) activities which require technology or knowledge at an advanced level pertinent to natural or human sciences, including physical sciences, engineering, jurisprudence, economics, business management and accounting, or activities which require ideas and sensitivity based on culture of a country other than Japan, recognised under the status of residence of "Engineer/Specialist in Humanities/ International Services" provided for in the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319 of 1951, as amended).

Note: For the purposes of this paragraph, a public or private organisation is "affiliated" with another public or private organisation when the latter can significantly affect the decision making of the former on finance and business policy.

2. The activities which require technology or knowledge at an advanced level pertinent to natural or human sciences referred to in subparagraph 1(c)(iv) mean the activities in which the natural person may not be able to engage without the application of specialised technology or knowledge of natural or human sciences acquired by him or her by, in principle, completing college education (i.e. bachelor's degree) or higher education.

Section 3. Natural Persons of ASEAN Member States Who Engage In Business Activities Which Require Technology or Knowledge at an Advanced Level on the Basis of a Personal Contract with Public or Private Organisations In Japan

1. Entry and temporary stay for a period of up to five years, which may be extended, shall be granted to a natural person of an ASEAN Member State who will engage in the business activities of supplying services during his or her temporary stay in Japan on the basis of a personal contract with a public or private organisation in Japan which correspond to:

(a) activities which require technology or knowledge at an advanced level pertinent to natural or human sciences, including physical sciences, engineering, jurisprudence, economics, business management and accounting; or

(b) activities which require ideas and sensitivity based on culture of a country other than Japan,

under the status of residence of "Engineer/Specialist in Humanities/International Services", whose scope is provided for in the Immigration Control and Refugee Recognition Act.

2. The activities which require technology or knowledge at an advanced level pertinent to natural or human sciences referred to in subparagraph 1(a) mean the activities in which the natural person may not be able to engage without the application of specialised technology or knowledge of natural or human sciences acquired by him or her by, in principle, completing college education (i.e. bachelor's degree) or higher education.

Section 4. Investors of ASEAN Member States

Entry and temporary stay for a period of up to five years, which may be extended, shall be granted to a natural person of an ASEAN Member State who will engage in one of the following activities during his or her temporary stay in Japan:

(a) activities to invest in business in Japan and manage such business;

(b) activities to manage business in Japan on behalf of a person other than that of Japan who has invested in such business; or

(c) conduct of business in Japan in which a person other than that of Japan has invested.

Section 5. Natural Persons of ASEAN Member States Who Engage In Professional Services

Entry and temporary stay for a period of up to five years, which may be extended, shall be granted to a natural person of an ASEAN Member State who is a legal, accounting or taxation service supplier qualified as specified in subparagraphs (a) through (j) under the laws and regulations of Japan and who will supply the respective services specified therein during his or her temporary stay in Japan:

(a) legal services supplied by a lawyer qualified as "Bengoshi" under the laws and regulations of Japan;

(b) legal advisory services on law of jurisdiction where the service supplier is a qualified lawyer on condition that the service supplier is qualified as "Gaikokuho-Jimu-Bengoshi" under the laws and regulations of Japan;

(c) legal services supplied by a patent attorney qualified as "Benrishi" under the laws and regulations of Japan;

(d) legal services supplied by a maritime procedure agent qualified as "Kaijidairishi" under the laws and regulations of Japan;

(e) accounting, auditing and bookkeeping services supplied by an accountant qualified as "Koninkaikeishi" under the laws and regulations of Japan;

(f) taxation services supplied by a tax accountant qualified as "Zeirishi" under the laws and regulations of Japan;

(g) legal services supplied by a judicial scrivener qualified as "Shiho-Shoshi" under the laws and regulations of Japan;

(h) legal services supplied by an administrative scrivener qualified as "Gyosei-Shoshi" under the laws and regulations of Japan;

(i) legal services supplied by a certified social insurance and labour consultant qualified as "Shakai-Hoken-Romushi" under the laws and regulations of Japan; or

(j) legal services supplied by a land and house surveyor qualified as "Tochi-Kaoku-Chosashi" under the laws and regulations of Japan.

6. Accompanying Spouse and Children

1. Entry and temporary stay shall be granted to a spouse and children accompanying a natural person of an ASEAN Member State who has been granted entry and temporary stay pursuant to Sections 2 through 5, in principle for the same period as the period of temporary stay granted to the natural person, provided that such spouse and children obtain maintenance

from the natural person and engage in daily activities recognised under the status of residence of “Dependants” provided for in the Immigration Control and Refugee Recognition Act.

2. A spouse who has been granted entry and temporary stay pursuant to paragraph 1 may, upon application, have his or her status of residence changed to that under which he or she is allowed to work, subject to the approval of the Government of Japan in accordance with the Immigration Control and Refugee Recognition Act.

Note: For the purposes of this Section, the term “spouse” or “children” means spouse or children recognised as such in accordance with the laws and regulations of Japan.