

# **Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation**

Japan and the Swiss Confederation (hereinafter referred to as "Switzerland"), hereinafter referred to as "the Parties",  
RECOGNISING that a dynamic and rapidly changing global environment brought about by globalisation and technological progress presents various economic and strategic challenges and opportunities to the Parties;  
CONSCIOUS of their longstanding friendship and ties that have developed through many years of fruitful and mutually beneficial cooperation and convinced that this Agreement will open a new era for their relationship;  
REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with their obligations under international law, including those set out in the United Nations Charter, and with the principles of the Universal Declaration of Human Rights;  
BELIEVING that their bilateral relationship will be enhanced by forging a mutually beneficial economic partnership through trade liberalisation, trade facilitation and cooperation;  
CONVINCED that the economic partnership will provide a useful framework for enhanced cooperation, serve their common interests in various fields as agreed in this Agreement and lead to the improvement of economic efficiency and the development of trade, investment and human resources;  
RECOGNISING that such a partnership will create larger and new markets, and enhance the attractiveness and dynamism of their markets;  
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 on 15 April 1994; RECOGNISING the importance of ensuring security in international trade without creating unnecessary obstacles to trade and of further deepening cooperation between the Parties in that field;  
DETERMINED, in implementing this Agreement, to seek to preserve and protect the environment, to promote the optimal use of natural resources in accordance with the objective of sustainable development and to adequately address the challenges of climate change; BELIEVING that this Agreement lays the foundation for further invigoration of cooperation between them in various economic fields; and DETERMINED to establish a legal framework for an economic partnership between them; HAVE AGREED as follows:

## **Section CHAPTER 1. General Provisions**

### **Article 1. Objectives**

The objectives of this Agreement are to:

- (a) liberalise and facilitate trade in goods and services between the Parties;
- (b) increase investment opportunities and strengthen protection for investments and investment activities in the Parties;
- (c) promote cooperation and coordination for the effective enforcement of competition laws and regulations in each Party;
- (d) ensure protection of intellectual property and promote cooperation in this field;
- (e) enhance opportunities for suppliers of the Parties to participate in government procurement in the Parties; and
- (f) create effective procedures for the implementation of this Agreement and for the resolution of disputes.

### **Article 2. Scope of Application**

Unless otherwise provided for in this Agreement, wherever applicable, this Agreement shall apply to the territories of the Parties.

### **Article 3. General Definitions**

For the purposes of this Agreement:

- (a) "Area" of a Party means:
  - (i) with respect to Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil

thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan; and (ii) with respect to Switzerland, the territory of Switzerland;

(b) "customs territory" of a Party means the territory with respect to which the customs laws of the Party are in force. The customs territory of Switzerland includes the territory of the Principality of Liechtenstein, as long as the Customs Union Treaty of 29 March 1923 between the Swiss Confederation and the Principality of Liechtenstein remains in force;

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

(d) "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 the GATT 1994 include the interpretative notes;

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

(f) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; and

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

## **Article 4. Transparency**

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures, judicial decisions and administrative rulings of general application as well as international agreements to which the Party is a party, which pertain to or affect the operation of this Agreement.

2. Each Party shall make its best efforts to ensure that the public obtains, upon request, 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 request by the other Party, within a reasonable period of time, respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1.

4. When introducing or changing its laws, regulations, or administrative procedures that significantly affect the operation of this Agreement, each Party shall endeavour to provide, except in emergency situations, a reasonable interval between the time when such laws, regulations, or administrative procedures are published or made publicly available and the time when they enter into force.

## **Article 5. Confidential Information**

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

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

3. Notwithstanding paragraph 2, the information provided pursuant to this Agreement may be transmitted to a third party, subject to prior consent of the Party which provided the information.

## **Article 6. Taxation**

1. The following provisions in this Agreement are relevant to taxation measures: (a) Article 14, and such other provisions as are necessary to give effect to that Article to the same extent as Article III of the GATT 1994; (b) Chapter 6; (c) Chapter 9, as provided for in Article 100; (d) Chapter 11; and (e) Chapter 12.

2. Without prejudice to Chapters 6, 9 and 11, nothing in this Agreement shall affect the rights and obligations of either Party under any agreement on the avoidance of double taxation. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency.

3. If a Party considers that a taxation measure applied by the other Party adversely affects the implementation or the functioning of provisions of this Agreement other than those referred to in paragraph 1, the Parties shall, upon request of the former Party, hold consultations with a view to finding a mutually satisfactory solution without having recourse to the dispute settlement procedures provided for in Chapter 14.

## **Article 7. Relation to other Agreements**

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

2. In the event of any inconsistency arising between this Agreement and the WTO Agreement or any other agreements to

which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

## **Article 8. Preferential Agreements**

1. This Agreement shall not prevent the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade and other preferential agreements, to the extent that they do not adversely affect the rights and obligations provided for by this Agreement.

2. In case a Party establishes a customs union with a non- Party, it shall inform the other Party. Upon request of the other Party, the Parties shall enter into consultations with a view to examining the possible impact of the customs union on the implementation of this Agreement.

## **Article 9. Promotion of Trade In Environmental Products and Environment-related Services**

1. The Parties shall encourage trade and dissemination of environmental products and environment-related services in order to facilitate access to technologies and products that support the environmental protection and development goals, such as improved sanitation, pollution prevention, sustainable promotion of renewable energy and climate-change-related goals.

2. The Parties shall periodically review in the Joint Committee progress achieved in pursuing the objectives set out in paragraph 1.

## **Article 10. Implementing Agreement**

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

## **Section CHAPTER 2. Trade In Goods**

### **Article 11. Definitions**

For the purposes of this Chapter:

(a) "bilateral safeguard measure" means a bilateral safeguard measure provided for in paragraph 2 of Article 20;

(b) "customs duty on exports" means any duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the exportation of a product, but does not include any fee or other charge commensurate with the cost of services rendered, imposed consistently with the provisions of Article VIII of the GATT 1994;

(c) "customs duty on imports" means any duty and a charge of any kind, including any form of surtax or surcharge, imposed in connection with the importation of a product, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of like products or directly competitive or substitutable products of the customs territory of a Party, or in respect of products from which the imported products have been manufactured or produced in whole or in part;

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

(iii) fee or other charge commensurate with the cost of services rendered, imposed consistently with the provisions of Article VIII of the GATT 1994;

(d) "customs value of products" means the value of products for the purposes of levying ad valorem customs duties on imports;

(e) "domestic industry" means the producers as a whole of the like or directly competitive products operating in the customs territory of a Party, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products;

(f) "export subsidies" means export subsidies listed in subparagraphs 1(a) to 1(f) of Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Agriculture");

(g) "originating product" means a product which qualifies as an originating product under Annex II;

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

(i) "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 12. Scope**

This Chapter shall apply, as specified therein, to any product traded between the customs territories of the Parties, falling within any chapter of the Harmonized System.

## **Article 13. Classification of Products**

The classification of products traded between the customs territories of the Parties shall be in conformity with the Harmonized System.

## **Article 14. National Treatment**

Each Party shall accord national treatment to the products of the customs territory of the other Party in accordance with Article III of the GATT 1994, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## **Article 15. Customs Duty on Imports**

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on imports on originating products of the Party and the other Party, imported from the customs territory of the other Party, in accordance with the terms and conditions set out in its Schedule in Annex I.
2. In cases where its most-favoured-nation applied rate of customs duty on imports on a particular product is lower than the rate of customs duty on imports to be applied in accordance with paragraph 1 on an originating product which is classified under the same tariff line as that particular product, each Party shall apply the lower rate with respect to that originating product.
3. Except as otherwise provided for in this Agreement, neither Party shall increase any customs duty on imports on originating products of the Party and the other Party, imported from the customs territory of the other Party, above the rate to be applied in accordance with the terms and conditions set out in its Schedule in Annex I.

## **Article 16. Customs Duty on Exports**

Neither Party shall introduce or maintain any customs duty on exports on products exported from the customs territory of the Party into the customs territory of the other Party.

## **Article 17. Customs Valuation**

For the purposes of determining the customs value of products traded between the customs territories of 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"), which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*, shall apply.

## **Article 18. Import and Export Restrictions**

Each Party shall ensure that no prohibition or restriction other than customs duties on imports and customs duties on exports inconsistent with its obligations under Article XI of the GATT 1994 and other relevant provisions under the WTO Agreement are introduced or maintained in the customs territory of the Party on the importation of any product of the customs territory of the other Party or on the exportation or sale for export of any product destined for the customs territory of the other Party.

## **Article 19. Export Subsidies**

Unless otherwise provided for in Annex I, no export subsidies shall be introduced or maintained in the customs territory of a Party on any agricultural product which is listed in Annex 1 to the Agreement on Agriculture.

## **Article 20. Bilateral Safeguard Measures**

1. Subject to the provisions of this Article, a Party may apply a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy serious injury to its domestic industry and to facilitate adjustment thereof, if an originating product of the other Party, as a result of the elimination or reduction of a customs duty on imports in accordance with

Article 15, is being imported into the customs territory of the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating product constitute a substantial cause of serious injury, or threat of serious injury, to the domestic industry in the customs territory of the former Party.

2. A Party may, unless otherwise provided for in Annex I, as a bilateral safeguard measure:

(a) suspend the further reduction of the rate of customs duty on imports on the originating product of the other Party referred to in paragraph 1; or

(b) increase the rate of customs duty on imports on the originating product of the other Party referred to in paragraph 1 to a level not to exceed the lesser of:

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

(ii) the most-favoured-nation applied rate of customs duty on imports in effect on the day immediately preceding the date of entry into force of this Agreement.

3. A Party shall not apply a bilateral safeguard measure to originating products imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with the terms and conditions set out in its Schedule in Annex I.

4. A Party may apply a bilateral safeguard measure only after an investigation has been carried out by its competent authorities in accordance with the same procedures as provided for in Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Safeguards"). Such investigation shall in all cases be completed within one year following its date of initiation.

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

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

(i) initiating an investigation referred to in paragraph 4 relating to serious injury, or threat of serious injury, and the reasons for it; and

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

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

(i) in respect of subparagraph (a)(i), in addition to the reason for the initiation of the investigation, a precise description of the originating product subject to the investigation and its subheading under the Harmonized System, the period to be covered by the investigation and the date of initiation of the investigation; and

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

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information gained from the investigation referred to in paragraph 4, exchanging views on the bilateral safeguard measure and reaching an agreement on compensation provided for in paragraph 6. (d) No bilateral safeguard measure shall be maintained except to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such period of time does not exceed two years. However, in highly exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total duration of the bilateral safeguard measure, including such extensions, does not exceed three years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure exceeds one year, the Party maintaining the bilateral safeguard measure shall progressively liberalise it at regular intervals during the period of application.

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

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

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

(b) If the Parties are unable to agree on compensation within 30 days after the commencement of consultations pursuant to subparagraph 5(c), the Party to whose originating product the bilateral safeguard measure is applied shall be free to suspend the application of concessions of customs duties on imports under this Chapter which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties on imports only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

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

bilateral safeguard measures.

8. In applying a bilateral safeguard measure, each Party shall follow equitable, timely, transparent and effective procedures.

9. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may apply a provisional bilateral safeguard measure, unless otherwise provided for in Annex I, which shall take the form of a measure set out in subparagraph 2(a) or 2(b), pursuant to a preliminary determination that there is clear evidence that increased imports of an originating product of the other Party have caused serious injury or threat of serious injury to a domestic industry in the customs territory of the former Party.

(b) A Party shall make a written notice to the other Party prior to applying a provisional bilateral safeguard measure referred to in subparagraph (a). Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after it is applied.

(c) The duration of the provisional bilateral safeguard measure referred to in subparagraph (a) shall not exceed 200 days. During that period, the pertinent requirements of paragraph 4 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 5(d).

(d) Subparagraph 5(f) and paragraphs 7 and 8 shall apply, mutatis mutandis, to the provisional bilateral safeguard measure referred to in subparagraph (a). The customs duty on imports imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in paragraph 4 does not determine that increased imports of an originating product of the other Party have caused serious injury or threat of serious injury to a domestic industry.

10. A written notice referred to in subparagraphs 5(a) and 9(b) and any other communication between the Parties pursuant to this Article shall be made in the English language.

11. The Parties shall review the provisions of this Article, if necessary, ten years after the date of entry into force of this Agreement or thereafter.

12. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating product of the other Party in accordance with:

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

(b) Article 5 of the Agreement on Agriculture.

## **Article 21. Restrictions to Safeguard the Balance of Payments**

1. Nothing in this Chapter shall be so construed as 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 and procedures established under Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

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

## **Article 22. General and Security Exceptions**

For the purposes of this Chapter, Articles XX and XXI of the GATT 1994, which are hereby incorporated into and made part of this Agreement, mutatis mutandis, shall apply.

## **Article 23. Rules of Origin**

The provisions on Rules of Origin are set out in Annex II.

## **Article 24. Operational Procedures for Trade In Goods**

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

## **Article 25. General Review**

The Parties shall undertake a general review of the provisions of this Chapter and the Schedules of the Parties in Annex I in the fifth calendar year following the calendar year in which this Agreement enters into force. As a result of such a review, the Parties may, if they agree, enter into negotiations on possible improvement of market access under this Chapter and the Schedules of the Parties.

## **Section CHAPTER 3. Customs Procedures and Trade Facilitation**

### **Article 26. Scope**

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

### **Article 27. Definitions**

For the purposes of this Chapter:

- (a) "A.T.A. Convention" means the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods, done at Brussels on 6 December 1961;
- (b) "customs authority" means the customs authority as defined in paragraph (c) of Article I of Annex II; and
- (c) "customs laws" means the laws and regulations administered and enforced by the customs authority of each Party concerning the importation, exportation and transit of products, relating to customs duties, charges and other taxes, or to prohibitions, restrictions and other similar controls, falling under the competence of the customs authority of the Party.

### **Article 28. Transparency**

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is readily available to any interested person.
2. When information that has been made available must be revised due to changes in its customs laws, each Party shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless such an advance notice is precluded.
3. At the request of any interested person of the Parties, each Party shall provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by the interested person and pertaining to its customs laws. Each Party shall supply not only the information specifically requested but also any other pertinent information which it considers the interested person should be made aware of.

### **Article 29. Customs Clearance**

1. The Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.
2. For prompt customs clearance of products traded between the customs territories of the Parties, each Party shall:
  - (a) make use of information and communications technology;
  - (b) simplify its customs procedures;
  - (c) harmonise its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those adopted under the auspices of the Customs Co-operation Council; and
  - (d) promote cooperation, wherever appropriate, between its customs authority and:
    - (i) other national authorities of the Party;
    - (ii) the trading communities of the Party; and
    - (iii) the customs authorities of non-Parties.
3. Each Party shall provide affected parties with easily accessible means of administrative and judicial review of its administrative actions relating to customs matters.

### **Article 30. Temporary Admission and Products In Transit**

1. Each Party shall continue to facilitate the procedures for the temporary admission of products traded between the customs territories of the Parties in accordance with the A.T.A. Convention.
2. Each Party shall continue to facilitate customs clearance of products in transit from or to the customs territory of the other Party in accordance with paragraph 3 of Article V of the GATT 1994.
3. The Parties shall endeavour to promote, through seminars and courses, the use of A.T.A. carnets pursuant to the A.T.A. Convention for the temporary admission of products and the facilitation of customs clearance of products in transit in the customs territories of the Parties or non-Parties.
4. For the purposes of this Article, "temporary admission" means customs procedures under which certain products may be brought into a customs territory conditionally, relieved totally or partially from the payment of customs duties. Such products shall be imported for a specific purpose, and shall be intended for re-exportation within a specified period and

without having undergone any change except normal depreciation due to the use made of them.

## **Article 31. Cooperation and Exchange of Information**

1. The Parties shall cooperate and exchange information in the field of customs procedures, including the enforcement against the trafficking of prohibited products and the importation and exportation of products suspected of infringing intellectual property rights.
2. Paragraph 1 of Article 5 shall not apply to the exchange of information under this Article.
3. Chapter 2 of the Implementing Agreement provides for the details and procedures for the implementation of cooperation and exchange of information, including exchange of confidential information, under this Article.

## **Article 32. Sub-committee on Rules of Origin, Customs Procedures and Trade Facilitation**

For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Rules of Origin, Customs Procedures and Trade Facilitation established under Article XXX of Annex II shall perform the functions provided for in the said Article.

## **Section CHAPTER 4. Sanitary and Phytosanitary Measures**

### **Article 33. Scope**

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

### **Article 34. Rights and Obligations**

With regard to the rights and obligations of the Parties in respect of SPS measures, the SPS Agreement shall apply.

### **Article 35. Consultations on Sps Matters**

1. The Parties shall hold science-based consultations to identify and address specific issues that may arise from the application of SPS measures with the objective of finding mutually acceptable solutions, at such time and venue as may be agreed by the Parties.
2. The consultations referred to in paragraph 1 shall be held between officials of the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.

### **Article 36. Non-application of Chapter 14**

Chapter 14 shall not apply to this Chapter.

## **Section CHAPTER 5. Technical Regulations, Standards and Conformity Assessment Procedures**

### **Article 37. Scope**

1. This Chapter shall apply to technical regulations, standards 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 "the TBT Agreement").
2. This Chapter shall apply to technical regulations, standards and conformity assessment procedures with respect to any product irrespective of its origin.
3. 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 the SPS Agreement.
4. With regard to the rights and obligations of the Parties in respect of technical regulations, standards and conformity assessment procedures, the TBT Agreement shall apply, unless otherwise provided for in this Chapter.



## **Article 38. Cooperation**

1. In order to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade in goods between the Parties, the Parties shall, where possible, strengthen their cooperation in the field of technical regulations, standards and conformity assessment procedures. When appropriate, this shall result in sector-specific arrangements.

2. Cooperation pursuant to paragraph 1 may include the following:

(a) exchanging information on technical regulations, standards and conformity assessment procedures of the Parties, including information regarding the harmonisation of the regulations of the Parties with international standards;

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

(c) reinforcing the role of international standards as a basis for technical regulations and conformity assessment procedures; and, in particular, promoting the accreditation of conformity assessment bodies and the acceptance of the results of conformity assessment procedures, on the basis of the relevant international standards.

## **Article 39. Enquiry Point**

Each Party shall designate an enquiry point to answer all reasonable enquiries from the other Party regarding technical regulations, standards and conformity assessment procedures and, if appropriate, provide the other Party with other relevant information which it considers the other Party should be made aware of.

## **Article 40. Acceptance of Results of Conformity Assessment Procedures**

1. Each Party shall ensure that, in cases where a positive assurance of conformity with technical regulations is required for a particular product, suppliers of such product imported from the other Party shall be granted access on a nondiscriminatory basis.

2. Each Party shall ensure, whenever possible, that results of the conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, provided it is satisfied that the procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures. In this regard, accreditation of conformity assessment bodies in accordance with relevant standards or guides issued by the international standardising bodies shall establish a rebuttable presumption of adequate technical competence.

3. The Parties recognise that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding with regard to such matters as provided for in paragraphs 1.1 and 1.2 of Article 6 of the TBT Agreement. Such consultations shall take place in the Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures provided for in Article 41.

4. A Party shall, upon request of the other Party and where appropriate, explain the reasons why it has not accepted the results of conformity assessment procedures in the other Party.

## **Article 41. Sub-committee on Technical Regulations, Standards and Conformity Assessment Procedures**

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

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

(a) coordinating and facilitating cooperation pursuant to this Chapter;

(b) reviewing the implementation and operation of this Chapter;

(c) discussing any issues related to this Chapter with the objective of finding mutually acceptable solutions;

(d) undertaking consultations on issues related to technical regulations, standards and conformity assessment procedures;

(e) reporting its findings to the Joint Committee; and

(f) carrying out other tasks assigned to it by the Joint Committee.

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. All such representatives shall have the necessary expertise relevant to the issues to be discussed. The Sub-Committee may establish ad hoc working groups to accomplish specific tasks.

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

## **Article 42. Non-application of Chapter 14**

Chapter 14 shall not apply to this Chapter.

## **Section CHAPTER 6. Trade In Services**

### **Article 43. Scope and Coverage**

1. This Chapter shall apply to measures by a Party affecting trade in services taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. It shall apply to all services sectors.
2. In respect of air transport services, this Chapter shall not apply to measures affecting traffic rights, however granted, or measures affecting services directly related to the exercise of traffic rights, other than those affecting:
  - (a) aircraft repair and maintenance services;
  - (b) the selling and marketing of air transport services; or
  - (c) computer reservation system (CRS) services.
3. Articles 45 to 47 shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not for commercial resale or for use in the supply of services for commercial sale.

### **Article 44. Definitions**

For the purposes of this Chapter:

- (a) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (b) "commercial presence" means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office; within the Area of a Party for the purposes of supplying a service;
- (c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) "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;
- (e) "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;
- (f) 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;
  - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (g) "juridical person of a Party" means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the Area of:
    - (A) either Party; or
    - (B) any Member of the World Trade Organization and is owned or controlled by natural persons of that Party or by juridical persons that meet all the conditions of subparagraph (A); or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of that Party; or
    - (B) juridical persons of that Party identified under subparagraph (i);
- (h) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (i) "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 that Party to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of the other Party for the supply of a service in the Area of the

Party;

(j) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the Area of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service; (k) "natural person of a Party" means a natural person who, under the legislation of that Party, is:

(i) in respect of Japan, a national of Japan; or

(ii) in respect of Switzerland:

(A) a national of Switzerland; or

(B) a permanent resident who resides in Switzerland;

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

(m) "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;

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

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

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

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

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

(q) "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;

(r) "service supplier" means any person that supplies, or seeks to supply, a service; Note: Where the service is not supplied or sought to be 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 commercial presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the commercial presence through which the service is supplied or sought to be supplied and need not be extended to any other parts of the service supplier located outside the Area of a Party where the service is supplied or sought to be supplied.

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

(t) "trade in services" means the supply of a service:

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

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

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

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

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

## **Article 45. Most-favoured-nation Treatment**

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and unless otherwise specified in its List of Reservations referred to in Article 57, a Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

2. The provisions of this Chapter shall not be so construed as to prevent either Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

3. Treatment granted under other agreements concluded by a Party and notified under Article V or Article Vbis of the GATS shall not be subject to paragraph 1.

4. If a Party concludes or amends an agreement of the type referred to in paragraph 3, it shall notify the other Party without delay and endeavour to accord to the other Party treatment no less favourable than that provided under that agreement. The former Party shall, upon request by the other Party, negotiate the incorporation into this Agreement of treatment no less favourable than that provided under the former agreement.

## **Article 46. Market Access**

1. With respect to market access through the modes of supply identified in paragraph (t) of Article 44, a Party shall accord services and service suppliers of the other Party treatment in conformity with its List of Reservations referred to in Article 57. Note: Unless otherwise specified in its List of Reservations referred to in Article 57 in respect of market access, where the cross-border movement of capital is an essential part of a service supplied through the mode of supply referred to in subparagraph (t)(i) of Article 44, a Party is hereby committed to allow such movement of capital. Unless otherwise specified in its List of Reservations referred to in Article 57 in respect of market access, where a service is supplied through the mode of supply referred to in subparagraph (t)(iii) of Article 44, a Party is hereby committed to allow related transfers of capital into its Area.

2. Unless otherwise specified in its List of Reservations referred to in Article 57, a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area measures defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

## **Article 47. National Treatment**

1. Unless otherwise specified in its List of Reservations referred to in Article 57, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. Note: This Article shall not be so construed as to require a Party to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant services and service suppliers.

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

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

4. A Party may not invoke this Article in dispute settlement procedures under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

## **Article 48. Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Where authorisation is required by a Party for the supply of a service, the competent authorities of that Party shall, within a reasonable period of time after the submission of an application is considered complete under that Party's laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of that Party shall provide, without undue delay, information concerning the status of the application.

3. Each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

4. (a) Each Party shall apply licensing and qualification requirements and procedures and technical standards in a manner which:

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

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

(iii) in the case of licensing procedures and of verification procedures related to technical standards and to qualification requirements, is not in itself a restriction on the supply of the service.

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

Note: "Relevant international organisations" refers to international bodies whose membership is open to the relevant

bodies of both Parties.

5. Paragraphs 1 to 4 are binding upon a Party only in sectors in which it has undertaken specific commitments in its Schedule under the GATS. Note: For the purposes of this paragraph, "sector" means one or more, or all, sub-sectors of the service concerned, as specified in a Party's Schedule under the GATS.

6. 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 of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

7. The Parties shall jointly review the results of the negotiations provided for in paragraph 4 of Article VI of the GATS with a view to incorporating into this Chapter, as appropriate, any disciplines agreed in such negotiations.

## **Article 49. Recognition**

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

2. Where a Party recognises, by an agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in a non-Party, it shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the other Party should also be recognised.

3. 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 service suppliers, or a disguised restriction on trade in services.

## **Article 50. Movement of Natural Persons**

1. This Article shall apply to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

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

3. Specific commitments of a Party applying to measures affecting the movement of natural persons of the other Party supplying services are contained in Annex VIII. Natural persons covered by Annex VIII shall be allowed to supply the service in accordance with the terms of this Chapter.

4. For the purposes of this Chapter, paragraph 3 of Article 62 shall apply, *mutatis mutandis*.

## **Article 51. Monopolies and Exclusive Service Suppliers**

1. A Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Articles 45 to 47.

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, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its Area in a manner inconsistent with that Party's obligations under Articles 46 and 47.

3. 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 Area.

## **Article 52. Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 51, may restrain competition and thereby restrict trade in services.

2. Without prejudice to Chapter 10, a Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting

Party.

## **Article 53. Payments and Transfers**

1. Except under the circumstances envisaged in Article 54, a Party shall not apply restrictions on international transfers and payments for current transactions and capital transactions relating to trade in services.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 54, or at the request of the International Monetary Fund.

## **Article 54. Restrictions to Safeguard the Balance of Payments**

1. The Parties endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.
3. The restrictions adopted or maintained by a Party referred to in paragraph 2:
  - (a) shall ensure that the other Party is treated as favourably as any non-Party;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 2; and (e) shall be temporary and be phased out progressively as the situation specified in paragraph 2 improves.
4. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic programme. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.
5. Any restrictions adopted or maintained by a Party under paragraph 2, or any changes therein, shall be promptly notified to the other Party.

## **Article 55. 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 countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be so construed as to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or 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 of the Party 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 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; and
  - (iii) safety;
- (d) inconsistent with Article 47, 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 the other Party; 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 Area of the Party;
  - (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Area 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 Area of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Area 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 paragraph 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 45, 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.

## **Article 56. Security Exceptions**

Nothing in this Chapter shall be so construed as:

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

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

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

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

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

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

## **Article 57. Lists of Reservations**

1. The List of Reservations of the Parties referred to in Articles 45 to 47 shall be set out in Annex III.

2. The List of Reservations of a Party set out in Annex III provides for:

(a) existing measures that the Party may maintain, renew at any time or modify without reducing their level of conformity with Articles 45 to 47; and

(b) measures that the Party may adopt, maintain or modify.

## **Article 58. Modification of Lists of Reservations**

1. A Party shall notify to the other Party its intention to modify its List of Reservations set out in Annex III. Upon written request of the other Party within 30 days from the receipt of the notification, the Parties shall hold consultations on any necessary compensatory adjustment with the aim to ensure that the general level of mutually advantageous commitments under this Chapter is not reduced. If the Parties fail to reach an agreement on compensation within 60 days after the receipt of the request for consultations, the Party receiving the notification may refer the matter to arbitration by an arbitral tribunal established following the same procedures as provided for in paragraphs 3 to 7 of Article 141. Such an arbitral tribunal shall present its findings as to the ways to ensure that the general level of mutually advantageous commitments under this Chapter is not reduced. Article 143 shall apply to the proceedings of such an arbitral tribunal *mutatis mutandis*.

2. If no consultations are requested, or once the Party which made the notification under paragraph 1 has made compensatory adjustments as agreed upon by the Parties or in conformity with the outcome of arbitration, the modification shall be incorporated into Annex III in accordance with the procedures set out in Article 152.

3. If a compensatory adjustment has been made by a Party to the benefit of the other Party as an "affected Member" in accordance with Article XXI of the GATS with regard to the same modification as intended for the List of Reservations of the former Party set out in Annex III, the Parties shall be deemed to have reached an agreement on compensation referred to in paragraph 1 with the same conclusion as agreed in the said compensatory adjustment.

## **Article 59. Transparency**

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

## **Article 60. Review**

1. With the objective of further liberalising trade in services between them, the Parties shall review at least every two years, or more frequently if so agreed, their Lists of Reservations set out in Annex III. The first such review shall take place not later than two years after the entry into force of this Agreement.

2. If, after the entry into force of this Agreement, a Party further liberalises autonomously any of its services sectors, sub-

sectors or activities, it shall consider any requests by the other Party for the incorporation into this Agreement of such autonomous liberalisation.

## **Article 61. Annexes**

Annexes III, IV, V, VI and VII form an integral part of this Chapter.

## **Section CHAPTER 7. Movement of Natural Persons**

### **Article 62. Scope**

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter and stay temporarily in the other Party.
2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor shall it apply to measures regarding nationality or citizenship, residence or employment on a permanent basis.
3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of the specific commitments set out in Annex VIII. Note: The sole fact of requiring a visa for natural persons of a certain nationality and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of the specific commitments.

### **Article 63. General Principles**

1. This Chapter reflects the preferential trading relationship between the Parties, the desire of the Parties to facilitate the movement of natural persons on a mutually beneficial basis and to establish transparent criteria and procedures for the movement of natural persons, and the need to ensure border security and to protect the domestic labour force and permanent employment in either Party.
2. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with paragraph 1, and, in particular, shall apply such measures expeditiously so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

### **Article 64. Definitions**

For the purposes of this Chapter, "natural person of a Party" means a natural person who, under the legislation of the Party, is:

- (a) in respect of Japan, a national of Japan; or
- (b) in respect of Switzerland,
  - (i) a national of Switzerland; or
  - (ii) a permanent resident who is a service supplier in the Area of Switzerland.

### **Article 65. Grant of Entry and Temporary Stay**

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter and relevant laws and regulations of the former Party, and subject to the terms of the specific commitments set out in Annex VIII.
2. Each Party shall ensure that fees charged by its competent authorities for processing application for entry and temporary stay of natural persons of the other Party for business purposes are charged having regard to the administrative costs involved.

### **Article 66. Provision of Information**

1. Each Party shall make publicly available information with respect to natural persons covered by its specific commitments set out in Annex VIII, including information necessary for an effective application for the grant of entry into, and temporary stay and work in, that Party. Such information shall be kept updated.
2. The information referred to in paragraph 1 shall include a description of, in particular:
  - (a) in respect of Japan: with respect to all the statuses of residence that are relevant to the grant of entry into, and



temporary stay and work in, Japan for natural persons of Switzerland covered in Japan's specific commitments in Annex VIII:

(i) visas and certificates of eligibility;

(ii) requirements and procedures for application for, and issuance of, visas and certificates of eligibility, including information on documentation required, conditions to be met and method of application; and

(iii) requirements and procedures for application for, and grant of, renewal of period of temporary stay; or

(b) in respect of Switzerland: with respect to the grant of entry into, and temporary stay and work in, Switzerland for natural persons of Japan covered in Switzerland's specific commitments in Annex VIII:

(i) all categories of visas and work permits;

(ii) requirements and procedures for application for, and issuance of, visas and work permits, including information on documentation required, conditions to be met and method of application; and

(iii) requirements and procedures for application for, and grant of, renewal of temporary stay and work permits.

3. Each Party shall provide the other Party with details of relevant publications or websites where information referred to in paragraph 2 is made available.

4. If the implementation of paragraph 1 proves to be impracticable for a Party, that Party shall provide the information referred to in paragraph 2, as well as any subsequent change therein, directly to the other Party. In addition, that Party shall indicate the contact details of its authority where persons of the other Party may obtain the information referred to in paragraph 2.

5. Each Party shall, to the extent possible, upon request by the other Party, make available to the other Party statistical data regarding the grant of entry into and temporary stay in the former Party for natural persons of the other Party under this Chapter.

## **Article 67. Expedious Application Procedures**

1. The competent authorities of each Party shall process without delay applications for the grant of entry and temporary stay or, where applicable, work permits or certificates of eligibility submitted for natural persons of the other Party, including applications for renewal thereof.

2. If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall endeavour to notify the applicant without undue delay.

3. Upon request by the applicant, the competent authorities of a Party shall endeavour to provide, without undue delay, information concerning the status of the application.

4. After a decision has been taken, the competent authorities of a Party shall endeavour to notify without undue delay the applicant for entry and temporary stay or, where applicable, work permit or certificate of eligibility, of the outcome of the application. The notification shall include the period of stay and any other conditions.

## **Article 68. Measures Pursuant to Immigration Laws and Regulations**

Except for this Chapter and Chapters 1, 14 and 16, nothing in this Agreement shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

## **Article 69. General and Security Exceptions**

For the purposes of this Chapter, Articles 55 and 56 shall apply mutatis mutandis.

## **Section CHAPTER 8. Electronic Commerce**

### **Article 70. Scope**

This Chapter shall apply to measures by a Party affecting electronic commerce, including for goods and services, in the context of their bilateral trade.

### **Article 71. General Provisions**

1. The Parties recognise the economic growth and opportunity provided by the increasing use of electronic commerce in trade in goods and services, among others, in particular for businesses and consumers, the importance of avoiding barriers to its use and development and the need to create an environment of trust and confidence in its use.

2. The Parties recognise the principle of technological neutrality in the sense that any provisions related to trade in services do not distinguish between the different technological means through which a service may be supplied.

3. In the event of any inconsistency between this Chapter and Chapter 2, 6, 9 or 11, the Chapter other than this Chapter shall

prevail to the extent of the inconsistency.

4. This Chapter shall not apply to: (a) government procurement; (b) subsidies as defined in the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; and (c) taxation measures.

## **Article 72. Definitions**

For the purposes of this Chapter:

(a) "digital products" means such products as computer programmes, texts, plans, designs, video, images and sound recordings or any combinations thereof, that are digitally encoded and transmitted electronically;

Note 1: For the purposes of this Chapter, digital products do not include those that are fixed on a carrier medium. Digital products that are fixed on carrier medium shall be subject to Chapter 2.

Note 2: For the purposes of this Chapter, digital products are those produced for commercial sale or distribution.

(b) "electronic certificate" means an electromagnetic record prepared for certifying that matters used to confirm that the user has performed the electronic signature are pertaining to such user;

(c) "electronic signature" means a measure taken with respect to information that can be recorded in an electromagnetic record and which fulfils both of the following requirements:

(i) that the measure indicates that such information has been approved by a person who has taken such measure; and

(ii) that the measure confirms that such information has not been altered;

(d) "parties to an electronic transaction" means at least one party in each of the Parties, all of them involved in an electronic transaction or an electronic communication that has significant relevance to that transaction;

(e) "trade administration documents" means forms that a Party issues or controls that must be completed:

(i) by or for an importer or exporter in connection with the importation or exportation of products; or

(ii) by a service supplier in connection with trade in services; and Note: For the purposes of this Chapter, "trade in services" shall have the same meaning as "trade in services" defined in subparagraph (t) of Article 44.

(f) "transmitted electronically" means transferred by any electromagnetic means.

## **Article 73. Non-discriminatory Treatment of Digital Products**

1. Unless otherwise specified in its List of Reservations referred to in Articles 57 and 90, which shall apply mutatis mutandis, each Party shall:

(a) not adopt measures that accord less favourable treatment to digital products of the other Party than it accords to its own like digital products. When a Party identifies a measure of such nature that has been adopted before the entry into force of this Agreement and is maintained by the other Party, that other Party shall endeavour to eliminate it; and

(b) not adopt or maintain measures that accord less favourable treatment to digital products of the other Party than it accords to like digital products of a non-Party.

2. In implementing its obligations under paragraph 1, each Party shall, in good faith, determine whether a digital product is a digital product of a Party, of the other Party or of a non-Party. Such determination shall be made in a transparent, objective, reasonable and fair manner. 3. Each Party shall, upon request by the other Party, explain how it determines the origin of a digital product in implementing its obligations under paragraph 1.

4. The Parties shall cooperate in international organisations and fora to foster the development of criteria determining the origin of a digital product, with a view to considering the incorporation of such criteria into this Agreement.

5. The Parties shall review this Article five years after the date of entry into force of this Agreement, unless they agree otherwise.

## **Article 74. Non-discriminatory Treatment of Services**

Each Party shall ensure that its measures governing electronic commerce do not discriminate the supply of services transmitted electronically against the supply of like services by other means.

## **Article 75. Market Access**

Unless otherwise specified in its List of Reservations referred to in Articles 57 and 90, which shall apply mutatis mutandis, each Party shall not adopt or maintain measures that unduly prohibit or restrict electronic commerce.

## **Article 76. Customs Duties**

1. Recognising the importance of maintaining the current practice of not imposing customs duties on electronic transmissions, the Parties shall cooperate to make this practice binding within the framework of the World Trade

Organization, with a view to considering its incorporation into this Agreement.

2. In the context of paragraph 1, the Parties confirm their current practice of not imposing customs duties on electronic transmissions under paragraph 46 of the Hong Kong Ministerial Declaration of December 2005.

## **Article 77. Domestic Regulation**

Each Party shall endeavour to ensure that all its measures affecting electronic commerce are administered in a transparent, objective, reasonable and impartial manner, and are not more burdensome than necessary.

## **Article 78. Electronic Signatures and Certification Services**

1. Neither Party shall adopt or maintain legislation for electronic signatures that would:

- (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic signature methods for that transaction or electronic communication that has significant relevance to that transaction;
- (b) prevent parties to an electronic transaction from having the opportunity to prove in court that their electronic transaction or electronic communication that has significant relevance to that transaction complies with any legal requirements with respect to electronic signatures; or
- (c) prevent parties to an electronic transaction from choosing the court or tribunal to which they bring any dispute concerning the transaction.

2. Notwithstanding paragraph 1, each Party may require that, for a particular category of electronic transactions or electronic communications that have significant relevance to those transactions, the electronic signatures meet certain performance standards or are based on a specific electronic certificate issued by a supplier of certification services accredited or recognised in accordance with the Party's laws and regulations, provided that the requirement:

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

3. This Article shall not apply to any transactions or communications that have significant relevance to those transactions, if those transactions are not permitted to be made electronically under each Party's laws and regulations.

4. Each Party shall, in accordance with its legislation on electronic signatures and certification services, endeavour to facilitate the procedure of accreditation or recognition of suppliers of certification services, which have already obtained accreditation or recognition under the legislation of the other Party.

## **Article 79. Paperless Trade Administration**

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

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

3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

## **Article 80. Protection of Online Consumers**

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as measures conducive to the development of consumer confidence.

2. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in the context of their bilateral trade in order to enhance consumer protection.

3. The Parties recognise the importance of:

- (a) adopting or maintaining measures, in accordance with their respective laws and regulations, to protect the personal data of electronic commerce users; and
- (b) taking international standards and criteria into account in developing such measures.

## **Article 81. Private Sector Participation**

1. Each Party shall endeavour to ensure that regulatory frameworks governing electronic commerce support industry-led development of electronic commerce with a view to promoting bilateral trade between the Parties.

2. Each Party shall encourage the private sector to adopt self-regulation, including through codes of conduct, guidelines and enforcement mechanisms, with a view to supporting electronic commerce.

## **Article 82. Cooperation**

1. The Parties shall cooperate to identify and overcome obstacles encountered in particular by small and medium-sized enterprises in using electronic commerce in the context of their bilateral trade.
2. The Parties shall endeavour to share information and experiences, including on related laws, regulations and best practices in the field of electronic commerce in relation to, inter alia:
  - (a) data privacy;
  - (b) fight against unsolicited commercial messages transmitted through the Internet such as electronic mails; (c) consumer confidence in electronic commerce;
  - (d) cyber-security;
  - (e) intellectual property;
  - (f) electronic government; and (g) public morals, in particular ethics for young generations.
3. Each Party shall encourage, through existing means available to it, the activities of non-profit organisations in that Party aimed at promoting electronic commerce, including the exchange of information and views.
4. The Parties shall, where appropriate, cooperate in relevant international organisations and fora to contribute to the development of the international framework for electronic commerce.

## **Article 83. Exceptions**

For the purposes of this Chapter, Articles 22, 55 and 56 shall apply mutatis mutandis.

## **Section CHAPTER 9. Investment**

### **Article 84. Scope and Coverage**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to investors of the other Party and to their investments in the Area of the former Party.
2. It is understood that this Chapter shall also apply to measures adopted or maintained by a Party relating to investments made by investors of the other Party in the Area of the former Party prior to the entry into force of this Agreement.
3. In the event of any inconsistency between this Chapter and Chapter 6 with regard to measures by a Party affecting trade in services, Chapter 6 shall prevail to the extent of the inconsistency.

### **Article 85. Definitions**

For the purposes of this Chapter:

- (a) "enterprise" means any entity duly constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, partnership, sole proprietorship, company, joint venture or other association;
- (b) "freely convertible currency" means any currency which is widely traded in international foreign exchange markets and widely used in international transactions;
- (c) "investment" means any kind of asset, particularly:
  - (i) an enterprise or a branch of an enterprise;
  - (ii) shares, stocks or any other kind of equity participation in an enterprise, including rights derived therefrom;
  - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
  - (iv) claims to money and to any performance associated with an enterprise and having an economic value;
  - (v) intangible assets such as intellectual property rights and goodwill;
  - (vi) rights conferred pursuant to law or contract such as concessions, licences, authorisations and permits, including those for cultivation, exploration, extraction and exploitation of natural resources;
  - (vii) rights under contracts, including turnkey, construction, management, production and revenue-sharing contracts; and
  - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as mortgages, liens and pledges; A change in the form of the asset does not affect its character as an investment;
- (d) "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment, liquidation, sale or other disposition of investment;
- (e) "investment made" means an investment which an investor of a Party has established, acquired or expanded in the Area of the other Party;
- (f) "investment of an investor of a Party" means an investment that is owned or controlled, either directly or indirectly, by an investor of the Party;
- (g) "investor of a Party" means:
  - (i) a natural person, who under the law of the Party:

(A) in respect of Japan, is a national of Japan; or  
(B) in respect of Switzerland:  
(aa) is a national of Switzerland; or  
(bb) has the right of permanent residence; or  
(ii) an enterprise constituted or organised under the applicable law of the Party and carrying out substantial business activities in the Area of that Party, that is in the process of making an investment or has made an investment in the Area of the other Party; and  
(h) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form.

## **Article 86. General Treatment and Protection**

1. Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security. Neither Party shall impair by unreasonable or arbitrary measures the management, conduct, operation, maintenance, use, enjoyment, liquidation, sale or other disposition of such investments.

2. Each Party shall observe any written obligation it may have entered into with regard to a specific investment by an investor of the other Party, which the investor could have relied on at the time of establishment, acquisition or expansion of such investment.

## **Article 87. National Treatment**

Each Party shall accord to investors of the other Party and to their investments, in relation to their investment activities, treatment no less favourable than that it accords, in like situations, to its own investors and to their investments.

## **Article 88. Most-favoured-nation Treatment**

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

2. It is understood that the treatment referred to in paragraph 1 does not include treatment accorded to investors of a non-Party and their investments by provisions concerning the settlement of investment disputes between a Party and the non-Party that are provided for in other international agreements.

3. If a Party accords more favourable treatment to investors of a non-Party and their investments by concluding or amending a free trade agreement, customs union or similar agreement that provides for substantial liberalisation of investment, it shall not be obliged to accord such treatment to investors of the other Party and their investments. Any such treatment accorded by a Party shall be notified to the other Party without delay and the former Party shall endeavour to accord to investors of the latter Party and their investments treatment no less favourable than that accorded under the concluded or amended agreement. The former Party, upon request by the latter Party, shall enter into negotiations with a view to incorporating into this Agreement treatment no less favourable than that accorded under such concluded or amended agreement.

## **Article 89. Transfers**

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

- (a) the initial capital and additional amounts to maintain or increase the investments;
- (b) profits, interests, dividends, capital gains, royalties, fees and other current incomes accruing from the investments;
- (c) payments made under a contract, including a loan agreement;
- (d) proceeds from the total or partial sale or liquidation of the investments;
- (e) earnings and other remuneration of personnel engaged from abroad in connection with the investments;
- (f) payments made in accordance with Articles 91 and 92; and
- (g) payments arising out of the settlement of a dispute under Article 94.

2. Each Party shall further ensure that transfers referred to in paragraph 1 may be made in a freely convertible currency. A transfer shall be able to be made at the market rate of exchange prevailing on the date of the transfer.

3. It is understood that paragraphs 1 and 2 are without prejudice to the equitable, non-discriminatory and good faith application by a Party of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) the issuing, trading or dealing in securities;
- (c) criminal or penal offences and the recovery of proceeds of crimes;
- (d) reports or record keeping of transfers of currency or other monetary instruments; or

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

## **Article 90. Reservations**

1. Articles 87, 88 and 96 shall not apply to:

(a) any existing non-conforming measure by a Party as set out in its List of Reservations in Section 1 of Appendix 1 or Section 1 of Appendix 2 to Annex IX, that is maintained, continued, or renewed at any time;

(b) an amendment or modification to any non-conforming measure covered by subparagraph (a) to the extent that the amendment or modification does not decrease the conformity of the measure with Articles 87, 88 and 96; and

(c) any measure adopted or maintained by a Party, in accordance with its List of Reservations in Section 2 of Appendix 1 or Section 2 of Appendix 2 to Annex IX, to the extent that such measures are inconsistent with Articles 87, 88 and 96.

2. In case of an amendment or modification to any existing non-conforming measure as referred to in subparagraph 1(b) or adoption of a measure as referred to in subparagraph 1(c), a Party shall notify the other Party thereof, providing detailed information, prior to the amendment, modification or adoption, or in exceptional circumstances, as soon as possible thereafter.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its List of Reservations set out in Annex IX, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.

4. As part of the review provided for in Article 102, the Parties undertake to review their Lists of Reservations set out in Annex IX with a view to reducing the scope of the reservations therein or removing them.

5. A Party may, at any time, either upon request of the other Party or unilaterally, remove in whole or in part its reservations set out in Annex IX by a written notification to that other Party.

6. Articles 87 and 88 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of the TRIPS Agreement.

7. Articles 87, 88 and 96 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

## **Article 91. Expropriation and Compensation**

1. Neither Party shall expropriate or nationalise in its Area investments of investors of the other Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation") except:

(a) for a purpose which is in the public interest;

(b) in a non-discriminatory manner;

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

(d) against prompt, adequate and effective compensation pursuant to paragraphs 2 to 4.

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

3. The compensation shall be paid without delay and shall include interest at a commercial rate established on a market basis, taking into account the length of time from the date of expropriation to the date of payment. It shall be effectively realisable, freely transferable and freely convertible at the market exchange rate prevailing on the date of expropriation into freely convertible currencies.

4. Without prejudice to Article 94, the investor affected by the expropriation shall have the right, under the law of the Party making the expropriation, to prompt review, by a court of justice, an administrative tribunal or another independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set out in this Article.

## **Article 92. Treatment In Case of Strife**

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

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

## **Article 93. Subrogation**

If an investor of a Party receives payment, pursuant to an insurance, guarantee or indemnity contract, from an insurer

constituted or organised under the law of that Party, the other Party shall recognise the assignment of any right or claim of the investor to the insurer, and the right of the insurer to exercise such right or claim by virtue of subrogation to the same extent as the predecessor in title.

## **Article 94. Settlement of Investment Disputes between an Investor and a Party**

1. For the purposes of this Chapter, "investment dispute" means a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach by the former Party of any obligation under this Chapter with respect to the investor or its investment. This Article shall not apply to disputes arising out of events which occurred prior to the entry into force of this Agreement.
  2. Any investment dispute shall, as far as possible, be settled amicably through consultations between the investor and the disputing Party (hereinafter collectively referred to in this Article as "the disputing parties") at the request of the investor.
  3. If the investment dispute cannot be settled through consultations within six months from the date on which the disputing investor requested such consultations in writing, the disputing investor may submit the investment dispute to international conciliation or arbitration at the following institutions or under the following rules:
    - (a) the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID") established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, on 18 March 1965;
    - (b) the Additional Facility Rules of ICSID, provided that either Party, but not both, is a party to the ICSID Convention; or
    - (c) an ad hoc arbitral tribunal which, unless otherwise agreed upon by the disputing parties, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted on 28 April 1976.
  4. Each Party hereby gives its consent to the submission of an investment dispute by a disputing investor to international conciliation or arbitration referred to in paragraph 3 regarding an investment made.
  5. Notwithstanding paragraph 4, no investment dispute may be submitted to conciliation or arbitration under paragraph 3, if more than five years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, knowledge of the incurred loss or damage referred to in paragraph 1.
  6. A disputing investor may submit the investment dispute to international conciliation or arbitration if:
    - (a) the disputing investor has not initiated any proceedings for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies of the disputing Party; or
    - (b) where the disputing investor has initiated any proceedings for the resolution of the investment dispute before courts of justice or administrative tribunals or agencies of the disputing Party, the disputing investor withdraws the investment dispute from such proceedings.
- For the purpose of withdrawal, a written waiver shall be included in the written request for conciliation or arbitration by which the disputing investor waives any right to initiate or continue before any courts of justice or administrative tribunals or agencies under the law of either Party, any proceeding with respect to any alleged breach of this Chapter. It is understood that a disputing investor may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests while the conciliation or arbitration is pending.
7. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.
  8. The arbitral tribunal shall decide the investment dispute in accordance with this Chapter and applicable rules of international law.
- Where the investment dispute includes a claim based on paragraph 2 of Article 86, the arbitral tribunal shall decide on that claim in accordance with this Chapter and the following:
- (a) the rules of law specified in the pertinent investment contract, or other rules of law the disputing parties may agree upon; or (b) in the absence of rules of law referred to in subparagraph (a):
    - (i) such rules of international law as may be applicable; and
    - (ii) the law of the respondent, including its rules on the conflict of laws.
9. The disputing Party shall notify the other Party in writing of the investment dispute submitted to international conciliation or arbitration no later than 30 days after the date on which it was submitted, and provide that other Party with copies of all pleadings filed in the arbitration.
  10. Upon written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Chapter.
  11. The disputing Party may not assert as a defence its immunity or the fact that the disputing investor has received or will receive, by virtue of an insurance contract, guarantee or indemnity, a compensation covering, in whole or in part, the incurred loss or damage.
  12. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute submitted to international arbitration, unless the disputing Party has failed to abide by and comply with the award

rendered. 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. The decision of arbitration shall be final and binding upon the disputing parties and shall be executed without delay in accordance with the law of the disputing Party.

## **Article 95. General and Security Exceptions**

1. In respect of the making of investments, Articles XIV and XIVbis of the GATS, which are hereby incorporated into and made part of this Agreement, mutatis mutandis, shall apply.
2. Paragraph 1 of Article XIVbis of the GATS shall also apply, mutatis mutandis, to investments made.
3. This Article shall not apply to paragraph 1 of Article 86, and Articles 91 and 92.
4. In exceptional circumstances, where a Party takes a measure pursuant to paragraphs 1 and 2, that Party shall, prior to the entry into force of the measure or as soon as possible thereafter, notify the other Party of the following:
  - (a) the sector and sub-sector or activity affected by the measure;
  - (b) the obligation or provisions of this Agreement affected by the measure;
  - (c) the legal basis of the measure;
  - (d) a succinct description of the measure; and
  - (e) the purpose of the measure.

## **Article 96. Prohibition of Performance Requirements**

For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Article 97. Temporary Safeguard Measures**

1. The Parties endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. A Party may adopt or maintain restrictive measures with regard to cross-border capital transactions as well as payment and transfers relating to investment:
  - (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
  - (b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.
3. Restrictive measures adopted or maintained by a Party under paragraph 2:
  - (a) shall ensure that investors of the other Party are treated as favourably as those of any non-Party;
  - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - (c) shall not exceed those necessary to deal with the circumstances set out in paragraph 2;
  - (d) shall be temporary and eliminated as soon as conditions permit;
  - (e) shall be promptly notified to the other Party; and
  - (f) shall avoid unnecessary damages to the commercial, economic and financial interests of the other Party.
4. Nothing in this Article shall be so construed as to alter the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

## **Article 98. Prudential Measures**

Article VI of Annex VI shall apply to this Chapter, mutatis mutandis.

## **Article 99. Special Formalities**

Nothing in Article 87 shall be so construed as to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of an investment by investors of the other Party, such as compliance with requirements on registration on residency, provided that such formalities do not materially impair the protection afforded by the former Party to investors of the latter Party and investment of the investors pursuant to this Chapter.

## **Article 100. Taxation Measures**

1. The following provisions shall apply to taxation measures of each Party: (a) Articles 87 and 88; and (b) Article 91, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of that Article.



2. For the purposes of subparagraph 1(a), subparagraphs (d) and (e) of Article XIV of the GATS are hereby incorporated into and made part of this Agreement, mutatis mutandis.
3. A Party may not invoke Article 87 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.
4. For the purposes of subparagraph 1(a), Article 94 shall not apply in respect of taxation measures.
5. For the purposes of subparagraph 1(b), Article 94 shall apply in respect of taxation measures.

## **Article 101. Health, Safety and Environmental Measures**

The Parties recognise that it is inappropriate to encourage investment activities by relaxing domestic health, safety or environmental measures or lowering labour standards. To this effect, each Party should not waive or otherwise derogate from such measures and standards as an encouragement for establishment, acquisition or expansion of investments in its Area.

## **Article 102. Review**

1. With a view to further progressive liberalisation of investments, the Parties shall review the legal framework, the investment climate and the flow of investment between their Areas consistent with their commitments under other international agreements on investment not later than three years after the date of entry into force of this Agreement and in regular intervals thereafter.
2. The review of the legal framework referred to in paragraph 1 shall include the review of measures adopted or maintained by a Party pursuant to subparagraph 1(c) of Article 90.

## **Section CHAPTER 10. Competition**

### **Article 103. Measures Against Anticompetitive Activities**

1. Recognising that anticompetitive activities may nullify or impair the benefits of liberalisation of trade and investment and impede the efficient functioning of its market, each Party shall take measures which it considers appropriate against anticompetitive activities, in accordance with its laws and regulations.
2. Any such measures shall be taken in conformity with the principles of transparency, non-discrimination and procedural fairness.
3. For the purposes of this Chapter, "anticompetitive activity" means any conduct or transaction that may be subject to penalties, sanctions or other relief under the competition laws and regulations of either Party. In particular, it includes:
  - (a) private monopolisation, unreasonable restraint of trade and unfair trade practices under the competition laws and regulations of Japan; and
  - (b) unlawful agreements between enterprises and unlawful practices of enterprises having a dominant position under the competition laws and regulations of Switzerland.

### **Article 104. Cooperation on Addressing Anticompetitive Activities**

1. The Parties shall, in accordance with their respective laws and regulations, cooperate on addressing anticompetitive activities, subject to their respective available resources, with the aim of contributing to the effective enforcement of the competition laws and regulations of each Party through the development of a cooperative relationship between the competition authorities of the Parties, thus avoiding or lessening the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws and regulations of each Party.
2. The details and procedures of cooperation under this Article shall be specified in Chapter 3 of the Implementing Agreement.

### **Article 105. Consultations**

After all applicable procedures under Article 104 have been undergone, a Party which considers that there remain adverse trade effects caused by an anticompetitive activity may request the other Party to enter into consultations in the Joint Committee with a view to eliminating such adverse trade effects. The consultations in the Joint Committee shall:

- (a) not examine the appropriateness of the enforcement of the competition laws and regulations by the competition authority of either Party; and
- (b) not infringe upon the independence of the competition authority of either Party in exercising its authority.

### **Article 106. Non-application of Paragraph 1 of Article 5 and Chapter 14**

1. Paragraph 1 of Article 5 and Chapter 14 shall not apply to this Chapter.
2. Chapter 3 of the Implementing Agreement provides for the details and procedures for the exchange of information, including confidential information, under this Chapter.

## **Section CHAPTER 11. Intellectual Property**

### **Article 107. General Provisions**

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of their respective intellectual property protection systems and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.
2. "Intellectual property" referred to in this Chapter means all categories of intellectual property:
  - (a) that are subject of Articles 114 to 121; and/or
  - (b) that are covered by the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.
3. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties at the date of entry into force of this Agreement and any amendment thereto which becomes effective for both Parties, including the following:
  - (a) the TRIPS Agreement;
  - (b) the Paris Convention for the Protection of Industrial Property done at Paris on 20 March 1883, as revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, at London on 2 June 1934, at Lisbon on 31 October 1958, and at Stockholm on 14 July 1967 and as amended on 28 September 1979 (hereinafter referred to as "the Paris Convention");
  - (c) the Patent Cooperation Treaty done at Washington on 19 June 1970, amended on 28 September 1979, modified on 3 February 1984, and on 3 October 2001;
  - (d) the Strasbourg Agreement Concerning the International Patent Classification done at Strasbourg on 24 March 1971, as amended on 28 September 1979;
  - (e) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure done at Budapest on 28 April 1977, and amended on 26 September 1980;
  - (f) the 1991 Act of the International Convention for the Protection of New Varieties of Plants of 2 December 1961 as revised at Geneva on 10 November 1972, on 23 October 1978, and on 19 March 1991 (hereinafter referred to as "the 1991 UPOV Convention");
  - (g) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on 27 June 1989 and amended on 3 October 2006;
  - (h) the Trademark Law Treaty adopted at Geneva on 27 October 1994;
  - (i) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks done at Nice on 15 June 1957, as revised at Stockholm on 14 July 1967, and at Geneva on 13 May 1977, and amended on 28 September 1979;
  - (j) the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods done at Madrid on 14 April 1891;
  - (k) the Berne Convention for the Protection of Literary and Artistic Works done at Berne on 9 September 1886, completed at Paris on 4 May 1896, revised at Berlin on 13 November 1908, completed at Berne on 20 March 1914, revised at Rome on 2 June 1928, at Brussels on 26 June 1948, at Stockholm on 14 July 1967 and at Paris on 24 July 1971 and amended on 28 September 1979 (hereinafter referred to as "the Berne Convention");
  - (l) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961 (hereinafter referred to as "the Rome Convention");
  - (m) the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms done at Geneva on 29 October 1971;
  - (n) WIPO Copyright Treaty adopted in Geneva on 20 December 1996; and (o) WIPO Performances and Phonograms Treaty adopted in Geneva on 20 December 1996 (hereinafter referred to as "the WPPT").
4. In common recognition of the importance of the following multilateral agreements for international efforts to protect intellectual property, each Party seeks to ratify or accede to the following multilateral agreements to which it is not yet a party:
  - (a) the Patent Law Treaty adopted at Geneva on 1 June 2000;
  - (b) the Singapore Treaty on the Law of Trademarks adopted in Singapore on 27 March 2006; and
  - (c) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on 2 July 1999.

## **Article 108. National Treatment**

1. Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.
2. For the purposes of this Article and Article 109, "nationals" shall have the same meaning as in the TRIPS Agreement, and "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

## **Article 109. Most-favoured-nation Treatment**

1. Each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement.
2. Paragraph 1 shall not be so construed as to oblige either Party to accord to the nationals of the other Party any treatment accorded to the nationals of a non-Party by virtue of any agreement on the avoidance of double taxation.

## **Article 110. Enhancement of Efficiency of Procedural Matters**

For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to enhance the efficiency of its administrative procedures concerning intellectual property.

## **Article 111. Acquisition of Intellectual Property Rights**

1. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall ensure that, irrespective of whether an application for the granting or registration of an intellectual property right is filed as a national or as an international application under the applicable international agreements, the procedures for granting or registration of the right, subject to compliance with the substantive conditions for acquisition of the right, are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
2. Each Party shall make its practice regarding the examination of the indications of designated products and services under the classes applied in trademark applications as transparent as possible.

## **Article 112. Transparency**

For the purposes of further promoting transparency in the administration of its intellectual property protection system, each Party shall take appropriate measures available to the extent possible under its laws and regulations to:

- (a) publish information on:
  - (i) applications for and grant of patents;
  - (ii) registrations of utility models and industrial designs;
  - (iii) registrations of trademarks and applications therefor;
  - (iv) registrations of layout-designs of integrated circuits; and
  - (v) registrations of new varieties of plants and applications therefor, and make available to the public information contained in the dossiers thereof;
- (b) make available to the public information on applications for the suspension by the competent authorities of the release of products infringing intellectual property rights as a border measure; and
- (c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with regard to its intellectual property protection system.

## **Article 113. Promotion of Public Awareness Concerning Protection of Intellectual Property**

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

## **Article 114. Copyrights and Related Rights**

1. Without prejudice to the obligations set out in the international agreements to which both Parties are parties, each Party shall, in accordance with its laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and broadcasting organisations for their works, performances, phonograms and broadcasts, respectively.
2. In addition to the protection provided for in paragraph 1, each Party shall grant and ensure protection as provided for in Articles 5 and 6 of the WPPT to performers for their visual performances.
3. Each Party shall ensure that a broadcasting organisation in the Party has at least the exclusive right of authorising the following acts: the fixation, the reproduction of fixations, and the making available to the public of its broadcasts by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.
4. Each Party may, in its national legislation, provide for the same kinds of limitations or exceptions as in Article 16 of the WPPT with regard to the protection of performers for their visual performances and to the protection of broadcasting organisations, to the extent that such limitations and exceptions are compatible with the Rome Convention.
5. Each Party shall ensure that the author has the right, independently of the author's economic rights, and even after the transfer of the said rights, to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his or her honour or reputation.
6. The rights granted to the author in accordance with paragraph 5 shall, after his or her death, be maintained at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the Party in which protection is claimed.
7. The rights granted under paragraphs 5 and 6 shall be granted, *mutatis mutandis*, to performers as regards their live aural or visual performances, or performances fixed in phonograms or audiovisual fixations.
8. Each Party shall ensure that the general term of protection granted for works is the life of the author and at least 50 years after his or her death.
9. Each Party shall ensure that the term of protection for related rights, as well as for copyrights whose term of protection is calculated on a basis other than the life of a natural person, is no less than 50 years:
  - (a) after the authorised publication, or, failing such authorised publication within 50 years after the making of the work, no less than 50 years after the making, for works;
  - (b) after the authorised publication, or, failing such publication within 50 years after the fixation of the phonogram, no less than 50 years after the fixation, for phonograms;
  - (c) after the performance, for performances; or
  - (d) after the broadcast, for broadcasts.
10. For certain categories of works, each Party shall provide that the term of protection is the life of the author and no less than 70 years after his or her death, or no less than 70 years after the authorised publication, or, failing such authorised publication within 70 years after the making of the work, no less than 70 years after the making.
11. A Party may be exempted from its obligations under this Article where the exemptions as provided for in Articles 7 and 7bis of the Berne Convention may apply.
12. Each Party shall ensure non-discriminatory treatment for owners of copyright in the other Party with regard to the enjoyment and the exercise of copyrights, regardless of whether such copyrights are registered under the applicable laws and regulations of the former Party.

## **Article 115. Trademarks**

1. Any sign, or any combination of signs, capable of distinguishing the products or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant products or services, each Party may make eligibility for registration depend on distinctiveness acquired through use. Each Party may require, as a condition of registration, that signs be visually perceptible.
2. Each Party shall protect well-known marks in accordance with Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.
3. The Parties reaffirm the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (hereinafter referred to as "the WIPO") in 1999 in furtherance of protection of well-known marks and the Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001 in furtherance of protection of signs on the Internet.
4. Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for products or services which are

identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. For the purposes of this paragraph, "using" such sign includes, at least, importing and exporting products or packages of products to which the sign is affixed.

5. Paragraph 4 shall also apply if only small quantities of products are imported or exported, as long as the import or export constitutes an infringement of the right conferred by a registered trademark under the laws and regulations of a Party. In case of the use of an identical sign for identical products or services, a likelihood of confusion shall be presumed. The rights described in paragraph 4 shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties making rights available on the basis of use.

## **Article 116. Industrial Designs**

1. Each Party shall ensure that adequate and effective protection is provided to industrial designs, including to designs of a part of an article.

2. Each Party shall ensure that the owner of a protected industrial design has the right to prevent third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design when such acts are undertaken for commercial purposes.

3. Paragraph 2 shall also apply if only small quantities of products are imported or exported, as long as the import or export constitutes an infringement of the right conferred by the protected industrial design under the laws and regulations of a Party.

4. Each Party shall ensure that the term of protection available is no less than 20 years.

## **Article 117. Patents**

1. Subject to paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, including in the field of biotechnology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Each Party may exclude from patentability inventions, the prevention of the commercial exploitation of which within the Party is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals, with the exception of products consisting of a substance or a composition for use in any such method; and

(b) plant and animal varieties other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

4. Each Party shall ensure that a patent confers on its owner exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, using, offering for sale, selling, importing for these purposes or exporting that product; and

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from using the process, and from using, offering for sale, selling, importing for these purposes or exporting at least the product obtained directly by that process.

5. With respect to the patent which is granted for an invention related to pharmaceuticals or plant protection products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for any period during which the patented invention cannot be worked due to marketing approval process.

6. For the purposes of paragraph 5:

(a) "compensatory term of protection" means, for Japan, an extension of a term of patent protection and, for Switzerland, a term specified in a supplementary protection certificate;

(b) "marketing approval" means approval or any other disposition by the competent authorities that is intended to ensure the safety and, where applicable, efficacy of the pharmaceuticals or plant protection products as provided for in the relevant laws and regulations of each Party; and

(c) the length of the compensatory term of protection shall be:

(i) for Japan, equal to the length of extension which the patentee requests, provided that the compensatory term of protection shall not exceed either the length of time during which the patented invention cannot be worked due to marketing approval processes, or a maximum term as provided for in the laws and regulations of Japan. As of the date of entry into force of this Agreement, such maximum term is stipulated as being five years by the relevant law of Japan; and

(ii) for Switzerland, equal to the period which elapsed between the filing date of the patent application and the date of the marketing approval of the product, reduced by a period of five years. The maximum compensatory term shall be at least five years.

## Article 118. New Varieties of Plants

Each Party shall provide the same level of protection for new varieties of all plant genera and species as provided under the 1991 UPOV Convention.

## Article 119. Geographical Indications and Related Indications

1. Each Party shall ensure adequate and effective protection of geographical indications and related indications in accordance with this Article.

2. For the purposes of this Chapter:

(a) "geographical indications" means indications which identify a product as originating in a Party, or a region or locality in that Party, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin; and

(b) "related indications" means:

(i) indications in the designation or presentation of a service that contain or consist of the name of a geographical place of a Party (hereinafter referred to in this Article as "indications of services"); and

(ii) the country name of a Party, the name of a canton of Switzerland, armorial bearings, flags and other State or regional emblems.

3. (a) In respect of geographical indications, each Party shall provide the legal means for interested parties to prevent:

(i) the use of any elements in the designation or presentation of a product that indicate or suggest that the product in question originates in a geographical place other than the true place of origin in a manner which misleads the public as to the geographical origin of the product; (ii) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention; and

(iii) any use of a geographical indication identifying wines for wines or identifying spirits for spirits not originating in the place indicated by the geographical indication in question. Note: Nothing in this Article shall be so construed as to derogate from any obligation of a Party under subparagraph (iii). The Parties may, with respect to subparagraph (iii), provide for enforcement by administrative action instead of judicial procedures.

(b) Each Party shall provide the legal means for interested parties to prevent the use of any indications of services in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

(c) Each Party shall provide the legal means for interested parties to prevent the use of the country name of either Party or the name of a canton of Switzerland for a product or service in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

(d) Each Party shall provide the legal means for interested parties to prevent the use of the geographical indication, the indications of services, the country name of either Party, or the name of a canton of Switzerland, even where the true origin of the products is indicated, or where they are used in translation or accompanied by terms such as "kind", "type", "style", "way", "imitation", "method" or other analogous expressions, if such use falls under subparagraphs (a) to (c). This subparagraph shall also apply to cases where a graphical symbol referring to a geographical place of a Party is used on a product or service in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

(e) (i) Each Party shall ensure that the registration of a trademark which contains or consists of a geographical indication, with respect to products not originating in the territory indicated, is refused or invalidated ex officio if the legislation of the Party so permits or at the request of an interested party, if the use of the indication in the trademark of such products in the Party corresponds to a situation referred to in subparagraph (a)(i), (a)(iii), or (d) insofar as subparagraph (a)(i) or (a)(iii) is applicable.

(ii) Each Party shall ensure that the registration of a trademark which contains or consists of an indication of service, the country name of either Party, or the name of a canton of Switzerland, the use of which corresponds to a situation referred to in subparagraph (b), (c), or (d) insofar as subparagraph (b) or (c) is applicable, is refused or invalidated ex officio if the legislation of the Party so permits or at the request of an interested party, where the trademark misleads the public in a manner as prescribed in the applicable laws and regulations of the Party.

(f) The protection afforded by this Article shall also apply in cases where products originating in a Party are destined for exportation.

(g) (i) Each Party shall, in accordance with its obligations under Article 6ter of the Paris Convention, ensure that armorial bearings, flags and other State emblems of the other Party are not used or registered as trademarks or as elements of trademarks.

(ii) Each Party reaffirms its obligations under paragraph 2 of Article 53 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 which provides that the use by private individuals, societies or firms, of the arms of Switzerland, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

(iii) Each Party shall ensure that armorial bearings, flags and other State or regional emblems of the other Party shall not be used in a manner, as prescribed in applicable laws and regulations of the Party, that misleads the public.

4. In proceedings by the relevant authorities of each Party, whether administrative or judicial, regarding the protection provided for in this Article, designations listed by a Party in Annex X shall serve, without prejudice to action or procedures by the relevant authorities of the other Party, as a source of information that these designations are protected by the former Party as geographical indications as provided for in this Article.

5. (a) The Parties shall, upon request of either Party, review in the Joint Committee Annex X with a view to updating the list by including in Annex X geographical indications which received protection by either Party at its national level. (b) Modifications proposed pursuant to subparagraph (a) shall be incorporated into this Agreement in accordance with paragraph 2 of Article 152.

6. Without prejudice to the rights and obligations set out in the international agreements to which both Parties are parties, paragraphs 3 to 9 of Article 24 of the TRIPS Agreement apply to the provisions of this Article in relation to geographical indications and, mutatis mutandis, to related indications.

## **Article 120. Unfair Competition**

1. Each Party shall provide for effective protection against acts of unfair competition. 2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited: (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the products, the services, or the industrial or commercial activities, of a competitor; (b) false allegations in the course of trade of such a nature as to discredit the establishment, the products, the services, or the industrial or commercial activities, of a competitor; (c) indications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the products or the services, or the manufacturing process of the products; (d) acts of creating confusion with another person's products or business by: (i) using an indication of products or business which is identical or similar to that other person's indication of products or business which is well-known among consumers or other purchasers; or (ii) assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through an electric telecommunication line, products using such indication; (e) acts of using as one's own an indication of products or business which is identical or similar to another person's famous indication of products or business, or acts of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through an electric telecommunication line, products using such indication; (f) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing products which imitate the configuration, excluding configuration which is indispensable for ensuring the function of the products, of another person's products; (g) acts of acquiring or holding a right to use domain names identical or similar to a specific indication of products or services of another person, or acts of using the domain name, with intention to gain unfair profit or intention of causing damage to another person; and (h) acts by an agent or representative of an owner of a right relating to a trademark, without a legitimate reason and the consent of the right-owner, of using a trademark identical or similar to the trademark for products or services identical or similar to those relating to such right; of using such trademark in assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through an electric telecommunication line products which are identical or similar to the products relating to such right; or of using such trademark in providing services which are identical or similar to the services relating to such right. 3. For the purposes of this Article, "indication of products or business" means a name, trade name, trademark, mark, or container or package of products, used in relation to a person's business, or any other indication of a person's products or business. 4. Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.

## **Article 121. Treatment of Test Data In Marketing Approval Procedure**

1. Each Party shall prevent applicants for marketing approval for pharmaceutical products which utilise new chemical entities from relying on or from referring to test or other data submitted to its competent authority by the first applicant for a certain period of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws of each Party. 2. Each Party, when requiring, as a condition for approving the marketing of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either: (a) prevented from relying on or from referring to such data submitted to its competent authority by the first applicant for a period of at least ten years counted from the date of approval of that application; or (b) required generally to submit a full set of test data, even in cases where there was a prior application for the same product, for a period, counted from the date of approval of a prior application, of at least ten years.

## **Article 122. Enforcement – General**

Each Party shall endeavour to: (a) encourage the establishment of public and/or private advisory groups to address issues of counterfeiting and piracy; and (b) enhance internal coordination among, and facilitate joint actions by, its government agencies concerned with enforcement of intellectual property rights, subject to its available resources.

## **Article 123. Enforcement – Border Measures**

1. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, ex officio, of the release of products infringing rights at least to patents, utility models where provided for in its laws and regulations, industrial designs or trademarks, or copyrights or related rights which are destined for importation into, exportation from or transit through, the customs territory of the Party. 2. For the purposes of this Article: (a) "exportation" includes re-exportation; and (b) "transit" means transshipment and customs transit, as defined in the International Convention on the Simplification and Harmonization of Customs Procedures. 3. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, upon request of a right holder, of the release of products infringing rights at least as referred to in paragraph 1, which are destined for importation into, exportation from and, where provided for in its laws and regulations, transit through, the customs territory of the Party. 4. In the case of the suspension pursuant to paragraphs 1 and 3 with respect to importation into, exportation from and, where provided for in the laws and regulations of a Party, transit through, the customs territory of the Party, the competent authorities of the Party suspending the release of the products shall notify the right holder of the name and addresses of the consignor or consignee, and the importer or exporter, as applicable, of the products in question. Such competent authorities shall notify the right holder of the names and addresses of the producer of the products in question, when they find that such information is indicated in the course of customs clearance procedures. 5. Each Party shall ensure that the products, the release of which has been suspended pursuant to paragraphs 1 and 3 and which have been found to be infringing products by the competent authorities, will not be released into free circulation without the consent of the right holder and will be destroyed in accordance with its laws and regulations. 6. Each Party shall ensure that right holders do not have to bear an unreasonable burden because of the fees and the cost of storage and destruction of the products the release of which has been suspended pursuant to paragraphs 1 and 3 and which have been found to be infringing products. 7. The competent authorities of each Party shall enable the right holder to analyse samples of the products the release of which has been suspended pursuant to paragraph 3, as appropriate and to the extent permitted by the laws and regulations of the Party, at the expense of the right holder. 8. Each Party shall adopt simplified procedures, which are to be used in the absence of objections and subject to the terms and conditions provided for in its laws and regulations, for the competent authorities to seize or destroy the products the release of which has been suspended.

## **Article 124. Enforcement – Civil Remedies**

1. Each Party shall ensure that the right holder has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of his or her intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in the infringing activity. 2. For the purposes of this Article, "right holder" shall include holders of interests which are protected under the laws and regulations of each Party preventing acts of unfair competition. 3. Where the right holder claims against the infringer compensation for damages caused by an intentional or negligent infringement of his or her intellectual property rights, an amount calculated, taking into consideration such factors as the following, may be, where applicable, presumed to be the amount of such damages, whether or not actual damages can be calculated: (a) the quantity of the products infringing the right holder's intellectual property rights and actually transferred to third persons, and the amount of profit per unit of products which would have been sold by the right holder if there had not been the act of infringement; (b) the profits earned by the infringer from the act of infringement; or (c) the amount that the right holder would have been entitled to receive for the exercise of his or her intellectual property rights. 4. In cases where it is extremely difficult for the right holder of intellectual property rights to prove the actual economic harm due to the nature of facts concerned, each Party shall ensure that, to the extent possible in accordance with its laws and regulations, its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them.

## **Article 125. Enforcement – Criminal Remedies**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of the following acts committed wilfully and on a commercial scale: (a) infringement of rights to patents, utility models where provided for in its laws and regulations, industrial designs or trademarks, copyrights or related rights, or rights relating to new varieties of plants; (b) infringement of rights to layout-design of integrated circuits; (c) disclosure of undisclosed information provided



for in paragraph 4 of Article 120 to the extent provided for in the laws and regulations of the Party; and (d) the acts of unfair competition provided for in subparagraphs 2(c) to 2(f) of Article 120 and the use of geographical indications and related indications as prescribed in subparagraphs 3(a)(i), 3(a)(ii), 3(b), 3(c), 3(d) insofar as subparagraph 3(a)(iii) is not applicable, 3(g)(i) and 3(g)(iii) of Article 119, to the extent provided for in the laws and regulations of the Party. 2. Importation, exportation or transit of products which constitutes an act referred to in subparagraph 1(a) or 1(d) shall be covered by the criminal procedures and penalties referred to in paragraph 1. Paragraph 2 of Article 123 shall apply to this paragraph. 3. Each Party shall provide for, where permitted by its laws and regulations, stricter or separate penalties to offences listed in subparagraphs 1(a), 1(b) and 1(d) committed in connection with corporate activities or on a commercial scale. 4. Each Party shall ensure that, in cases of infringement committed wilfully and on a commercial scale of rights to patents, utility models where provided in its laws and regulations, industrial designs, trademarks or new varieties of plants, or the acts of unfair competition provided for in subparagraphs 2(c) to 2(f) of Article 120 to the extent provided for in its laws and regulations committed wilfully and on a commercial scale, its competent authorities may institute prosecution ex officio, without the need for a formal complaint by the right holder whose right has been infringed. 5. Each Party shall ensure that, in cases where either (a) infringement of rights to patents or trademarks, or copyrights or related rights, or (b) offence of the customs laws in connection with the infringement of intellectual property rights, is committed by an organised criminal group, its judicial authorities have the authority to confiscate crime proceeds and properties derived from such crime proceeds in accordance with its laws and regulations. 6. Each Party shall provide for criminal penalties to be applied in cases of wilful import conducted on a commercial scale of labels on which a trademark has been applied that is identical to a trademark registered in the Party in respect of certain products, or that is similar to or cannot be distinguished in its essential aspects from such trademark, if such labels are intended to be used on the products for which such trademark is registered or on similar products.

## **Article 126. Internet Service Providers**

1. For the purposes of encouraging Internet service providers to cooperate with right holders in protecting their rights against materials infringing intellectual property rights, each Party shall provide measures to prevent undue liabilities of Internet service providers for the removal of materials that they have put on their Internet websites under contracts with information senders where a right holder claims to the Internet service provider that such materials infringe his or her intellectual property rights, provided that the Internet service provider complies with the procedures to be followed by the parties concerned. 2. Each Party shall enable right holders, who have given effective notification to an Internet service provider of materials that they claim with valid reasons to be infringing their intellectual property rights, to expeditiously obtain from that Internet service provider information on the identity of the information sender.

## **Article 127. Cooperation**

1. The Parties, recognising the growing importance of protection of intellectual property in further promoting trade and investment between them, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property, including by exchanging information on relations of the Parties with non-Parties on matters concerning intellectual property. 2. The Parties shall seek for cooperation on activities relating to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the World Trade Organization and the WIPO. 3. Chapter 14 shall not apply to this Article.

## **Article 128. Sub-committee on Intellectual Property**

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") is hereby established. 2. The functions of the Sub-Committee shall be: (a) reviewing and monitoring the implementation and operation of this Chapter; (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system; (c) reporting its findings and the outcome of its discussions to the Joint Committee; and (d) carrying out other tasks as may be assigned by the Joint Committee. 3. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties. 4. The Sub-Committee shall be: (a) composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties, including those from private sectors, with the necessary expertise relevant to the issues to be discussed; and (b) co-chaired by officials of the Governments of the Parties.

## **Article 129. Security Exceptions**

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is hereby incorporated into and made part of this Agreement, mutatis mutandis.

## **Section CHAPTER 12. Government Procurement**

### **Article 130. Existing Rights and Obligations**

1. The rights and obligations of the Parties in respect of government procurement shall be governed by the Agreement on Government Procurement in Annex 4 to the WTO Agreement (hereinafter referred to as "the GPA"). 2. If the GPA is amended or is superseded by another agreement, "the GPA", for the purposes of this Chapter, shall refer to the GPA as amended or such other agreement, as of the date on which such amendment or other agreement enters into force for both Parties. 3. Chapter 14 shall not apply to this Article.

### **Article 131. Enquiry Points**

Each Party hereby designates the following governmental authority as its enquiry point to facilitate communication between the Parties on any matter regarding government procurement: (a) for Japan, the Ministry of Foreign Affairs; and (b) for Switzerland, the State Secretariat for Economic Affairs.

### **Article 132. Further Negotiations**

1. The Parties will consult in the Joint Committee with a view to increasing mutual understanding of their respective government procurement systems, effectively implementing them and further enhancing and expanding access to the government procurement market of each Party for the suppliers of the other Party. 2. In the event that, after the entry into force of this Agreement, a Party accords to a non-Party additional advantages of access to its government procurement market beyond those accorded to the other Party under the GPA, the former Party shall, upon request of the other Party, enter into negotiations with a view to extending those advantages to the other Party on a reciprocal basis.

## **Section CHAPTER 13. Promotion of a Closer Economic Relationship**

### **Article 133. Basic Principles**

1. The Parties, confirming their willingness to promote a closer economic relationship, shall, whenever the need arises, hold consultations in order to address issues concerning the promotion of trade and investment activities of their business sectors. 2. The Parties shall, in accordance with their respective laws and regulations, cooperate and take appropriate measures to promote a closer economic relationship between themselves for the benefit of their business sectors.

### **Article 134. Sub-committee on Promotion of a Closer Economic Relationship**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish the Sub-Committee on Promotion of a Closer Economic Relationship (hereinafter referred to in this Article as "the Sub-Committee").

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

- (a) discussing ways and means to promote a closer economic relationship between the Parties;
- (b) discussing possibilities to further remove obstacles to trade and investment between the Parties and to facilitate business activities in the Parties;
- (c) discussing possibilities to cooperate at government and business sector levels in the field of bilateral trade and investment promotion activities;
- (d) discussing other issues related to promotion of a closer economic relationship;
- (e) reporting its findings, and making, as needed, recommendations on appropriate measures to be taken by the Parties, to the Joint Committee;
- (f) reviewing, where appropriate, the implementation of the recommendations referred to in subparagraph (e); and
- (g) carrying out other tasks assigned by the Joint Committee.

3. The Sub-Committee:

- (a) shall be composed of government officials of the Parties;
- (b) shall take all its actions by agreement between the Parties;
- (c) may, upon agreement by the Parties, invite representatives of business sectors and other business-related organisations of the Parties with the necessary expertise related to the issues to be discussed; and
- (d) shall be co-chaired by government officials of the Parties.

4. The Sub-Committee shall meet at such time and venue as may be agreed by the Parties.
5. The Sub-Committee shall cooperate with other relevant Sub-Committees with a view to avoiding unnecessary overlap with their work. The Joint Committee shall, if necessary, give instructions to this end.

### **Article 135. Contact Point**

The contact point designated pursuant to Article 149 shall, in regard to the implementation of this Chapter, perform the functions as set forth in Chapter 4 of the Implementing Agreement.

### **Article 136. Non-application of Chapter 14**

Chapter 14 shall not apply to this Chapter.

## **Section CHAPTER 14. Dispute Settlement**

### **Article 137. General Provisions**

The Parties shall at all times endeavour to reach a mutually satisfactory resolution of any matter concerning the interpretation and application of this Agreement through cooperation, expert consultations or other means provided for in this Agreement.

### **Article 138. Scope and Coverage**

1. Unless otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of disputes between the Parties concerning the interpretation or application of this Agreement.
2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.
3. Notwithstanding paragraph 2, once the complaining Party has requested the establishment of an arbitral tribunal under this Chapter or a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement with respect to a particular dispute, the arbitral tribunal or panel selected shall be used to the exclusion of the other procedure for that particular dispute.

### **Article 139. Consultations**

1. A Party may request in writing consultations with the other Party if it considers that a measure applied by that other Party is inconsistent with this Agreement or that any benefit accruing to it directly or indirectly under this Agreement is impaired or nullified by such measure. The Party requesting consultations shall set out the reasons for the request, including identification of the measure at issue and an indication of the legal basis for the complaint.
2. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply promptly and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to a prompt and satisfactory resolution of the matter. In case of a matter concerning perishable products, the other Party shall enter into consultations within 15 days after the date of receipt of the request.

### **Article 140. Good Offices, Conciliation or Mediation**

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time if the Parties agree and, at the request of either Party, be terminated at any time.
2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.
3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings shall be confidential and without prejudice to the rights of either Party in any further proceedings.

### **Article 141. Establishment of Arbitral Tribunals**

1. The complaining Party that requested consultations under Article 139 may address a written request to the Party complained against for the establishment of an arbitral tribunal:
  - (a) if the Party complained against does not enter into such consultations within 30 days, or within 15 days in case of a matter concerning perishable products, after the date of receipt of the request for consultations under that Article; or

(b) if the Parties fail to resolve the matter through such consultations under that Article within 60 days after the date of receipt of the request for such consultations.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

(a) the specific measures at issue; and

(b) the legal basis of the complaint including, if applicable, the provisions of this Agreement alleged to have been breached and any other relevant provisions. The arbitral tribunal may also be requested to propose implementation options, which will be attached to its award.

3. The arbitral tribunal shall consist of three arbitrators with relevant technical or legal expertise.

4. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

5. The Parties shall agree on and appoint the third arbitrator within 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 4.

6. If a Party has not appointed the one arbitrator pursuant to paragraph 4, or if the Parties fail to agree on the third arbitrator pursuant to paragraph 5, the necessary appointments shall be made at the request of either Party by the Secretary-General of the Permanent Court of Arbitration within a further 30 days.

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

## **Article 142. Functions of Arbitral Tribunals**

1. The arbitral tribunal established pursuant to Article 141:

(a) shall examine the matter referred to in the request for the establishment of the arbitral tribunal pursuant to paragraph 2 of Article 141; (b) shall make its award in accordance with this Agreement and applicable rules of international law;

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

(d) shall, if requested by the complaining Party pursuant to paragraph 2 of Article 141, attach to its award suggested implementation options for the Parties to consider in conjunction with Article 145; and

(e) should consult with the Parties, as appropriate, with a view to providing adequate opportunities for the development of a mutually satisfactory resolution.

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

## **Article 143. Proceedings of Arbitral Tribunals**

1. Unless the Parties have agreed otherwise, the arbitral tribunal shall decide on whether its proceedings are to be held in Japan or Switzerland, and the complaining Party shall provide the secretariat services. The language of the proceedings and the documents submitted to and produced by the tribunal, including the award, shall be English.

2. The arbitral tribunal shall meet in closed session. Hearings shall be open to the public, unless either Party objects.

3. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 8 shall be kept confidential.

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

5. Each Party has the right to at least one hearing before the arbitral tribunal as well as the opportunity to provide initial and rebuttal written submissions. 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 an arbitral tribunal for such information.

6. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter.

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

8. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purpose of enabling the Parties to review it. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the afore-mentioned 90 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral

tribunal on the draft award within 15 days after the date of submission of the draft award.

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

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

11. The award of the arbitral tribunal shall be made public.

## **Article 144. Suspension or Termination of Proceedings of Arbitral Tribunals**

1. The Parties may agree to suspend the work of the arbitral tribunal at any time before the issuance of the award for a period not exceeding twelve months following the date of such agreement. If the work of the tribunal has been suspended for more than twelve months, the authority of the arbitral tribunal to examine the dispute shall lapse, unless the Parties agree otherwise.

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

## **Article 145. Implementation of Award**

1. The Party complained against shall promptly comply with the award issued by the arbitral tribunal pursuant to Article 143.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the means and the period of time for implementing the award, taking into account, if applicable, the implementation options attached to the award. If the complaining Party considers the notified means or period of time to be unacceptable, it may request the Party complained against to hold consultations with a view to reaching a mutually satisfactory solution on the matter. If no such solution has been agreed upon within 20 days after the date of receipt of the request, the complaining Party may refer the matter to an arbitral tribunal, which then shall determine a reasonable means or period of time for implementing the award. The determination of the arbitral tribunal shall be presented within 15 days from the referral of the matter to the arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award, it shall notify the complaining Party accordingly within 20 days after the issuance of the award and enter into consultations, with a view to agreeing on mutually satisfactory compensation. If no such compensation has been agreed upon within 20 days after the date of the notification, the complaining Party may notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

4. If the Party complained against has failed to notify the means and the period of time for implementing the award pursuant to paragraph 2 or if the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as specified pursuant to paragraph 2, the complaining Party may notify the Party complained against that it intends to suspend the application of concessions or other obligations under this Agreement.

5. The notification pursuant to paragraph 3 or 4 shall indicate when the suspension of the application of concessions or other obligations under this Agreement shall commence and the application of what concessions or other obligations under this Agreement is to be suspended.

Such suspension shall:

(a) only be implemented at least 30 days after the date of notification;

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

(c) be restricted to benefits equivalent to the level of failure to comply with the award; and

(d) be restricted to the same sector or sectors to which the inconsistency with the provisions of, or the nullification or impairment of a benefit under, this Agreement relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

6. If the Party complained against considers that the requirements for the suspension of the application of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 5 have not been met, it may request consultations with the complaining Party within ten days after the receipt of the notification in accordance with paragraph 3 or 4. The complaining Party shall enter into consultations within ten days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal. The ruling of the arbitral tribunal shall be given within 15 days from that referral. Application of concessions or other obligations under this Agreement shall not be suspended until the arbitral tribunal has issued its ruling.

7. The suspension of the application of concessions or other obligations under this Agreement following notification pursuant to paragraph 3 or 4 shall be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected.

8. A Party may request an arbitral tribunal to rule on the conformity with the award of any implementing measures adopted

after the suspension of the application of concessions or other obligations under this Agreement and, in light of such ruling, whether the suspension should be terminated or modified. The ruling of the arbitral tribunal shall be given within 15 days from the date of such request.

9. The arbitral tribunal under this Article shall, wherever possible, be composed of the arbitrators of the original arbitral tribunal. If any of the arbitrators is not available, that arbitrator shall be replaced by an arbitrator appointed pursuant to paragraphs 4 to 6 of Article 141.

## **Article 146. Expenses**

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

## **Article 147. Other Provisions**

Any time period mentioned in this Chapter may be modified by agreement between the Parties.

# **Section CHAPTER 15. Administration of the Agreement**

## **Article 148. Joint Committee**

1. The Parties hereby establish the Joint Committee which shall be co-chaired by senior officials of the Parties.
2. The functions of the Joint Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Agreement;
  - (b) considering and recommending to the Parties any amendments to this Agreement;
  - (c) supervising and coordinating the work of all Sub- Committees and ad hoc working groups established pursuant to this Agreement;
  - (d) endeavouring to resolve disputes between the Parties about any matter concerning the interpretation or application of this Agreement; (e) adopting the Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin, referred to in Article 24 and Article XXVIII of Annex II, respectively;
  - (f) reviewing and amending, as necessary, the Operational Procedures referred to in subparagraph (e);
  - (g) adopting any necessary decisions for the operation of this Agreement; and
  - (h) carrying out other functions as the Parties may agree or as provided for in this Agreement.
3. The Joint Committee may establish Sub-Committees or ad hoc working groups to assist it in carrying out its functions. The mandate of the Sub-Committees or ad hoc working groups shall be established by the Joint Committee except where specifically provided for in this Agreement.
4. The Joint Committee shall establish its rules of procedures.
5. The Joint Committee shall meet, in principle, every two years at such venue as may be agreed by the Parties. Each Party may, in cases of urgency, request in writing to the other Party that a special meeting of the Joint Committee be held. Upon such request, the Parties shall make every effort to hold the special meeting within 30 days. Notwithstanding paragraph 1, a special meeting can be held at any appropriate level.

## **Article 149. Communications**

1. Each Party shall designate upon entry into force of this Agreement a contact point to facilitate communications between the Parties on any matter relating to this Agreement.
2. Communications referred to in paragraph 1 shall be made in English.

# **Section CHAPTER 16. Final Provisions**

## **Article 150. Tables of Contents and Headings**

The tables of contents and headings of the Chapters and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

## **Article 151. Annexes and Notes**

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

## **Article 152. Amendment**

1. This Agreement may be amended by agreement between the Parties. Such amendment shall be approved by the Parties in accordance with their respective legal procedures and shall enter into force on the date to be agreed on by the Parties.

2. Without prejudice to the legal procedures of each Party with respect to the conclusion and amendment of international agreements, amendments in the following areas may be made by the Governments of the Parties by means of exchange of diplomatic notes:

(a) Annex I, provided that the amendments are made in accordance with the amendment of the Harmonized System, and include no change of the rates of customs duty on imports applied to the originating products of the other Party in accordance with Annex I;

(b) List of Natural Cheeses in paragraph 1 of Attachment 1 to Appendix 1 to Annex I, provided that the amendment is made as a result of the consultation in accordance with paragraph 3 thereof, or made in accordance with paragraph 4 of Attachment 1 to Appendix 1 to Annex I;

(c) Appendices 1, 2 and 3 to Annex II; (d) Appendix 2 to Annex III; or (e) Annex X.

## **Article 153. Entry Into Force**

This Agreement shall enter into force on the first day of the second month following the month in which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 154.

## **Article 154. Termination**

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

## **Article Article**

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement. DONE at Tokyo on this nineteenth day of February in the year 2009, in two originals in the English language. For Japan: For the Swiss Confederation: Doris Leuthard