UNITED ARAB EMIRATES – UKRAINE
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

PREAMBLE

The Government of the United Arab Emirates (hereinafter referred to as the "UAE") and the Government of Ukraine (hereinafter referred to as "Ukraine");

hereinafter being referred to individually as a "Party" and collectively as "the Parties";

RECOGNISING the strong economic and political ties between the UAE and Ukraine, and wishing to strengthen these links through the creation of a free trade area, thus establishing close and lasting relations;

DETERMINED to build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

CONSCIOUS of the dynamic and rapidly changing global environment brought about by globalisation and technological progress that presents various economic and strategic challenges and opportunities to the Parties;

DETERMINED to develop and strengthen their economic and trade relations through the liberalisation and expansion of trade in goods and services in their common interest and for their mutual benefit;

AIMING to promote the transfer of technology and expand trade;

CONVINCED that the establishment of a free trade area will provide a more favourable climate for the promotion and development of economic and trade relations between the Parties;

AIMING to facilitate trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

DETERMINED to support growth and development of micro, small and medium-sized enterprises by enhancing their ability to participate in, and benefit from, the opportunities created by this Agreement;

AIMING to establish a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment;

RECOGNISING their inherent right to regulate and resolved to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, the integrity and stability of their financial systems, and public morals, in accordance with the rights and obligations provided in this Agreement;

HAVE AGREED, in pursuit of the above, to conclude the following free trade agreement, which shall hereinafter be called the Comprehensive Economic Partnership Agreement ("CEPA") (hereinafter referred to as "this Agreement"):

CHAPTER 1
INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1: General Definitions

For the purposes of this Agreement, and unless otherwise specified:

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

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

customs authority or customs authorities means:

(a) for the UAE, the Federal Authority for Identity, Citizenship, Customs & Port Security, or its successor;

(b) for Ukraine, the State Customs Service of Ukraine or its successor;

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

days means calendar days;

DSU means the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 to the WTO Agreement;

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

GATT 1994 means the General Agreement on Tariffs and Trade 1994 contained in Annex 1A to the WTO Agreement;

good refers to any merchandise, product, article, or material;

GPA means the Agreement on Government Procurement contained in Annex 4 to the WTO Agreement;

Harmonized System (HS) means the Harmonized Commodity Description and Coding System, including its General Rules for the Interpretation, Section Notes, Chapter Notes and Subheading Notes;

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

Joint Committee means the Joint Committee established pursuant to Article 17.1 (Joint Committee) of this Agreement;

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

person means either a natural person or a juridical person;

natural person of a Party means a national or a permanent resident of the Party according to its respective legislation;

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

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

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

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures contained in Annex 1A to the WTO Agreement;

TBT Agreement means the Agreement on Technical Barriers to Trade contained in Annex 1A to the WTO Agreement;

territory means:

(a) for the UAE, its land territories, internal waters, including its Free Zones, territorial sea, including, the seabed, and subsoil thereof, and airspace over such territories and waters, as well as the contiguous zone, the continental shelf and exclusive economic zone, over which the UAE has sovereignty, sovereign rights or jurisdiction as defined in its laws, and in accordance with the international law;

(b) for Ukraine, its land territory, air space, internal waters and territorial sea, its exclusive economic zone and its continental shelf as determined by its national law and consistent with the international law;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;

WTO means the World Trade Organization; and

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

Article 1.2: Objectives

1. The Parties hereby establish a free trade area by means of this Agreement and in conformity with Article XXIV of the GATT 1994 and Article V of the GATS.

2. The objectives of this Agreement include *inter alia*:

(a) to increase and enhance economic cooperation between the Parties and raise the living standards of their people;

(b) to reduce and/or eliminate difficulties and restrictions on trade in goods and to progressively liberalize trade in services;

(c) to promote, through the expansion of reciprocal trade, the harmonious development of the economic relations between the Parties;

(d) to contribute by the removal of barriers to trade, to the harmonious development and expansion of world trade;

(e) to promote bilateral trade and investments;

(f) to strengthen the development of digital economy; and

(g) to provide fair conditions of competition in trade between the Parties.

Article 1.3: Customs Unions and Free Trade Areas

1. This Agreement shall not preclude the maintenance or establishment of customs unions, free trade areas, or arrangements for frontier trade, insofar as they are in accordance with the provisions of Article XXIV of the GATT 1994 and with the Understanding on the Interpretation of Article XXIV of the GATT 1994.

2. Upon request of either Party, consultations between the Parties shall take place within the Joint Committee in order for the Parties to inform each other and discuss agreements on establishing customs unions or free trade areas, or arrangements for frontier trade.

Article 1.4: Relation to Other Agreements

1. This Agreement shall in no way prejudice the obligations of the Parties arising from their participation in regional or sub-regional unions and entities, multilateral treaties as well as in

international organisations.

2. The Parties reaffirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party.

3. In the event of any inconsistency between this Agreement and other agreements to which both Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

Article 1.5: Regional and Local Governments

1. Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities and by non-governmental bodies in the exercise of governmental powers delegated by central, regional and local governments and authorities within its territories.

2. This provision is to be interpreted and applied in accordance with the principles set out in paragraph 12 of Article XXIV of the GATT 1994 and paragraph 3 of Article I of the GATS.

Article 1.6: Transparency

1. Each Party shall, to the extent possible, publish or otherwise make publicly available their laws, regulations, administrative rulings of general application, as well as their respective international agreements that may affect the operation of this Agreement.

2. Without prejudice to Article 1.7, each Party shall respond within a reasonable period of time to specific questions and provide, upon request, information to each other on the matters referred to in paragraph 1.

Article 1.7: Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party.

2. Nothing in this Agreement shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement of the Party, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.

CHAPTER 2
TRADE IN GOODS

Section A: Common Provisions

Article 2.1: Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties and to progressively liberalise trade in goods in accordance with the provisions of this Agreement.

Article 2.2: Scope

Except as otherwise provided in this Agreement, this Chapter shall applies to trade in goods originating in the territory of the Parties falling within Chapters 1 to 97 of the Harmonized Commodity Description and Coding System ("the Harmonized System" or "HS").

Article 2.3: National Treatment on Internal Taxation and Regulations

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

Article 2.4: Classification and Valuation of Goods

1. The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonized System.

2. Each Party shall ensure that the transposition of its schedule of tariff commitments into a new version of the Harmonized System does not afford less favourable treatment to an originating good of the other Party set out in Annex 2A (Tariff Schedule of Ukraine) and in Annex 2B (Tariff Schedule of the UAE).

3. A Party may introduce new tariff splits, provided that the preferential conditions applied in the new tariff splits are not less preferential than those applied originally.

4. The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994, *mutatis mutandis.*

Article 2.5: Customs Duty

A customs duty includes any duty or charge of equivalent effect imposed in connection with the importation or exportation of goods, including any form of surtax or surcharge in connection with such importation or exportation, but does not include any:

(a) internal taxes or other internal charges imposed in accordance with Article III of the GATT 1994;

(b) antidumping or countervailing duties applied in accordance with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, or the Agreement on Safeguards in Annex 1A to the WTO Agreement; and

(c) fees or other charges imposed in accordance with Article 2.8.

Article 2.6: Import and Export Restrictions

Unless otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.

Article 2.7: Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement[1], which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Before applying any new or modified import licensing procedure, a Party shall publish it in such a manner as to enable governments and traders to become acquainted with it, including through publication on an official government internet site. Upon request of the other Party, the Party shall exchange information concerning its implementation within a reasonable period.

[1] For the purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in this Agreement.

Article 2.8: Fees and Other Charges

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

Article 2.9: Export Subsidies and Measures of Equivalent Effect

Upon entry into force of this Agreement, neither Party shall maintain, introduce or reintroduce export subsidies or other measures with equivalent effect on any good destined for the territory of the other Party, including agricultural products.

Article 2.10: Freedom of Transit

Each Party shall ensure freedom of transit traffic for goods originating in the territory of the other Party, in accordance with Article V of GATT 1994.

Article 2.11: State Trading Enterprises

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994.

Article 2.12: Non-Tariff Measures

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

2. Each Party shall ensure that its laws, regulations, procedures and administrative rulings relating to non-tariff measures are not prepared, adopted or applied with a view to creating unnecessary obstacles to trade with the other Party.

3. If a Party considers that a non-tariff measure of the other Party is an unnecessary obstacle to trade, that Party may nominate such a non-tariff measure for review by the Subcommittee on Trade in Goods and Rules of Origin by notifying the other Party at least 30 days before the date of the next scheduled meeting of the Subcommittee on Trade in Goods and Rules of Origin. The Subcommittee shall immediately review the measure with a view to securing a mutually agreed solution to the matter.

Section B: Reduction and/or Elimination of Customs Duties

Article 2.13: Customs Duties on Imports

1. Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on the goods originating in the other Party in accordance with its Tariff Schedule included in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE) respectively.

2. The base rate of customs duties on imports, to which the successive reductions are to be applied under paragraph 1, shall be the most-favoured-nation ("MFN") rate of customs duty applied on 1 January 2023 as specified in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE) respectively.

3. Except as otherwise provided in this Agreement, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good of the other Party.

4. If, at any moment following the date of entry into force of this Agreement, a Party reduces its applied MFN customs duty rate, that duty rate shall apply as base rate if and for as long as it is lower than the customs duty rate calculated in accordance with its Tariff Schedule in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE) respectively.

5. Reduced duties calculated in accordance with paragraph 1 shall be rounded to the first decimal place or, in the case of specific duties, to the second decimal place using common arithmetical principles.

6. Except as otherwise provided in this Chapter, including as indicated in the Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE), the Parties shall abolish any charges having an equivalent effect to customs duties in trade between them on imports of goods originating in the UAE or in Ukraine upon the entry into force of this Agreement.

Article 2.14: Acceleration or Improvement of Tariff Commitments

1. Upon request of a Party, the other Party shall consult with the requesting Party to consider accelerating or broadening the scope of the elimination of customs duties as set out in their Tariff Schedules in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE). Following such consultations, a decision by the Joint Committee on the acceleration or the broadening of the scope of the reduction or elimination of a customs duty on a good shall supersede any duty rate or staging category determined pursuant to the respective Party's Schedule included in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE).

2. Nothing in this Agreement shall prohibit a Party from unilaterally accelerating or broadening the scope of the elimination of customs duties set out in its Tariff Schedule in Annex 2A (Tariff Schedule of Ukraine) or Annex 2B (Tariff Schedule of the UAE) on

originating goods. Any such unilateral acceleration or broadening of the scope of the elimination of customs duties shall not permanently supersede any duty rate or staging category determined pursuant to its respective Tariff Schedules nor serve to waive that Party's right to impose, at a later time, the duty rate or staging category that is determined for that later time by their respective Tariff Schedules.

Article 2.15: Exports Duties and Charges Having Equivalent Effect

Except as otherwise provided in Annex 2C (Exceptions to Article 2.15 on Export Duties and Charges of Equivalent Effect), each Party may apply duties, taxes or charges having equivalent effect, on exports, in accordance with their rights and obligations under the WTO.

Article 2.16: Administration and Implementation of Tariff-Rate Quotas

1. Each Party shall administer its Tariff Rate Quotas ("TRQs") set out respectively in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE) in a manner that is transparent, non-discriminatory, and the least-burdensome to trade.

2. For the purpose of the implementation of paragraph 1, the Party which provides the TRQ according to its Tariff Schedule shall publish, upon the entry into force of the Agreement, a notice that should be made available to the public on the procedures and methodologies for the administration of the TRQ.

Article 2.17: Subcommittee on Trade in Goods and Rules of Origin

1. The Parties herby establish a Subcommittee on Trade in Goods and Rules of Origin, comprising representatives of each Party.

2. The Subcommittee shall meet upon request of a Party or the Joint Committee to consider any matter arising under this Chapter.

3. The Subcommittee's functions shall include, *inter alia*:

(a) monitoring the implementation and administration of this Chapter;

(b) promoting trade in goods between the Parties, including through consultations on broadening and accelerating the reduction or elimination of customs duties under this Agreement and other issues as appropriate;

(c) addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, when appropriate, referring such matters to the Joint Committee for its consideration;

(d) recommending to the Joint Committee any amendments to this Chapter, Chapter 3 (Rules of Origin), or Chapter 4 (Customs Procedures and Trade Facilitation);

(f) considering any other matter referred to it by a Party relating to the implementation and administration by the Parties of this Chapter, Chapter 3 (Rules of Origin), or Chapter 4 (Customs Procedures and Trade Facilitation);

(g) exchanging data on trade in goods between the Parties on periodical basis starting one year after the entry into force of this Agreement; and

(h) considering any other matter arising under this Chapter, Chapter 3 (Rules of Origin), or Chapter 4 (Customs Procedures and Trade Facilitation) as may be agreed by the Parties.

CHAPTER 3
RULES OF ORIGIN

Section A: Origin Determination

Article 3.1: Definitions

For the purposes of this Chapter:

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

customs value refers the value as determined in accordance with the Customs Valuation Agreement;

Chapters, **headings** and **subheadings** mean the Chapters (two-digit codes), the headings (four-digit codes) and the subheadings (six-digit codes) used in the nomenclature of the Harmonized System;

classified refers to the classification of a product or material under a particular heading;

competent authority refers to:

(a) for Ukraine, the State Customs Service of Ukraine or any other agency notified from time to time; and

(b) for the UAE, to the Ministry of Economy or any other agency notified from time to time;

consignment means the products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

customs authority refers to:

(a) for Ukraine, the State Customs Service of Ukraine; and

(b) for the UAE, the Federal Authority for Identity and Citizenship, Customs and Port Security;

ex-works price refers to the price paid for the product ex-works to the manufacturer in a Party where the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;

fungible material or **fungible good** refers to material or good that is of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another;

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

good refers to the definition of goods as stated in Article 1.1 (General Definitions);

manufacture refers to any kind of working or processing, including assembly or specific operations;

material refers to any ingredient, raw material, compound or part, etc., used in the production of goods;

non-originating good refers to a good that does not qualify as originating under this Chapter;

non-originating material (NOM) refers to any materials whose country of origin is a country other than the Parties (imported non-originating), any materials whose origin cannot be determined (undetermined origin) or a material that does not qualify as originating under this Chapter;

originating goods / originating material refers to goods or materials that qualify as originating under this Chapter;

person of a Party refers to the definition of "person" in Article 1.1 (General Definitions);

product refers to goods obtained by growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, extracting or manufacturing, even if it is intended for later use in another manufacturing operation;

production refers to growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, manufacturing, processing, assembling or disassembling a good;

territory[ies] refers to the definition of "territory" in Article 1.1 (General Definitions);

value of non-originating materials refers to the customs value at the time of importation of the non-originating materials used, or, if this is unknown and cannot be ascertained, the first ascertainable price paid for the materials in a Party.

Article 3.2: Originating Goods

For the purposes of implementing this Agreement, goods shall be considered as originating in the territory of a Party, if:

(a) goods are wholly obtained there according to Article 3.3; or

(b) goods are not wholly obtained entirely there, provided that the good has undergone sufficient transformation according to Article 3.4; or

(c) goods produced in the territory of a Party exclusively from materials that qualify as originating according to this Agreement;

and the goods satisfy all other applicable requirements of this Chapter.

Article 3.3: Wholly Obtained Goods

For the purposes of this Agreement, the following goods shall be considered as being wholly obtained in the territory of a Party:

(a) plant and plant products grown, collected and harvested there;

(b) live animals born and raised there;

(c) products obtained from live animals there;

(d) mineral products and natural resources extracted or taken from that Party's soil, subsoil, waters, seabed or beneath the seabed;

(e) products obtained from hunting, trapping, collecting, capturing, fishing or aquaculture conducted there;

(f) products of sea fishing and other marine products taken from outside its territorial waters of the Parties by a vessel and/or produced or obtained by a factory ship registered, recorded, listed or licensed by a Party and flying its flag;

(g) products, other than products of sea fishing and other marine products, taken or extracted from the seabed, ocean floor or the subsoil of the continental shelf or the exclusive economic zone of either of the Parties, provided that the Party or Person of a Party has the right to exploit such seabed, ocean floor, or subsoil in accordance to the international law;

(h) used articles collected there which can no longer perform their original purpose nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;

(i) waste or scrap resulting from utilisation, consumption or manufacturing operations conducted there, fit only for recovery of raw materials;

(j) products produced or obtained there exclusively from product referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

Article 3.4: Sufficient Working or Production

1. For the purposes of Article 3.2(b), a good shall be considered to have undergone sufficient transformation and shall be deemed to be originating if the good satisfy any of the following:

(a) change in Tariff Heading (CTH), which means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four (04)-digit level; or

(b) the total value of all the non-originating materials used (Max-NOM) does not exceed 65% of the ex-works price of the final good.

2. Notwithstanding paragraph 1, if the good is included in the Product Specific Rules (PSR) list in Annex 3A (Product Specific Rules), then the good shall satisfy the specific rule detailed therein.

Article 3.5: Intermediate Goods

For a non-originating material that undergoes sufficient production in the territory of a Party as provided in Article 3.4 the resulting good shall be considered as originating and no account shall be taken of the non-originating material contained therein if such good is used in the subsequent production of another good.

Article 3.6: Accumulation

1. An originating good of a Party which is used in the working or production in the territory of the other Party as material for finished goods shall be deemed as a material originating in the territory of the latter Party where the working or processing of the finished goods has taken place.

2. The Joint Committee may agree to review this Article with a view to providing for other forms of accumulation for the purposes of qualifying goods as originating goods under this Agreement.

Article 3.7: Tolerance

1. Notwithstanding Article 3.4, a good shall be considered to have undergone a change in tariff classification if the value of all non-originating materials that are used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 15% of the ex-works price of the good.

2. Paragraph 1 shall not apply if the value of non-originating materials used in the production of the good exceeds any of the percentages for the maximum value of non-originating materials as specified in the requirements set out in this Chapter.

3. Paragraph 1 shall not apply to products falling within Chapters 50 through 63 of the Harmonized System (refer to Rule 9 of the headnotes to Annex 3A (Product Specific Rules)).

Article 3.8: Insufficient Operations

1. Whether or not the requirements of Article 3.4 are satisfied, a good shall not be considered to be originating in the territory of a Party if the following operations are undertaken exclusively by itself or in combination in the territory of that Party:

(a) operations to ensure the preservation of products in good condition during transportation and storage such as drying, freezing, ventilation, chilling, etc;

(b) sifting, classifying, washing, cutting, slitting, bending, coiling or uncoiling, sharpening, simple grinding, slicing;

(c) cleaning, including removal of oxide, oil, paint or other coverings;

(d) simple painting and polishing operations;

(e) testing or calibration;

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

(g) simple mixing of goods, whether or not of different kinds;

(h) simple assembly of parts of products to constitute a complete good or disassembly of products into parts;

(i) changes of packing, unpacking or repacking operations, and breaking up and assembly of consignments;

(j) affixing or printing marks, labels, logos and other similar distinguishing signs on goods or their packaging;

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

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

(m) slaughter of animals; and

(n) operations to colour sugar or form sugar lumps.

Article 3.9: Neutral Elements

In order to determine whether a good originates, the following materials used in the production of a good shall be treated as originating material, irrespective of whether such material is originating:

(a) energy and fuel;

(b) plant and equipment;

(c) machines, tools; and

(d) other goods which do not enter into and which are not intended to enter into the final composition of the good.

Article 3.10: Accessories, Spare Parts, Tools

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

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

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

Article 3.11: Unit of Qualification

The unit of qualification for the application of the provisions of this Chapter shall be the particular product, which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. Accordingly, it follows that:

(a) when a product composed of a group or assembly of articles is classified under a single heading, the whole constitutes the unit of qualification;

(b) when a consignment consists of a number of identical products classified under the same heading, each product shall be taken individually into account when applying the provisions of this Chapter.

Article 3.12: Packaging Materials and Containers

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified together with the good, according to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification as set out in Article 3.4.

2. Packing materials and containers in which a good is packed for shipment are disregarded in determining the origin of that product.

Article 3.13: Fungible Goods and Materials

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

2. Each Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the Party that selected the inventory management method.

Article 3.14: Sets of Goods

Sets, as defined in General Rule 3 of the Harmonized System (HS), shall be regarded as originating when all component goods are originating. However when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of non-originating products does not exceed 20% of the ex-works price of the set.

Section B: Territoriality and Transit

Article 3.15: Principle of Territoriality

1. The conditions for acquiring the originating status set out in Article 3.2 must be fulfilled without interruption in the territory of one or both of the Parties.

2. Where originating goods are exported from the territory of a Party to a non-Party, and returned to the exporting Party, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those exported; and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that non-Party or while being exported.

Article 3.16: Outward Processing

1. Notwithstanding Article 3.15, the acquisition of originating status set out in Article 3.2 shall not be affected by working or processing done outside a Party on materials exported from a Party and subsequently re-imported there, provided:

(a) the said materials are wholly obtained in any of the Parties or have undergone working or processing beyond the operations referred to in Article 3.8 prior to being exported; and

(b) it can be demonstrated to the satisfaction of the customs authorities that:

(i) the re-imported goods have been obtained by working or processing of the exported materials;

(ii) the total added value acquired outside a Party by applying the provisions of this Article does not exceed 15 % of the ex-works price of the end product for which originating status is claimed.

(c) the conditions set out in Article 3.7 shall not apply to the said material as referred to in subparagraph (a) when determining the origin of the final product.

2. For the purposes of applying the provisions of paragraph 1, "total added value" shall be taken to mean all costs arising outside the Parties, including the value of the materials incorporated there. However, where, a rule in Article 3.4 setting a maximum value for all the non-originating materials incorporated in the territory of the exporting Party is applied, the total value of the non-originating materials incorporated in the territory of the Party concerned, taken together with the total added value acquired outside this Party resulting from applying the provisions of this Article, it shall not exceed the stated percentage in the Article 3.4.

3. Any working or processing of the kind covered by the provisions of this Article and done outside the exporting Party shall be done under the outward processing arrangements, or similar arrangements.

Article 3.17: Transit and Transhipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported directly to the importing Party without passing through the territory of a non-Party.

2. Notwithstanding paragraph 1, each Party shall provide that an originating good retains its originating status if transited or stored in a temporary warehousing through one or more intermediate non-Parties, provided that the good:

(a) remains under customs control in the territory of a non-Party; and

(b) has not undergone any operation there other than unloading, reloading, repackaging, split from bulk, labelling or any operation required to keep them in good condition.

3. An importer shall upon request supply appropriate evidence to the customs authority of the importing Party to confirm that the conditions set out in paragraph 2 have been fulfilled by the production of:

(a) a single or combined transport document covering the passage from the exporting Party through the country of transit; or

(b) a non-manipulation certificate issued by the customs authorities of the country of transit; or

(c) failing these, any substantiating documents.

Article 3.18: Exhibitions

1. Products sent from an exporting Party for exhibition in a non-Party and sold during or after the exhibition into a Party shall benefit from preferential tariff treatment under this Agreement on the condition that the products meet the requirements of the rules of origin under this Agreement and provided that it is shown to the satisfaction of the relevant competent authorities of the importing Party that:

(a) an exporter has dispatched those products from the territory of the exporting Party to the country where the exhibition is held and has exhibited them there;

(b) the exporter has sold the goods or transferred them to a consignee in the importing Party; and

(c) the products have been shipped during the exhibition or immediately thereafter to the importing Party in the state in which they were sent for exhibition.

2. For the purposes of implementing the provisions of paragraph 1, the proof of origin must be presented to the relevant competent authorities of the importing Party. The name and address of the exhibition must be indicated thereon. A certificate issued by the relevant competent authority of the Party where the exhibition took place together with supporting documents of origin prescribed in Article 3.21 may be required.

3. Paragraph 1 shall apply to any trade, agricultural or crafts exhibition, fair or similar show or display in shops or business premises with the view to the sale of foreign products and where the products remain under customs control during the exhibition.

Article 3.19: Free Economic Zones or Free Zones

1. Both Parties should ensure that originating goods traded under cover of a proof of origin which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.

2. Goods produced or manufactured in a free zone situated within a Party, should be considered as originating goods in that Party when exported to the other Party provided that the treatment or processing is in conformity with the provisions of this Chapter and supported by a proof or origin.

Article 3.20: Third Party Invoicing

1. The customs authority of the importing Party shall not reject a certificate of origin prescribed in Article 3.21 only for the reason that the invoice was not issued by the exporter or producer of a good provided that the good meets the requirements in this Chapter.

2. The exporter of the goods can indicate "third party invoicing" and such information as the name and country of registration of the company issuing the invoice shall appear in the appropriate field as detailed in Annex 3B (Certificate of Origin) and Annex 3C (Specimens of Movement Certificate EUR.1 and Application For a Movement Certificate EUR.1).

Section C: Origin Certification

Article 3.21: Proof of Origin

1. Goods originating in a Party shall, on importation into the other Party, benefit from preferential tariff treatment under this Agreement on the basis of a Proof of Origin.

2. Any of the following shall be considered as a Proof of Origin:

(a) a paper format certificate of origin in soft or hard copy issued by a competent authority as per Article 3.22;

(b) an Electronic Certificate of Origin (E-Certificate) issued by a competent authority and exchanged by a mutually developed electronic system as per Article 3.23;

(c) an origin declaration made out by an approved exporter as per Article 3.24.

3. Each Party shall provide that a Proof of Origin which shall be completed in the English language and remains valid for 12 months from the date on which it is issued.

Article 3.22: Certificate of Origin in Paper Format

1. A Certificate of Origin in paper format shall:

(a) for the UAE to be in a standard A4 white paper issued as per the attached Form set out in Annex 3B (Certificate of Origin), and for Ukraine to be issued as per the attached Form set out in Annex 3C (Specimens of Movement Certificate EUR.1 and Application For a Movement Certificate EUR.1);

(b) comprise one original and two copies. The original shall be forwarded by the exporter to the importer for submission to the customs authority of the importing Party. The first copy of Certificate of Origin shall be retained by the competent authority of the exporting Party. The second copy of Certificate of Origin shall be retained by the exporter;

(c) cover one or more goods under one consignment; and

(d) be in a printed format.

2. A Certificate of Origin in paper format shall bear an official signature, a seal of the competent authority and a unique serial reference number separately given by each place or office of issuance.

3. An authentication mechanism, such as QR code or a secured website, shall be included in the Certificate of Origin in paper format for the certificate to be deemed as an original certificate.

4. Certificate of Origin in paper format shall be issued by the competent authority and made available to the exporter as soon as actual exportation has been effected or ensured.

Article 3.23: E-Certificate and Electronic Data Origin Exchange System

1. Upon the notification from one Party to the other Party expressing its readiness to implement Article 3.21.2. (b), all the technical issues related to such implementation (issuance,

transmission, submission and verification of E-Certificate) shall be agreed upon and implemented by the competent authorities of both Parties.

2. An authentication mechanism of the electronic Certificates of Origin, such as QR code or a secured website, shall be included in the certificate for the certificate to be deemed as an original certificate.

Article 3.24: Origin Declaration

1. For the purposes of Article 3.21.2. (c) the Parties shall, within 12 months from the date of entry into force of this Agreement, implement the provisions allowing each competent authority to recognise an Origin Declaration made by an approved exporter.

2. The customs authority or competent authority of the exporting Party may authorise any exporter, (hereinafter referred to as "approved exporter"), who exports goods under this Agreement, to make out Origin Declarations, a specimen of which appears in Annex 3D (Origin Declaration Pursuant to Article 3.24), irrespective of the value of the goods concerned, in accordance with appropriate conditions in the respective legislation of the exporting Party.

3. An exporter seeking such authorisation must offer to the satisfaction of the customs authority or competent authority all guarantees necessary to verify the originating status of the goods as well as the fulfilment of the other requirements of this Chapter.

4. The customs authority or competent authority of the exporting Party may grant the status of approved exporter, subject to any conditions which they consider appropriate.

5. The customs authority or competent authority shall grant to the approved exporter a customs authorisation number which shall appear on the Origin Declaration.

6. The customs authority or competent authority of the exporting Party shall share information on structure of authorisation number of approved exporters or publish the list of approved exporters, and shall periodically update it, when necessary.

7. An Origin Declaration the text of which appears in Annex 3D (Origin Declaration Pursuant to Article 3.24) shall be made out by the approved exporter by typing, stamping or printing the Declaration on the invoice, the delivery note or another commercial document which describes the products concerned in sufficient detail to enable them to be identified. The Declaration may also be hand-written. If the Declaration is hand-written, it shall be written in permanent ink in legible printed characters.

8. The approved exporter making out an Origin Declaration shall be prepared to submit at any time, at the request of the customs authority of the exporting Party, all appropriate documents proving the originating status of the goods concerned, as well as the fulfilment of the other requirements of this Chapter.

Article 3.25: Application for Certificate of Origin

1. Certificates of Origin in Paper Format or E-Certificate shall be issued by the competent authority of the exporting Party, either upon an electronic application or an application in paper form, having been made by the exporter or under the exporter's responsibility by his or her authorized representative, in accordance with the domestic regulations of the exporting Party.

2. The exporter applying for the issuance of the Certificate of Origin shall be prepared to submit at any time, at the request of the competent authority of the exporting Party, all appropriate documents proving the originating status of the goods concerned, as well as the fulfilment of the other requirements of this Chapter.

3. The Certificate shall be issued if the goods to be exported can be considered as products originating in the exporting Party in accordance with Article 3.2.

Article 3.26: Examination of Application for a Certificate of Origin

For the purpose of issuing a Certificate of Origin in paper form or E-Certificate, the competent authority shall, to the best of its competence and ability, carry out proper examination in accordance with the laws and regulations of the exporting Party.

Article 3.27: Importation by Instalments

Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System (HS) falling within Sections XVI and XVII or Headings 7308 and 9406 of the HS are imported by instalments, a single proof of origin for such products shall be submitted to the customs authorities upon importation of the first instalment.

Article 3.28: Certificate of Origin Issued Retrospectively

1. Notwithstanding Article 3.22.4, Certificate of Origin in paper format and E-Certificate may exceptionally be issued after exportation of the products to which it relates if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the competent authorities that the Certificate was issued but was not accepted at importation for technical reasons; or

(c) the Certificate issued at the time of exportation is returned by exporter to the competent authorities because of errors or involuntary omissions or special circumstances.

2. In exceptional cases where the Certificate has not been issued prior to or at the time of export, due to involuntary errors or omissions or other valid causes, the Certificate may be issued retroactively, in which case it is necessary to indicate "ISSUED RETROSPECTIVELY" in the appropriate field as detailed in Annex 3B (Certificate of Origin) or Annex 3C (Specimens of Movement Certificate EUR.1 and Application For a Movement Certificate EUR.1).

3. The provisions of this Article shall be applied to goods, which comply with the provisions of this Agreement, and which on the date of its entry into force, are either in transit or are in the territory of the Parties in temporary storage under customs control. This shall be subject to the submission to the customs authorities of the importing Party, within six months from the said date, of the Certificate of Origin issued retrospectively by the Competent Authority of the exporting Party together with documents, showing that the goods have been transported in accordance with the provisions of Article 3.17.

Article 3.29: Loss of the Certificate of Origin in Paper Format

1. In the event of theft, loss or destruction of a Certificate of Origin, the manufacturer, producer, exporter, or its authorised representative may apply to the Competent Authority which issued it for a certified true copy or duplicate of the Certificate of Origin to be made out on the basis of the export documents in possession of the Competent authority.

2. The certified true copy or duplicate of the Certificate of Origin shall be endorsed with an official signature and seal and bear the words "CERTIFIED TRUE COPY" or "DUPLICATE" and the date of issuance of the Certificate of Origin in appropriate fields as detailed in Annex 3B (Certificate of Origin) or Annex 3C (Specimens of Movement Certificate EUR.1 and Application For a Movement Certificate EUR.1). The certified true copy or duplicate of a Certificate of Origin shall be issued within the same validity period of the Certificate of Origin.

Article 3.30: Presentation of Proofs of Origin

For the purposes of applying for preferential tariff treatment, the importer or its authorized representative shall submit to the customs authority of the importing Party, at the time of filing import declaration, a Proof of Origin, in accordance with the laws and regulations of the importing Party.

Article 3.31: Treatment of Minor Discrepancies

1. The discovery of minor discrepancies between the statements made in the Proof of Origin and those made in the documents submitted to the customs authority of the importing Party for the purpose of carrying out the formalities for importing the goods shall not ipso-facto invalidate the proof of origin, if it does in fact correspond to the goods submitted.

2. Obvious formal errors, such as typing errors, on a proof of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.

Section D: Cooperation and Origin Verification

Article 3.32: Notification

The competent authorities of the Parties shall provide each other before this Agreement getting in force with the following:

(a) the specimen seals of the competent authorities issuing the Certification of Origin in Paper Format;

(b) the web address used for the QR code or website authentication;

(c) the addresses of the customs authorities responsible for verifying certificates and origin declarations.

Article 3.33: Denial of Preferential Tariff Treatment

1. Except as otherwise provided in this Chapter, the customs authority of the importing Party may deny a customs clearance with preferential tariff treatment or recover unpaid duties, in accordance with its laws and regulations, when the requirements of Article 3.17 are not fulfilled.

2. If the customs authority of the importing Party denies a customs clearance with preferential tariff treatment, it shall provide the decision in writing or in electronic form to the importer that includes the reasons for the decision.

3. Upon being communicated the grounds for denial of preferential tariff treatment, the importer may, within the period provided for in the custom laws of the importing Party, file an appeal or claim against such decision with the appropriate authority under the customs laws and regulations of the importing Party.

Article 3.34: Verification

1. The customs authority or competent authority of the importing Party may request a retroactive check at random or when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the goods in question or of certain parts thereof.

2. For the purpose of paragraph 1, the custom authority or competent authority of the importing Party may conduct the checking process by issuing a written request for additional information from the customs authority or competent authority of the exporting Party.

3. The request shall be accompanied with the copy of Proof of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Proof of Origin may be inaccurate, unless the retroactive check is requested on a random basis.

4. The customs authority of the importing Party may suspend the provisions on preferential treatment while awaiting the result of verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.

5. Pursuant to paragraph 2, the customs authorities or competent authority of the importing Party requesting the verification shall be informed of the results thereof as soon as possible but not later than nine months from the date of the request.

6. When a reply from the exporting Party is not obtained within nine months from the date of the request of customs authority or competent authority of the importing Party has not received sufficient information upon the request to determine that the good is originating or the exporter, or producer of the good failed to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment, the customs authority of the importing Party deny preferential tariff treatment to the good referred to in the said Proof of Origin that would have been subject to the check and recover unpaid duties.

Article 3.35: Record Keeping Requirement

1. For the purposes of the verification process pursuant to Article 3.34, each Party shall require that:

(a) the manufacturer, producer or exporter retain, for a period not less than 36 months from the date of issuance of the Proof of Origin, or a longer period in accordance with its domestic laws and regulations, all supporting records necessary to prove that the good for which the Proof of Origin was issued was originating;

(b) the importers shall retain, for a period not less than 36 months from the date of importation of the good, or a longer period in accordance with its domestic laws

and regulations, all records to prove that the good for which preferential tariff treatment was claimed was originating; and

(c) the competent authority or customs authority retain, for a period not less than 36 months from the date of issuance of the Proof of Origin, or a longer period in accordance with its domestic laws and regulations, all supporting records of the application for the Proof of Origin.

2. The records referred to in paragraph 1 may be maintained in any medium that allows for prompt retrieval, including but not limited to, digital, electronic, optical, magnetic, or written form.

Article 3.36: Confidentiality

All information related to the application of this Chapter communicated between the Parties shall be treated as confidential. It shall not be disclosed by the Parties authorities without express permission of the person or authority providing it.

Article 3.37: Dispute Settlement

1. Disputes between the Parties arising in relation to the verification procedures pursuant to Article 3.34, which cannot be settled between the competent authorities of the Parties, or which raise a question as to the interpretation of this Chapter, shall be referred to the Joint Committee.

2. In all cases the settlement of disputes between the importer and the competent authorities of the importing Party shall be conducted under the legislation of the importing Party.

Section E: Consultation and Modifications

Article 3.38: Consultation and Modifications

The Parties shall consult and cooperate as appropriate through the Subcommittee on Trade in Goods and Rules of Origin to:

(a) ensure that this Chapter is applied in an effective and uniform manner; and

(b) discuss necessary amendments to this Chapter, taking into account developments in technology, production processes, and other related matters.

CHAPTER 4
CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purpose of this Chapter:

customs laws means provisions implemented by legislations and regulations concerning the importation, exportation, transit of goods, or any other customs procedures whether relating to customs duties, taxes or any other charges collected by the Customs Authority, or to measures for prohibition, restriction, or control enforced by the Customs Authority;

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

Customs Mutual Assistance Agreement (CMAA) means an agreement that further enhances customs cooperation and exchange of information between the Parties to secure and facilitate lawful trade;

Authorized Economic Operator(s) (AEO) means the program which recognizes an operator involved in the international movement of goods in whatever function that has been approved by the national Customs Authority as complying with the World Customs Organization (WCO) or equivalent supply chain security standards; and

Mutual Recognition Arrangement (MRA) means the arrangement between the Parties that mutually recognize AEO authorizations that has been properly granted by one of the Customs Authorities.

Article 4.2: Scope

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

Article 4.3: General Provisions

1. Parties agree that their customs law and procedures shall be transparent, non-discriminatory, consistent and avoid unnecessary procedural obstacles to trade.

2. Customs procedures of the Parties shall conform where possible, to the standards and recommended practices of the World Customs Organization ("WCO").

3. The Customs Authority of each Party shall periodically review its customs procedures with a view to their further simplification and development to facilitate bilateral trade.

Article 4.4: Publication and Availability of Information

1. Each Party shall ensure that its laws, regulations, guidelines, procedures, and administrative rulings governing customs matters are promptly published, either on the internet or in print form. Such information and publications will be available to the extent possible in the English language.

2. Each Party shall designate, establish, and maintain one or more inquiry points to address inquiries from interested persons pertaining to customs matters, and shall endeavour to make available publicly through electronic means, information concerning procedures for making such inquiries.

3. Nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.

4. Each Party shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, so that interested parties have the opportunity to become acquainted with the new or amended laws and regulations. Such information and publications shall be available in the English language, to the extent possible.

Article 4.5: Risk Management

The Parties shall adopt a risk management approach in its customs activities, based on its identified risk of goods, in order to facilitate the clearance of low-risk consignments, while focusing its inspection activities on high-risk goods.

Article 4.6: Paperless Communications

1. For the purposes of facilitating bilateral exchange of international trade data and expediting procedures for the release of goods trade facilitation, the Parties shall endeavor to provide an electronic environment that supports business transactions between their respective Customs Authorities and their trading entities.

2. The Parties shall exchange views and information on realizing and promoting paperless communications between their respective Customs Authorities and their trading entities.

3. The respective Customs Authorities of the Parties, in implementing initiatives which provide for the use of paperless communications, shall take into account the methodologies agreed at the WCO.

Article 4.7: Advance Rulings

1. In accordance with its commitments under the WTO Trade Facilitation Agreement (TFA), each Party, shall provide to the applicant that has submitted a request for the issuance of an advance ruling, prior to the importation of a good into its territory, to an importer of the good in its territory or to an exporter or producer of the good in the territory of another Party.

2. For purposes of paragraph 1, each Party shall issue advance rulings as to whether the good qualifies as an originating good or to assess the good's tariff classification. In addition, each Party may issue advance rulings that cover additional trade matters as specified in the TFA. Each Party shall issue its determination regarding the origin or classification of the good within a reasonable, time-bound manner from the date of receipt of a complete application for an advance ruling.

3. The importing Party shall apply an advance ruling issued by it under paragraph 1 on the date that the ruling is issued or on a later date specified in the ruling and remain in effect for a reasonable period of time and in accordance with the national procedures on advanced ruling unless the advance ruling is modified or revoked.

4. The advance ruling issued by the Party shall be binding to the person to whom the ruling is issued only.

5. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of a post clearance audit or an administrative, judicial, or quasi-judicial review or appeal. A Party that declines to issue an advance ruling shall promptly notify, in writing, the person requesting the advance ruling, setting out the relevant facts and circumstances and the basis for its decision.

6. The importing Party may modify or revoke an advance ruling:

(a) if the ruling was based on an error of fact;

(b) if there is a change in the material facts or circumstances on which the ruling was based;

(c) to conform with a modification of this Chapter; or

(d) to conform with a judicial decision or a change in its domestic law.

7. Each Party shall provide written notice to the applicant explaining the Party's decision to revoke or modify the advance ruling issued to the applicant.

8. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 4, the issuing Party shall postpone the effective date of the modification or revocation of an advance ruling for a reasonable period of time and in accordance with the each Party's national procedures on advance rulings, where the person to whom the advance ruling was issued demonstrates that he has relied in good faith to his detriment on that ruling.

Article 4.8: Penalties

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties, whether solely or in combination, for violations of the Party's customs laws, regulations or procedural requirements.

2. Each Party shall ensure that penalties issued for a breach of a customs law, regulations or procedural requirements are imposed only on the person(s) responsible for the breach under its laws.

3. Each Party shall ensure that the penalty imposed by its Customs Authority is dependent on the facts and circumstances of the case and is commensurate with the degree and severity of the breach.

4. Each Party shall ensure that it maintains measures to avoid conflicts of interest in the assessment and collection of penalties and duties. No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.

5. Each Party shall ensure that if a penalty is imposed by its Customs Authority for a breach of a customs law, regulation or procedural requirement, the person(s) upon whom the penalty is imposed, is (are) provided with the decision on the application of penalty specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

Article 4.9: Release of Goods

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

2. Pursuant to paragraph 1, each Party shall adopt or maintain procedures that:

(a) provide for the immediate release of goods upon receipt of the customs declaration and fulfillment of all applicable requirements and procedures;

(b) provide for the electronic submission and processing of documentation and data, including manifests, prior to the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

(c) allow goods to be released at the point of arrival without requiring temporary transfer to warehouses or other facilities; and

(d) require that the importer be informed if a Party does not promptly release goods, including, to the extent permitted by its law, the reasons why the goods are not released and which border agency, if not the Customs Authority, has withheld release of the goods.

3. Nothing in this Article requires a Party to release a good if its requirements for release have not been met nor prevents a Party from liquidating a security deposit in accordance with its law.

4. Each Party may allow, to the extent practicable and in accordance with its customs laws, goods intended for import to be moved within its territory under customs control from the point of entry into the Party's territory to another customs office in its territory from where the goods are intended to be released, provided the applicable regulatory requirements are met.

Article 4.10: Authorized Economic Operators

In order to facilitate trade and enhance compliance and risk management between them, the Parties shall endeavor to conclude an AEO MRA between their Customs Authorities.

Article 4.11: Border Agency Cooperation

Each Party shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade pursuant to this Chapter.

Article 4.12: Expedited Shipments

1. Each Party shall adopt or maintain expedited customs procedures for goods entered through air cargo facilities while maintaining appropriate customs control and selection. These procedures shall:

(a) provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;

(b) allow a single submission of information covering all goods contained in an express shipment, such as a manifest through, if possible, electronic means[1];

(c) to the extent possible, provide for the release of certain goods with a minimum of documentation;

(d) under normal circumstances, provide for express shipments to be released as soon as possible after submission of the necessary customs documents, provided the shipment has arrived;

(e) apply to shipments of any weight or value recognizing that a Party may require formal entry procedures as a condition for release, including declaration and supporting documentation and payment of customs duties, based on the good's weight or value; and

(f) provide that, under normal circumstances, no customs duties will be assessed on express shipments valued at or below a fixed amount set under the Party's law.[2]

Article 4.13: Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination on a customs matter has access to:

(a) at least one level of administrative review of determinations by its Customs Authority independent[3] of either the official or office responsible for the decision under review; and

(b) judicial review of decisions taken at the final level of administrative review.

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

3. Each Party shall ensure than an authority conducting a review or appeal under paragraph 1 notifies the person in writing of its determination or decision in the review or appeal, and the reasons for the determination or decision.

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[1] Additional documents may be required as a condition for release

[2] Notwithstanding this Article, a Party may assess customs duties, or may require formal entry documents, for restricted or controlled goods, such as goods subject to import licensing or similar requirements.

[3] The level of administrative review for the UAE may include the competent authority supervising the Customs Authority.

Article 4.14: Customs Cooperation

1. With a view to further enhancing customs cooperation through the exchange of information and the sharing of best practices between the Customs Authorities to secure and facilitate lawful trade, the Customs Authorities of the Parties will endeavor to conclude and sign a CMAA.

2. The Parties shall, for the purposes of applying customs laws and to give effect to the provisions of this Agreement, endeavor to:

(a) cooperate and assist each other in the prevention and investigation of offences against customs legislations;

(b) upon request, provide each other information to be used in the enforcement of customs legislations; and

(c) cooperate in the research, development and application of new customs procedures, in the training and exchange of personnel, sharing of best practices, and in other matters of mutual interest.

3. Assistance under this Chapter shall be provided in accordance with the domestic law of the requested Party.

4. The Parties shall exchange official contact points with a view to facilitating the effective implementation of this Chapter.

Article 4.15: Confidentiality

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

2. Each Party shall maintain, in accordance with its domestic laws, the confidentiality of information obtained pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

Article 4.16: Temporary Admission of Goods

1. Each Party shall, in accordance with its respective domestic law grant temporary admission free of customs duties for the following goods imported from the other Party, regardless of their origin:

(a) professional and scientific equipment, including their spare parts, and including equipment for the press or television, software contained on physical media, and broadcasting and cinematographic equipment, that are necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display, demonstration or use at theaters, exhibitions, fairs, or other similar events including its component parts, ancillary apparatus and accessories;

(c) commercial samples and advertising films and recordings;

(d) goods admitted for sports purposes;

(e) containers and pallets that are used for the transportation of equipment or used for refilling; and

(f) goods entered for completion of processing.

2. Each Party shall, at the request of the importer and for reasons deemed valid by its Customs Authority, extend the time limit for temporary admission beyond the period initially fixed.

3. Neither Party may condition the temporary admission of a good referred to in paragraph 1, other than to require that the good:

(a) not be sold or leased while in its territory;

(b) be accompanied by a security in an amount no greater than the custom duties and any other tax imposed on imports that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(c) be capable of identification when exported;

(d) be exported in accordance with the time period granted for temporary admission in accordance with its domestic law related to the purpose of the temporary admission;

(e) not be admitted in a quantity greater than is reasonable for its intended use; or

(f) be otherwise admissible into the importing Party's territory under its law.

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

5. Each Party through its Customs Authority shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such

procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.

6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted in accordance with its customs procedures.

7. Each Party shall provide that the importer of a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension. A Party may condition relief of liability under this paragraph by requiring the importer to receive prior approval from the Customs Authority of the importing Party before the good can be so destroyed.

Article 4.17: Goods Re-Entered After Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory in accordance with its laws and procedures after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory from which the good was exported, except that a customs duty or other taxes may be applied to the addition resulting from the repair or alteration that was performed in the territory of the other Party.

2. Neither Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.

3. For purposes of this Article, "repair" or "alteration" does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good;

(b) transforms an unfinished good into a finished good; or

(c) results in a change of the classification at a six-digit level of the Harmonized System (HS).

Article 4.18: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party, in accordance with its respective domestic law, shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

(a) such samples be imported solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-Party; or

(b) such advertising materials be imported in packets, that each contain no more than one copy of each such material, and that neither the materials nor the packets form part of a larger consignment.

CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*.

2. In addition, for the purposes of this Chapter:

Competent Authority means a government body of each Party responsible for measures and matters referred to in this Chapter;

Contact Point means the government body of each Party that is responsible for the implementation and coordination of this Chapter; and

emergency measure means a sanitary or phytosanitary measure that is applied by the importing Party to a good of the exporting Party to address an urgent problem of human, animal, or plant life or health protection that arises or threatens to arise in the importing Party.

Article 5.2: Objectives

The objectives of this Chapter are:

(a) to protect human, animal, and plant life or health, while facilitating trade;

(b) to enhance cooperation, communication, and transparency between the Parties; and

(c) to ensure that the Parties' sanitary and phytosanitary measures are science-based and do not create unjustified barriers to trade.

Article 5.3: Multilateral Obligations

The Parties reaffirm their rights and obligations under the SPS Agreement.

Article 5.4: Scope

This Chapter shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 5.5: Competent Authorities

1. Upon the entry into force of this Agreement, each Party shall designate a Contact Point or Contact Points to facilitate communication on matters covered by this chapter and promptly notify the other Party no later than 30 days after the entry into force of this Agreement.

2. Each Party shall keep the information on Contact Points and Competent Authorities up to date and shall promptly inform the other Party of any change.

Article 5.6: Determination of Equivalence

1. The Parties recognize that the principle of equivalence as provided for under Article 4 of the SPS Agreement has mutual benefits for both exporting and importing countries.

2. The Parties shall follow the procedures for determining the equivalence of sanitary and phytosanitary measures and standards developed by the WTO SPS Committee and relevant international standard-setting bodies in accordance with Annex A of the SPS Agreement, *mutatis mutandis*.

3. The fact that an exported product achieves compliance with sanitary and phytosanitary measures or standards that have been accepted as equivalent to sanitary and phytosanitary measures and standards of the importing Party shall not remove the need for that product to comply with any other relevant, mandatory requirements of the importing Party.

Article 5.7: Transparency and Exchange of Information

1. The Parties recognize the value of transparency in the adoption and application of sanitary and phytosanitary measures and the importance of sharing information about such measures on an ongoing basis.

2. In implementing this Chapter, each Party should take into account relevant guidance of the WTO SPS Committee and international standards, guidelines, and recommendations.

3. Each Party agrees to notify a proposed sanitary or phytosanitary measure that may have an effect on the trade of the other Party, including any that conforms to international standards, guidelines, or recommendations, by using the WTO SPS notification submission system as a means of notification.

4. The Parties shall exchange information on proposed or actual sanitary and phytosanitary measures which affect or are likely to affect trade between them and relating to each Party's SPS regulatory system. To the extent that a Party desires to provide written comments on a proposed sanitary and phytosanitary measure by the other Party, the Party shall provide those comments in a timely manner.

5. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with the other Party, on request and if appropriate and feasible, any scientific or trade concerns that the other Party may raise regarding the proposed measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

6. Each Party shall notify the other Party of final sanitary or phytosanitary measures through the WTO SPS notification submission system and via their respective Contact Points. Each Party shall ensure that the text or the notice of a final sanitary or phytosanitary measure specifies the date on which the measure takes effect and the legal basis for the measure. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures.

7. An exporting Party shall notify the importing Party through the Contact Points established under Article 5.5 in a timely and appropriate manner if it has knowledge of:

(a) a significant or urgent situation of a sanitary or phytosanitary risk in its territory that may affect current trade between the Parties; or

(b) significant changes in food safety, pest, or disease management, control, or eradication policies or practices that may affect current trade between the Parties.

8. A Party shall provide to the other Party, on request, all sanitary or phytosanitary measures related to the importation of a good into that Party's territory.

9. Each Party shall provide information, upon request of the other Party, on the results of import checks in cases of rejected or non-compliant consignments, including the scientific basis for such rejections.

Article 5.8: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal, or plant life or health, that Party shall promptly notify the other Party of that measure through the relevant Contact Point and the Competent Authority referred to in Article 5.5. The Party adopting the emergency measure shall take into consideration any information provided by the other Party in response to the notification and, upon request of the other Party, consultations between the Competent Authorities shall be held within 14 days of the notification.

2. The importing Party shall consider information provided by the exporting Party in a timely manner when making decisions with respect to consignments that, at the time of adoption of the emergency measure, are being transported between the Parties.

3. If a Party adopts an emergency measure, it shall review the scientific basis of that measure within six months and make available the results of the review to the other Party on request. If the Party maintains the emergency measure after the review because the reasons for its adoption remain, the Party shall review the measure periodically.

Article 5.9: Technical Consultations

1. The Parties shall endeavour to work expeditiously to address any specific SPS trade-related issue and commit to carry out the necessary technical level discussions in order to resolve any such issue.

2. At any time, a Party may raise a specific SPS issue with the other Party through the Competent Authorities, and may request additional information related to the issue. The other Party shall respond in a timely manner.

3. If an issue is not resolved through the information exchanged pursuant to paragraph 2 or Article 5.7, upon request of either Party through its Contact Point, the Parties shall meet in a timely manner to discuss the specific SPS issue, to avoid a disruption in trade, or to reach a mutually acceptable solution. The Parties shall meet either in person or using available technological means. If travel is required, the Party requesting the meeting shall travel to discuss the specific SPS issue in the territory of the other Party, unless otherwise agreed.

Article 5.10: Cooperation

1. The Parties shall cooperate to facilitate the implementation of this Chapter.

2. The Parties shall explore opportunities for further cooperation, collaboration, and information exchange between the Parties on sanitary and phytosanitary matters of mutual interest related to the implementation of the SPS Agreement, consistent with this Chapter. Those opportunities may include trade facilitation initiatives and technical assistance.

CHAPTER 6
TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to facilitate trade, including by ensuring that standards, technical regulations, and conformity assessment procedures and their application do not create unnecessary obstacles to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practices.

Article 6.2: Reaffirmation and Incorporation of the TBT Agreement

The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement and to this end the following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:

(a) Article 2;

(b) Article 4.1;

(c) Article 5;

(d) Articles 6.1 and 6.3; and

(e) Annex 3, except paragraph A.

Article 6.3: Scope of Application

1. This Chapter shall apply to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, that may affect trade in goods between the Parties.

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

(a) a purchasing specification prepared by a governmental body for production or consumption requirements of a governmental body; or

(b) a sanitary or phytosanitary measure as defined in Chapter 5 (Sanitary and Phytosanitary Measures) of this Agreement.

Article 6.4: International Standards

1. The Parties shall:

   (a) determine whether there is an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, applying the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement adopted[1] by the WTO Committee on Technical Barriers to Trade ("TBT Committee");

   (b) use relevant international standards, guidelines and recommendations as provided in Articles 2.4 and 5.4 of the TBT Agreement as a basis for their technical regulations and conformity assessment procedures;

   (c) encourage national standardization bodies to cooperate with the relevant standardization bodies of the other Party in areas of mutual interest in the context of international standardization activities.

Article 6.5: Technical Regulations

1. The Parties shall use international standards as a basis for preparing their technical regulations, unless those international standards are ineffective or inappropriate to achieving the legitimate objective pursued. A Party shall, upon request of the other Party, provide the reasons for not having used international standards as a basis for preparing its technical regulations.

2. Upon request of the other Party when interested in developing a similar technical regulation, and in order to minimize the duplication of costs, a Party shall, to the extent practicable, provide the requesting Party with any information, technical study, risk assessment or other available relevant document, on which that Party has relied for the development of such technical regulation, excluding confidential information.

Article 6.6: Conformity Assessment Procedures

1. The Parties recognize the possibility of applying a broad range of mechanisms to facilitate recognition and acceptance of the results of conducted conformity assessment of the other Party. Such mechanisms shall be determined as mutually agreed between the Parties. To that end, the Parties shall *inter alia*:

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[1] G/TBT/1/Rev.13, 13 November 2017 Annex 2 to part I (original Decision: 1 January 1995) and any subsequent version thereof.

(a) exchange information on technical regulations used by the Parties and respective conformity assessment procedures; and

(b) consider initiating negotiations in order to conclude agreements for recognition and acceptance in their territories of the results of conformity assessment conducted by bodies located in the territory of the other Party, when it is in the interest of the Parties.

2. The Parties shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition and acceptance of the results of conformity assessment conducted in the territory of the other Party, when appropriate.

3. In order to enhance confidence, in consistent reliability of each one of the conformity assessment results, prior to an agreement as described in paragraph 2, the Parties may consult and exchange information on matters such as the technical competence of the conformity assessment bodies involved.

Article 6.7: Transparency

1. Upon request of the other Party, a Party shall provide, whenever it is available, an English summary of the technical regulation or conformity assessment procedure that may affect the trade in goods between the Parties.

2. Each Party shall give appropriate consideration to the comments received from the other Party when a proposed technical regulation is submitted for public consultation and, upon request of the other Party, provide written answers to the comments made by the other Party.

3. Each Party shall ensure that all adopted technical regulations and conformity assessment procedures are publicly available.

Article 6.8: Information Exchange

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavour to respond to such a request within 60 days.

2. The Contact Points shall be responsible for facilitating communication between the Parties on any matter covered by this Chapter. On the request of the other Party, the Contact Point shall identify the office or the official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

Article 6.9: Cooperation and Trade Facilitation

1. The Parties shall strengthen their cooperation in the fields of standardization, technical regulations, and conformity assessment procedures, with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

2. Further to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives on cooperation regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors, taking into consideration, *inter alia,* the Parties' experience in regional, bilateral, and multilateral arrangements or agreements.

3. These initiatives may include:

(a) cooperation on regulatory issues, such as transparency, the promotion and application of good regulatory practices, harmonization with international standards, use of accreditation to qualify conformity assessment bodies, and the use of equivalency and regulatory impact assessment;

(b) technical assistance and cooperation under this Chapter as mutually agreed between the Parties; and

(c) establishment of effective interaction between relevant regulatory bodies and between relevant national standardization bodies.

4. The Subcommittee on Technical Barriers to Trade may define priority sectors for cooperation.

Article 6.10: Contact Points

1. For the purposes of this Chapter, the Contact Points are:

(a) for Ukraine, the Ministry of Economy of Ukraine, or its successor; and

(b) for the UAE, the Ministry of Industry and Advanced Technology and the Ministry of Economy of the UAE, or its successor.

Article 6.11: Subcommittee on Technical Barriers to Trade

1. The Parties hereby establish a Subcommittee on Technical Barriers to Trade ("Subcommittee on TBT") comprising representatives of each Party. The Subcommittee on TBT may meet in person, via teleconference, video-conference, or through any other means, as agreed by the Parties.

2. The functions of the Subcommittee on TBT shall include:

(a) monitoring and reviewing the implementation and administration of this Chapter;

(b) ensuring appropriate steps are taken promptly to address any issue that a Party may raise related to the development, adoption or application of standards, technical regulations and conformity assessment procedures;

(c) on the request of the other Party, promptly facilitating technical discussions on any matter arising under this Chapter, which shall be without prejudice to the rights and obligations of the Parties;

(d) taking any other steps the Parties consider may facilitate trade in goods between them; and

(f) establishing working groups to undertake specific tasks under this Chapter.

3. The Subcommittee on TBT shall meet as mutually agreed by the Parties.

CHAPTER 7
TRADE REMEDIES

Article 7.1: Competent Investigating Authorities

In regard to the application of the provisions set forth in this Chapter, the competent investigating authorities are:

(a) for Ukraine, the Ministry of Economy of Ukraine, or its successor; and

(b) for United Arab Emirates, the Ministry of Economy of the UAE, or its successor.

Article 7.2: Application of a Bilateral Safeguard Measures

1. Where, as a result of the reduction or elimination of a customs duty under this Agreement, any product originating in a Party is being imported into the territory of the other Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of like or directly competitive products in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the extent necessary to remedy or prevent the injury, subject to the provisions of paragraphs 2 through 7 and Article 7.3.

2. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry of like or directly competitive products, pursuant to an investigation in accordance with the procedures laid down in Articles 3 and 4.2 (c) of the Agreement on Safeguards and to this end, Articles 3 and 4.2 (c) of the Agreement on Safeguards are incorporated into and made part of this Agreement, *mutatis mutandis.*

3. The Party intending to take a bilateral safeguard measure under this Article shall immediately, and in any case before taking a measure, notify the other Party in writing or by electronic communication.

4. In the investigation described in paragraph 2, the Party shall comply with the requirements of Article 4.2 (a) and (b) of the Agreement on Safeguards, and to this end, Article 4.2 (a) and (b) of the Agreement on Safeguards are incorporated into and made a part of this Agreement, *mutatis mutandis*.

5. A Party shall immediately notify the other Party in writing upon:

(a) initiating an investigation described in paragraph 2;

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

(c) applying a bilateral safeguard measure.

6. If a Party whose good is subject to a bilateral safeguard proceeding under this Article, requests within 10 days from receipt of a notification as specified in paragraph 5 (b) to hold consultations, the Party conducting that proceeding shall enter into consultations with a view to finding an appropriate and mutually acceptable solution. If the Parties fail to find mutually acceptable solution within 30 days of the notification being made, the Party may apply the appropriate provisional or final measures.

7. If the conditions set out in paragraph 1 are met, the importing Party may to the extent necessary to prevent or remedy serious injury, or threat thereof:

(a) suspend the further reduction of any rate of customs duty on the good provided for under this Agreement; or

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

(i) the most-favoured-nation ("MFN") applied rate of duty in effect at the time the measure is applied; or

(ii) the base rate as specified in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE) respectively.

Article 7.3: Limitations for Applying a Bilateral Safeguard Measures

1. Bilateral safeguard measures may not be applied in the first year after the entry into force of this Agreement.

2. A bilateral safeguard measure shall be applied only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment and, it shall be applied for a period not exceeding two years.

3. The period may be extended to up to one additional year if the competent authority of the importing Party determine, in conformity with the procedures specified in Article 7.2, that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting, provided that the total period of application of a safeguard measure, including the period of initial application and any extension thereof, shall not exceed three years. The Party maintaining the measure beyond a two-year period shall progressively liberalize it at annual intervals during the period of application.

4. Neither Party shall apply a bilateral safeguard measure more than once against the same good.

5. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect if the measure had not been applied.

6. The bilateral safeguard mechanism shall be terminated five years after the date on which the elimination or reduction of the customs duties is completed in accordance with the Party's Schedule of Tariff Commitments in Annex 2A (Tariff Schedule of Ukraine) and Annex 2B (Tariff Schedule of the UAE), unless the Joint Committee decides to maintain the possibility to take bilateral safeguard measures between the Parties for a period of time that will be indicated in the decision of the Joint Committee.

7. Documents submitted by the competent investigating authority of a Party to the competent investigating authority of the other Party may be in English.

Article 7.4: Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay in the introduction of a bilateral safeguard measure in accordance with Article 7.2 would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports as to cause or threaten to cause serious injury to the domestic industry.

2. The Party intending to take a provisional bilateral safeguard measure shall immediately notify the other Party. This notification shall contain all relevant information, including preliminary evidence of serious injury or threat thereof caused by increased imports, a precise description of the product involved and the proposed measure, as well as the proposed date of introduction and the expected duration.

3. Any provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration of the bilateral safeguard measure set out in Article 7.3.2 and any extension thereof. Any tariff increases shall be promptly refunded if the investigation described in Article 7.2.2 does not result in a finding that the conditions of Article 7.2.1 are met.

Article 7.5: Compensation

1. No later than 30 days after it applies a bilateral safeguard measure, a Party shall afford an opportunity for the other Party to consult with it regarding appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure. The applying Party shall provide such compensation as the Parties mutually agree.

2. If the Parties are unable to agree on compensation within 30 days after consultations begin, the Party against whose originating product the measure is applied may suspend the application of concessions with respect to originating product of the applying Party that have

trade effects substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions only for the minimum period necessary to achieve the substantially equivalent effects.

3. A Party against whose product the bilateral safeguard measure is applied shall notify the Party applying the bilateral safeguard measure in writing at least 30 days before it suspends concessions in accordance with paragraph 2.

4. The right of suspension referred in paragraph 2 shall not be exercised for the first 24 months during which a bilateral safeguard measure is in effect, provided that the bilateral safeguard measure has been applied as a result of an absolute increase in imports and conforms to the provisions of this Chapter.

5. The applying Party's obligation to provide compensation under paragraph 1 and the other Party's right to suspend concessions under paragraph 2 shall terminate on the date the bilateral safeguard measure terminates.

Article 7.6: Imposition of Global Safeguard Measures

1. Each Party retains its rights and obligations under Article XIX of the GATT 1994 and the Agreement on Safeguards.

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

(a) a bilateral safeguard measure; and

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

3. At the request of the other Party and/or provided that it has a substantial interest, the Party intending to take a safeguard measure shall provide immediately written notification of all pertinent information on the initiation of the safeguard investigation, including the provisional findings and the final findings of the investigation, as well as offer the possibility for consultations to the other Party.

4. For the purpose of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported goods during the most recent one-year period preceding the initiation of the safeguard investigation, measured in terms of absolute volume.

5. A Party taking a safeguard measure shall exclude the other Party as long as its share of imports of the product concerned in the importing Party does not exceed three per cent of total imports of the concerned product.

6. Neither Party shall have recourse to the dispute settlement procedures in Chapter 15 (Dispute Settlement) in respect of this Article.

Article 7.7: Antidumping and Countervailing Measures

1. Except as otherwise provided for in this Article, each Party retains its rights and obligations under Article VI of the GATT 1994 the Anti-Dumping Agreement and the SCM Agreement.

2. The Parties agree that antidumping and countervailing measures should be applied in full compliance with Article VI of the GATT 1994, the Anti-Dumping Agreement and the SCM Agreement and should be based on a fair and transparent system. In furtherance of this, as soon as practically possible after any imposition of provisional measures and before the final decision is taken, the Parties shall ensure full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply definitive measures without prejudice to Article 6.5 of the Anti-Dumping Agreement or Article 12.4 of the SCM Agreement. Disclosures shall be made in writing and allow interested parties at least 10 days to respond with comments.

3. Interested parties should be granted the right to express their views during anti-dumping and anti-subsidy investigations in accordance with the conditions of each Party's internal legislation.

4. Prior to the imposition of definitive measures, the exporting Party within 10 days from receipt of the disclosure as specified in paragraph 2, may request consultations with a view to seeking a solution acceptable to the Parties. If the Parties are unable to reach a mutually acceptable solution within 25 days of the disclosure being sent, the importing Party may apply the appropriate definitive measures.

5. Should a Party decide to impose a provisional or definitive anti-dumping or countervailing duty, the amount of such duty shall not exceed the margin of dumping or countervailable subsidies, but it should be less than the margin if such a lesser duty is in accordance with the Party's internal legislation and would be adequate to remove the injury to the domestic industry.

6. The Party whose goods are subject to anti-dumping or countervailing measures imposed by the other Party has the right to request consultations in order to discuss the impact of these measures on bilateral trade.

7. Neither Party shall have recourse to the dispute settlement procedures in Chapter 15 (Dispute Settlement) in respect of this Article.

Article 7.8: Cooperation on Trade Remedies

The Parties shall endeavour to encourage cooperation on trade remedies between the relevant authorities of each Party who have responsibility for trade remedy matters.

CHAPTER 8
INVESTMENT

Article 8.1: Ukraine - UAE Bilateral Investment Treaty

The Parties note the existence of and reaffirm the *Agreement Between the Government of Ukraine and the Government of the United Arab Emirates on the Promotion and Protection of Investments*, done at Abu Dhabi on 22 January 2003 (Ukraine - UAE Bilateral Investment Agreement) and any subsequent amendments thereto.

Article 8.2: Promotion of Investment

The Parties affirm their desire to promote an attractive investment climate and expand investments and cross-border trade in goods and services. Consistent with Article 2 (Promotion and Protection of Investments) of the Ukraine - UAE Bilateral Investment Agreement, the Parties shall take appropriate measures to encourage and facilitate the exchange of goods and services and to secure favourable investments conditions for long-term economic development and diversification of trade between the two countries.

Article 8.3: Technical Council

The Parties shall establish a Ukraine - UAE Council on Investment (hereinafter referred to as "the Council"), which shall be composed of representatives of both Parties. The side of the UAE will be chaired by Ministry of Finance of the UAE and the side of Ukraine will be chaired by Ministry of Economy of Ukraine. The Council may establish working groups as the Parties deem necessary.

Article 8.4: Objectives of the Council

1. The objectives of the Council are as follows:

   (a) to promote and enhance the economic cooperation between the Parties;

   (b) to monitor trade and investment relations, to identify opportunities for expanding investment, and to identify issues relevant to investment that may be appropriate for negotiation in an appropriate forum;

   (c) to hold consultations on specific investment matters of interest to the Parties;

(d) to work toward the enhancement of investment flows under investment projects;

(e) to identify and work toward the removal of impediments to investment flows under investment projects; and

(f) to seek the views of the private sector, where appropriate, on matters related to the work of the Council.

2. For further clarification, the Council shall not undertake the role of the "Settlements of Investment Disputes between an Investor of a Contracting Party and the other Contracting Party" as established by the Ukraine - UAE Bilateral Investment Agreement.

Article 8.5: Role of the Council

The Council shall meet at such times and venues as agreed by the Parties, but the Parties shall endeavour to meet no less than once per year. A Party may refer specific investment matters to the Council by delivering a written request to the other Party that includes a description of the matter concerned. The Council shall take up the matter promptly after the request is delivered unless the requesting Party agrees to postpone discussion of the matter. Each Party shall endeavour to provide for an opportunity for the Council to discuss a matter before taking actions that could affect adversely the trade or investment interests of the other Party.

Article 8.6: Non-Application of Dispute Settlement

Chapter 15 (Dispute Settlement) shall not apply to any matter or dispute arising from this Chapter.

CHAPTER 9
TRADE IN SERVICES

Article 9.1: Definitions

For the purposes of this Chapter:

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

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

(c) **airport operation and management services** means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

(d) **commercial presence** means any type of business or professional establishment through:

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

(ii) the creation or maintenance of a branch or representative office,

within the territory of a Party for the purpose of supplying a service;

(e) **computer reservation system services** mean 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;

(f) **ground handling services** means the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fueling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems;

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

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

(a) that Party; or

(b) any Member of the WTO and is owned or controlled by natural persons of that other Party or by juridical persons that meet all the conditions of subparagraph (i)(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 other Party identified under subparagraph (i);

(h) **a juridical person** is:

(i) "owned" by persons of a Party if more than 50 percent 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; or

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

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

(j) **measures by the Parties** means measures taken by:

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

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

In fulfilling its obligations and commitments under the Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by central, regional and local governments and authorities and non-governmental bodies within its territory;

(k) **measures by the Parties affecting trade in services** include measures in respect of:

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

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

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

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

(m) **natural person of the other Party**: means a national or a permanent resident[1] of the UAE or Ukraine;

(n) **sector of a service** means:

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitments are set forth in Annex 9A-A (Ukraine – Schedule of Specific Commitments) and Annex 9A-B (United Arab Emirates – Schedule of Specific Commitments); or

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

(o) **selling and marketing of air transport services** mean 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;

(p) **services** include any service in any sector except services supplied in the exercise of governmental authority;

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

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

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a

[1] For the purposes of the UAE, the term "permanent resident" shall mean any natural person who is in possession of a valid residency permit under the laws and regulations of the UAE.

person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

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

(s) **service supplier** means any person that supplies a service;[2]

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

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

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

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

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

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

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

Article 9.2: Scope and Coverage

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

2. This Chapter shall not apply to:

(a) laws, regulations, or requirements governing the procurement by government agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;

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

(b) services supplied in the exercise of governmental authority;

(c) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees, and insurance; and

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

Nothing in this Chapter or its Annexes shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.[3]

(e) measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

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

(iii) computer reservation system services;

(iv) ground-handling services;

(v) airport operation services.

The rights and obligations of the Parties in respect of financial services shall be governed by the Annex on Financial Services of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 9.3: Schedules of Specific Commitments

1. Each Party shall set out in a schedule, called its Schedule of Specific Commitments, the specific commitments it undertakes in accordance with Articles 9.5, 9.6, and 9.7.

2. With respect to sectors where such commitments are undertaken, each Schedule of Specific Commitments shall specify:

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

(b) conditions and qualifications on national treatment;

[3] The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

(c) undertakings relating to additional commitments;

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

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

3. Measures inconsistent with both Articles 9.5 and 9.6 shall be inscribed in the column relating to Article 9.5. In this case the inscription will be considered to provide a condition or qualification to Article 9.6 as well.

4. The Parties' Schedules of Specific Commitments are set forth in Annex 9A-A (Ukraine – Schedule of Specific Commitments) and Annex 9A-B (United Arab Emirates – Schedule of Specific Commitments).

Article 9.4: Most-Favoured Nation Treatment

1. Except as provided for in its List of MFN Exemptions contained in Annex 9B-A (Ukraine - List of MFN Exemptions) and Annex 9B-B (United Arab Emirates – List of MFN Exemptions), 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 obligations of paragraph 1 shall not apply to:

(a) treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or V *bis* of the GATS as well as treatment granted in accordance with Article VII of the GATS or prudential measures in accordance with the GATS Annex on Financial Services; or

(b) the rights and obligations arising from regional or subregional unions and agreements.

3. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS, which is hereby incorporated into and made part of this Chapter.

4. If, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall upon request from the other Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

Article 9.5: Market Access

1. With respect to market access through the modes of supply identified in the definition of "trade in services" contained in Article 9.1, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments.[4]

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[5]

(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.

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[4] If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in referred to in the definition of "trade in services" contained in Article 9.1 (v)(i) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through the mode of supply referred to in in the definition of "trade in services" contained in Article 9.1 (v)(iii), it is thereby committed to allow related transfers of capital into its territory.

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

Article 9.6: National Treatment

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

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 by a Party shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of that Party compared to like services or service suppliers of the other Party.

Article 9.7: Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 9.5 or 9.6, including those regarding qualification, standards or licensing matters. Such commitments shall be inscribed in that Party's Schedule of Specific Commitments.

Article 9.8: Modification of Schedules

Upon written request by a Party, the Parties shall hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules are subject to any procedures adopted by the Joint Committee established in Chapter 17 (Administration of the Agreement).

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

Article 9.9: Domestic Regulation

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

2.

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

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

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

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

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

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

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

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, in sectors where specific commitments are undertaken, the Parties shall aim to ensure that such requirements are:

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

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

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

5. In determining whether a Party is in conformity with the obligation under paragraph 4, account shall be taken of international standards of relevant international organisations applied by that Party.[7]

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

7. The Parties shall jointly review the results of the negotiations on disciplines on domestic regulation, pursuant to paragraph 4 of Article VI of the GATS, with a view of incorporating them into this Chapter.

Article 9.10: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to paragraph 3, a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted in the territory of a non-Party, that Party 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, experience, licences or certifications obtained or requirements met in that other Party's territory should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the other Party and non-Parties 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.

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[7] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties to this Agreement.

4. The Parties agree to encourage, where possible, the relevant bodies in their respective territories responsible for issuance and recognition of professional and vocational qualifications to:

(a) strengthen cooperation and to explore possibilities for mutual recognition of respective professional and vocational qualifications; and

(b) pursue mutually acceptable standards and criteria for licensing and certification with respect to service sectors of mutual importance to the Parties.

Article 9.11: Payments and Transfers

1. Except under the circumstances envisaged in Article 16.4 (Balance of Payments Difficulties), a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 16.4 (Balance of Payments Difficulties) or at the request of the International Monetary Fund.

Article 9.12: Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2, and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Chapter.

Article 9.13: Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Chapter.

Article 9.14: Denial of Benefits

A Party may deny the benefits of this Agreement to a service supplier that is a juridical person, if persons of a non-Party own or control that juridical person and the denying Party:

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

(b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Agreement were accorded to the juridical person; or

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

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

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

Article 9.15: Review

With the objective of further liberalising trade in services between them, the Parties agree to jointly review their Schedules of Specific Commitments, and their Lists of MFN Exemptions, taking into account any services liberalization developments as a result of on-going work under the auspices of the WTO.

Article 9.16: Annexes

The following Annexes form an integral part of this Chapter:

- Annex 9A-A (Ukraine – Schedule of Specific Commitments)
- Annex 9A-B (United Arab Emirates – Schedule of Specific Commitments)
- Annex 9B-A (Ukraine - List of MFN Exemptions)
- Annex 9B-B (United Arab Emirates – List of MFN Exemptions)
- Annex 9C (Telecommunications Services).

CHAPTER 10
DIGITAL TRADE

Article 10.1: Definitions

For purposes of this Chapter:

customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(a) charge equivalent to an internal tax imposed consistently with paragraph 2 of Article III of the GATT 1994;

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

(c) antidumping or countervailing duty.

digital authentication means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

digital or electronic signature means data in digital or electronic form that is in, affixed to, or logically or cryptographically associated with, a digital or electronic document, and that may be used to identify or verify the signatory in relation to the digital or electronic document and indicate the signatory's approval of the information contained in the digital or electronic document;

digital product means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically;[1,2]

electronic transmission or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

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

open data means non-proprietary information, including data, made freely available to the public by the central level of government;

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[1] For greater certainty, digital product does not include a digitised representation of a financial instrument, including money.

[2] The definition of digital product should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

personal data means any information about an identified or identifiable natural person;

trade administration documents means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

Article 10.2: Objectives

1. The Parties recognise the economic growth and opportunity that digital trade provides, the importance of avoiding barriers to its use and development, the importance of frameworks that promote consumer confidence in digital trade, and the applicability of the WTO Agreement to measures affecting digital trade.

2. The Parties seek to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening their bilateral relations on these matters.

Article 10.3: General Provisions

1. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

2. This Chapter shall not apply to:

   (a) government procurement;

   (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

3. For greater certainty, the Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the relevant provisions of Chapter 9 (Trade in Services) and its Annexes, including any exceptions or limitations set out in this Agreement that are applicable to such provisions.

Article 10.4: Customs Duties

1. Neither Party shall impose customs duties on digital or electronic transmissions, including content transmitted electronically, between a person of one Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted digitally or electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 10.5: Non-Discriminatory Treatment of Digital Products

1. A Party shall not accord less favourable treatment to some digital products than it accords to other like digital products:

(a) on the basis that:

(i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in the territory of the other Party; or

(ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party; or

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

2. A Party shall not accord less favourable treatment to digital products:

(a) created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, in the territory of the other Party than it accords to like digital products created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of a non-Party; or

(b) whose author, performer, producer, developer, or distributor of such digital products is a person of the other Party than it accords to like digital products whose author, performer, producer, developer, or distributor of such digital products is a person of a non-Party.

3. Paragraphs 1 and 2 of this Article are subject to relevant exceptions, limitations or reservations set out in this Agreement or its Annexes, if any.

4. This Article does not apply to measures affecting the electronic transmission of a series of text, video, images, sound recordings, and other products scheduled by a content provider for aural and/or visual reception, and for which the content consumer has no choice over the scheduling of the series.

Article 10.6: Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce* (1996) or the *United Nations Convention on the Use of Electronic Communications in International Contracts*, done at New York on 23 November 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions, including in relation to trade documentation.

Article 10.7: Digital Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in digital or electronic form.

2. Neither Party shall adopt or maintain measures regarding digital authentication and digital signatures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods or digital signatures for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication or digital signatures.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication or digital signature meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable means of digital authentication.

Article 10.8: Paperless Trading

Each Party shall, where applicable and to the extent possible:

(a) make trade administration documents available to the public in digital or electronic form; and

(b) accept completed electronic versions of trade administration documents as the legal equivalent of paper documents, except where:

(i) that Party is subject to a domestic or international legal requirement to the contrary; or

(ii) doing so would reduce the effectiveness of the trade administration process.

Article 10.9: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from misleading, deceptive, and fraudulent commercial practices when they engage in digital trade.

2. Each Party shall adopt or maintain consumer protection laws to proscribe misleading, deceptive, and fraudulent commercial activities that cause harm or potential harm to consumers engaged in digital trade.[3]

Article 10.10: Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of persons who conduct or engage in electronic transactions and the contribution that this makes to enhancing consumer confidence in digital trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal data of the users of digital trade.[4] In the development of any legal framework for the protection of personal data, each Party should endeavour to take into account principles and guidelines of relevant international organisations.

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[3] For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as generally-applicable consumer protection laws or regulations or sector or medium-specific laws or regulations regarding consumer protection.

[4] For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

Article 10.11: Principles on Access to and use of the Internet for Digital Trade

To support the development and growth of digital trade, each Party recognizes that consumers in its territory should be able to:

(a) access and use services and applications of their choice, unless prohibited by the Party's law on grounds of public morality, public policy or public security;

(b) run services and applications of their choice, subject to the Party's law, including the needs of legal and regulatory enforcement activities; and

(c) connect their choice of devices to the Internet, provided that such devices do not harm the network and are not otherwise prohibited by the Party's law on grounds of public morality, public policy or public security.

Article 10.12: Unsolicited Commercial Electronic Messages

1. Each Party shall endeavor to adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;

(b) require the consent, as specified in the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall endeavor to provide recourse against a supplier of unsolicited commercial electronic messages that does not comply with a measure adopted or maintained in accordance with paragraph 1.

3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 10.13: Cross-Border Flow of Information

Recognizing the importance of the free flow of information in facilitating trade, and acknowledging the importance of protecting personal data, the Parties shall endeavor to refrain from imposing or maintaining unnecessary barriers to electronic information flows across borders.

Article 10.14: Open Data

1. The Parties recognise that facilitating public access to and use of open data contributes to stimulating economic and social benefit, competitiveness, productivity improvements and innovation. To the extent that a Party chooses to make available open data, it shall endeavour to ensure:

(a) that the information is appropriately anonymised, contains descriptive metadata and is in a machine readable and open format that allows it to be searched, retrieved, used, reused and redistributed freely by the public; and

(b) to the extent practicable, that the information is made available in a spatially enabled format with reliable, easy to use and freely available Application Programming Interfaces (hereinafter referred to as "APIs") and is regularly updated.

2. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to and use of open data, with a view to enhancing and generating business and research opportunities.

Article 10.15: Digital Government

1. The Parties recognise that technology can enable more efficient and agile government operations, improve the quality and reliability of government services, and enable governments to better serve the needs of their citizens and other stakeholders.

2. To this end, the Parties shall endeavour to develop and implement strategies to digitally transform their respective government operations and services, which may include:

(a) adopting open and inclusive government processes focusing on accessibility, transparency, and accountability in a manner that overcomes digital divides;

(b) promoting cross-sectoral and cross-governmental coordination and collaboration on digital agenda issues;

(c) shaping government processes, services and policies with digital inclusivity in mind;

(d) providing a unified digital platform and common digital enables for government service delivery;

(e) leveraging emerging technologies to build capabilities in anticipation of disasters and crises and facilitating proactive responses;

(f) generating public value from government data by applying it in the planning, delivering and monitoring of public policies, and adopting rules and ethical principles for the trustworthy and safe use of data;

(g) making government data and policy-making processes (including algorithms) available for the public to engage with; and

(h) promoting initiatives to raise the level of digital capabilities and skills of both the populace and the government workforce.

3. Recognising that the Parties can benefit by sharing their experiences with digital government initiatives, the Parties shall endeavour to cooperate on activities relating to the digital transformation of government and government services, which may include:

(a) exchanging information and experiences on digital government strategies and policies;

(b) sharing best practices on digital government and the digital delivery of government services; and

(c) providing advice or training, including through exchange of officials, to assist the other Party in building digital government capacity.

Article 10.16: Digital and Electronic Invoicing

1. The Parties recognise the importance of digital and electronic invoicing to increase the efficiency, accuracy and reliability of commercial transactions. Each Party also recognises the benefits of ensuring that the systems used for digital and electronic invoicing within its territory are interoperable with the systems used in the other Party's territory.

2. Each Party shall ensure that the implementation of measures related to digital and electronic invoicing in its territory supports cross-border interoperability between the Parties' digital and electronic invoicing frameworks. To this end, each Party shall endeavour to base its measures relating to digital and electronic invoicing on international frameworks.

3. The Parties recognise the economic importance of promoting the global adoption of digital and electronic invoicing systems, including interoperable international frameworks. To this end, the Parties shall endeavour to:

(a) promote, encourage, support or facilitate the adoption of digital and electronic invoicing by enterprises;

(b) promote the existence of policies, infrastructure and processes that support digital and electronic invoicing;

(c) generate awareness of, and build capacity for, digital and electronic invoicing; and

(d) share best practices and promote the adoption of interoperable international digital and electronic invoicing systems.

Article 10.17: Digital and Electronic Payments

1. Recognising the rapid growth of digital and electronic payments, in particular those provided by non-bank, non-financial institutions and financial technology enterprises, the Parties shall support the development of efficient, safe and secure cross-border digital and electronic payments by:

(a) fostering the adoption and use of internationally accepted standards for digital and electronic payments;

(b) promoting interoperability and the interlinking of digital electronic payment infrastructures; and

(c) encouraging innovation and competition in digital and electronic payments services.

2. To this end, each Party shall endeavour to:

(a) make publicly available its laws and regulations of general applicability relating to digital and electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards;

(b) finalise decisions on regulatory or licensing approvals relating to digital and electronic payments in a timely manner;

(c) not arbitrarily or unjustifiably discriminate between financial institutions and non-financial institutions in relation to access to services and infrastructure necessary for the operation of digital and electronic payment systems;

(d) adopt or utilize international standards for electronic data exchange between financial institutions and services suppliers to enable greater interoperability between digital and electronic payment systems;

(e) facilitate the use of open platforms and architectures such as tools and protocols provided for through APIs and encourage payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation and competition in electronic payments; and

(f) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner, such as through adopting regulatory and industry sandboxes.

Article 10.18: Digital Identities

Recognising that cooperation between the Parties on digital identities for natural persons and enterprises will promote connectivity and further growth of digital trade, and recognising that each Party may take different legal and technical approaches to digital identities, the Parties shall endeavour to pursue mechanisms to promote compatibility between their respective digital identity regimes. This may include:

(a) developing appropriate frameworks and common standards to foster technical interoperability between each Party's implementation of digital identities;

(b) developing comparable protection of digital identities under each Party's respective legal frameworks, or the recognition of their legal effects, whether accorded autonomously or by agreement;

(c) supporting the development of international frameworks on digital identity regimes;

(d) exchanging knowledge and expertise on best practices relating to digital identity policies and regulations, technical implementation and security standards, and the promotion of the use of digital identities.

Article 10.19: Cooperation

1. Recognising the importance of digital trade to their collective economies, the Parties shall endeavour to maintain a dialogue on regulatory matters relating to digital trade with a view to sharing information and experiences, as appropriate, including on related laws, regulations, and their implementation, and best practices with respect to digital trade, including in relation to:

(a) online consumer protection;

(b) personal data protection;

(c) anti-money laundering and sanctions compliance for digital trade;

(d) unsolicited commercial electronic messages;

(e) authentication;

(f) intellectual property concerns with respect to digital trade;

(g) challenges for small and medium-sized enterprises in digital trade; and

(h) digital government.

2. The Parties have a shared vision to promote secure digital trade and recognise that threats to cybersecurity undermine confidence in digital trade. Accordingly, the Parties recognise the importance of:

(a) building the capabilities of their government agencies responsible for computer security incident response;

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties; and

(c) promoting the development of a strong public and private workforce in the area of cybersecurity, including possible initiatives relating to mutual recognition of qualifications.

CHAPTER 11
INTELLECTUAL PROPERTY

Section A: General Provisions

Article 11.1: Definitions

For the purposes of this Chapter:

intellectual property embodies:

(a) copyright, including copyright in computer programs and in databases, and related rights;

(b) patents and utility models;

(c) trademarks;

(d) industrial designs;

(e) layout-designs (topographies) of integrated circuits;

(f) geographical indications;

(g) plant varieties; and

(h) protection of undisclosed information.

national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 11.5 or the TRIPS Agreement;

WIPO means the World Intellectual Property Organization.

Article 11.2: Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of trade, investment, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 11.3: Principles

1. The Parties shall endeavour to guarantee the protection of the legitimate interests of the owners of intellectual property rights.

2. The Parties may take appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology between countries.

Article 11.4: Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 11.5: International Agreements

1. The Parties reaffirm their obligations set out in the following multilateral agreements:

   (a) *Patent Cooperation Treaty* done on 19 June 1970, as revised by the Washington Act of 2001;

   (b) *Paris Convention* for the Protection of Industrial Property, done on 20 March 1883, as revised by the Stockholm Act of 1967 (Paris Convention);

   (c) *Berne Convention for the Protection of Literary and Artistic Works*, done 9 September 1886, as revised by the Paris Act of 1971 (Berne Convention);

   (d) *Madrid Protocol relating to the Madrid Agreement concerning the International Registration of Marks*, done on 28 June 1989;

   (e) *WIPO Performances and Phonogram Treaty*, done on 20 December 1996 (WPPT);

   (f) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, done on 26 October 2961 (Rome Convention);

   (g) *WIPO Copyright Treaty*, done on of 20 December 1996 (WCT);

(h) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, done on 28 April 1977; and

(i) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*, done at Marrakesh of 27 June 2013 (Marrakesh Treaty).

2. Each Party shall endeavour to ratify or accede to each of the following agreements, if it is not already a party to that agreement:

(a) *International Convention for the Protection of New Varieties of Plants*, done on 2 December 1961 as revised in 19 March 1991.

Article 11.6: Intellectual Property and Public Health

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

2. The Parties recognise the principles established in the *Declaration on the TRIPS Agreement and Public Health*, done on 14 November 2001 (Doha Declaration) by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

Article 11.7: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention or the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, done in Washington, DC, United State on 26 May 1989.

2. With respect to secondary uses of phonograms by means of analogue communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded to within the jurisdiction of that other Party.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 11.8: Transparency

1. Each Party shall endeavour, subject to its legal system and practice, to make information concerning application and registration of trademarks, geographical indications, industrial designs, patents, utility models, and plant variety rights available for the general public.

2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

3. Each Party shall make its best efforts to make available such information in the English language.

Article 11.9: Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter give rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter without unreasonably impairing the fair interest of the third parties.

2. Unless provided in this Chapter, a Party shall not be required restore protection to subject matter which on the date of entry into force of this Agreement for the Party in question has fallen into the public domain.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Article 11.10: Exhaustion of Intellectual Property Rights

Without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a member, nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system. A Party may establish its own regime of exhaustion of intellectual property rights, taking into account the provisions of the TRIPS Agreement.

Section B: Cooperation

Article 11.11: Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed upon between the Parties. Cooperation may cover areas such as:

(a) developments in domestic and international intellectual property policy;

(b) intellectual property administration and registration systems;

(c) education and awareness relating to intellectual property;

(d) intellectual property issues relevant to:

  (i) SMEs;

  (ii) science, technology and innovation activities;

  (iii) generation, transfer and dissemination of technology; and

  (iv) empowering women and youth.

(e) policies involving the use of intellectual property for research, innovation and economic growth;

(f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;

(g) capacity-building;

(h) enforcement of intellectual property rights; and

(i) other activities and initiatives as may be mutually determined between the Parties.

Article 11.12: Patent Cooperation

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties will make efforts to improve cooperation among their respective patent offices to facilitate the sharing and use of search and examination work with the other Party. This may include:

(a) making search and examination results available to the patent office of the other Party; and

(b) exchanging information on quality assurance systems and quality standards relating to patent examination.

Section C: Trademarks

Article 11.13: Types of Signs Registrable as Trademarks

A Party may require as a condition of registration, that the sign will be perceived visually, and a Party may not refuse registration of a trademark solely on the grounds, that the sign of which it is composed, is a sound. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 11.14: Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs for goods 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. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Article 11.15: Collective and Certification Marks

Each Party shall provide that trademarks may include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party may provide that signs that may serve as geographical indications are capable of protection under its trademark system.[1]

Article 11.16: Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

Article 11.17: Well-Known Trademarks

1. Neither Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6 bis of the Paris Convention shall apply, mutatis mutandis, to goods or services that are not similar to those in respect of which a trademark is registered provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO 20-29 September, 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark[2], for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide for such measures including in cases in which the subsequent trademark is likely to deceive.

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[1] Consistent with the definition of a geographical indication in Article 11.1, any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.

[2] The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.

Article 11.18: Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which includes among other things:

(a) communicating to the applicant in writing, which may be provided by electronic means, the reasons for any refusal to register a trademark;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;

(c) providing an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark; and

(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

Article 11.19: Electronic Trademarks System

Each Party shall provide:

(a) a system for the electronic application for, and maintenance of, trademarks; and

(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article 11.20: Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done on 15 June, 1957, as revised and amended (Nice Classification). Each Party shall provide that:

(a) registrations and publications of applications indicate goods and services by their names, grouped according to the classes established by the Nice Classification[3]; and

[3] A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

Article 11.21: Term of Protection for Trademarks

Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.

Article 11.22: Non-Recordal of a Licence

Neither Party shall require recordal of trademark licences:

(a) to establish the validity of the licence; or

(b) as a condition for the use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.

Article 11.23: Domain Names

In connection with each Party's system for the management of its country code top-level domain (ccTLD) domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) of 24 October 1999 or that:

(i) is designed to resolve disputes expeditiously and at low cost;

(ii) is fair and equitable;

(iii) is not overly burdensome; and

(iv) does not preclude resort to judicial proceedings; and

(b) online public access to a reliable and accurate database of contact information concerning domain name registrants, in accordance with each Party's law and, if applicable, relevant administrator policies regarding the protection of privacy and personal data.

Section D: Country Names

Article 11.24: Country Names

Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E: Geographical Indications

Article 11.25: Recognition of Geographical Indications

1. Geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.

2. The Parties recognise that geographical indications may be protected through a trademark or sui generis system or other legal means.

Article 11.26: Administrative Procedures for the Protection of Geographical Indications

If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a sui generis system, that Party shall with respect to applications for that protection or petitions ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions.

Article 11.27: Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication, such protection or recognition shall commence no earlier than the filing date[4] in the Party or the registration date in the Party, as applicable.

Section F: Patents and Industrial Designs

Article 11.28: Grace Period

1. Each Party shall disregard information contained in public disclosure of an invention related to an application to register a patent[5] if the public disclosure:

(a) was made by the inventor, applicant or a person that obtained the information from the inventor or applicant inside or outside the territory of each Party; and

(b) occurred prior to the date of filing of the application or priority data during the period determined by the legislation of each Party.

2. Each Party shall disregard information contained in public disclosure of a design related to an application to register an industrial design if the public disclosure:

(a) was made by the designer, applicant or a person that obtained the information from the designer or applicant inside or outside the territory of each Party; and

(b) occurred prior to the date of filing of the application or priority data during the period determined by the legislation of each Party.

Article 11.29: Procedural Aspects of Examination, Opposition and Invalidation of Certain Registered Patent and Industrial Design

Each Party shall provide a system for the examination and registration of patents or industrial designs which includes among other things:

(a) communicating to the applicant in writing, which may be provided by electronic means, the reasons for any refusal to register patent or industrial design;

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[4] For greater certainty, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

[5] For greater certainty, patent may include utility model in accordance with national law and regulations.

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register patent or industrial design;

(c) providing an opportunity for interested parties to seek cancellation or invalidation of a registered patent or industrial design, and in addition providing an opportunity for interested parties to oppose the registration of patent or industrial design; and

(d) making decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing, which may be delivered by electronic means.

Article 11.30: Amendments, Corrections, and Observations

1. Each Party shall provide an applicant for patent or industrial design with at least one opportunity to make amendments, corrections or observations in connection with its application.

2. Each Party shall provide a right holder of patent or industrial design with opportunities to make amendments or corrections after registration provided that such amendments or corrections do not change or expand the scope of the patent or industrial design right as a whole.[6]

Article 11.31: Industrial Design Protection

1. The Parties shall ensure that requirements for securing or enforcing registered industrial design protection do not unreasonably impair the opportunity to obtain or enforce such protection.

2. The duration of protection available for registered industrial designs shall amount to at least 20 years from the date of filing.

Article 11.32: Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent or an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent or an industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

Section G: Protection of Undisclosed Test or Other Data

[6] It is understood that the amendments or corrections which do not change or expand the scope of the right means that the scope of the patent or industrial design right stays same as before or is reduced.

Article 11.33: Protection of Undisclosed Test or Other Data for Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning either or both the safety and efficacy of the product, that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar[7] product on the basis of:

(a) that information; or

(b) the marketing approval granted to the person that submitted such information, for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of the Party.

2. A Party may adopt or maintain a system other than judicial proceedings that precludes, based upon patent information submitted to the regulatory authority by a patent holder or the applicant for marketing approval, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder, subject to its domestic laws and regulations.

3. Notwithstanding paragraph 1, a Party may take measures to protect public health in accordance with:

(a) the Doha Declaration;

(b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Doha Declaration and that is in force between the Parties; or

(c) any amendment of the TRIPS Agreement to implement the Doha Declaration that enters into force with respect to the Parties.

4. For the purposes of paragraph 1, a new pharmaceutical product means a pharmaceutical product that contains an active ingredient for which no other pharmaceutical product containing the same active ingredient has previously obtained marketing approval in the country.

Section H: Copyright and Related Rights

Article 11.34: Definitions

[7] For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

For the purposes of Article 11.35 and Article 11.37 through Article 11.44, the following definitions shall apply with respect to performers and producers of phonograms:

(a) **broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

(b) **communication to the public of a performance or a phonogram means the transmission to the public by any medium**, other than by broadcasting, of sounds of a performance or sounds or representations of sounds fixed in a phonogram;

(c) **fixation** means the embodiment of sounds, or of representations thereof, from which they can be perceived, reproduced, or communicated through a device;

(d) **performers** mean actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

(e) **performance** means a performance fixed in a phonogram unless otherwise specified;

(f) **phonogram** means the fixation of sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

(g) **producer of a phonogram** means a person that takes the initiative and has the responsibility for the first fixation of sounds of a performance or other sounds, or representations of sounds;

(h) **publication of a performance or phonogram** means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;

(i) **right to authorise or prohibit**, with respect to copyright and related rights.

Article 11.35: Right of Reproduction

Each Party shall provide[8] to authors, performers and producers of phonograms[9] the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

Article 11.36: Right of Communication to the Public

Without prejudice to Article 11 (1)(ii), Article 11bis (1)(i) and (ii), Article 11ter (1)(ii), Article 14 (1)(ii), and Article 14bis (1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.[10]

Article 11.37: Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies[11] of their works, performances and phonograms through sale or other transfer of ownership.

Article 11.38: Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals[12] of another Party; and to performances or phonograms first published or first fixed[13] in the territory

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[8] For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.

[9] References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

[10] The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis (2) of the Berne Convention.

[11] The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

[12] For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

[13] For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

of another Party.[14] A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

2. Each Party shall provide to performers the exclusive right to authorise or prohibit:

(a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and

(b) the fixation of their unfixed performances.

3.

(a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means,[15, 16] and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

(b) Notwithstanding subparagraph (a) and Article 11.40, the application of the right referred to in subparagraph (a) to analogue transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law.[17]

Article 11.39: Term of Protection for Copyright and Related Rights

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[14] For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, in accordance with Article 11.7, each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

[15] With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15 (1) and Article 15 (4) of the WPPT and may also apply Article 15 (2) of the WPPT, provided that this is done in a manner consistent with that Party's obligations under Article 11.7.

[16] For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

[17] For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:[18]

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 50 years after the author's death;[19] and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 50 years from the end of the calendar year of the first authorised publication[20] of the work, performance or phonogram; or

(ii) anonymous and pseudonymous works shall be protected for a period of 50 years from the beginning of the calendar year subsequent to the year in which such works have been first published,[21] performance or phonogram, not less than 50 years from the end of the calendar year of the creation of the work, performance or phonogram.

Article 11.40: Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Article 11.41: Balance in Copyright and Related Rights Systems

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[18] For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 11.40 and that Party's international obligations.

[19] The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 11.7 shall preclude that Party from applying Article 7 (8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

[20] For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.

[21] In case the author of such works has been known or specified or has disclosed his identity, the protection will be for the lifetime of the author and 50 years thereafter commencing as of the beginning of the calendar year subsequent to the author's death.

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 11.40, including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.[22, 23]

Article 11.42: Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right[24] in a work, performance or phonogram:

(a) may freely and separately transfer that right by contract; and

(b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.[25]

Article 11.43: Obligations concerning Protection of Technological Measures and Rights Management Information

1. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights as provided under Article 11.35, Article 11.36, Article 11.37 and Article 11.38, that restrict acts, in respect of their works, performances or phonograms, which are not authorised by the authors, performers or producers of phonograms concerned or permitted by law.

2. Each party shall provide adequate and effective legal remedies against any person who knowingly, without authorisation removes or alters any electronic rights management information and/or distributes, imports for distribution, broadcasts or communicates to the public, without

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[22] As recognised by the Marrakesh Treaty.

[23] For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 11.40.

[24] For greater certainty, this provision does not affect the exercise of moral rights.

[25] Nothing in this Article shall affect a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

authorisation, works or copies of works knowing that electronic rights management information[26] has been removed or altered without authorisation.

Article 11.44: Collective Management

The Parties recognise the role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Section I: Enforcement of Intellectual Property Rights

Article 11. 45: General Obligation in Enforcement

Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 11.46: Border Measures

1. Each Party shall, in conformity with its domestic law and regulations and the provisions of Part III, Section 4 of the TRIPS Agreement adopt or maintain procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.

2. A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory as per its domestic laws and regulation.

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[26] For the purpose of clarity "rights management information" shall be interpreted to be as provided under Article 12 of the WCT.

CHAPTER 12
SMALL AND MEDIUM-SIZED ENTERPRISES

Article 12.1: General Principles

1. The Parties, recognising the fundamental role of small and medium-sized enterprises ("SMEs") in maintaining dynamism and enhancing competitiveness of their respective economies, shall foster close cooperation between SMEs of the Parties and cooperate in promoting jobs and growth in SMEs.

2. The Parties recognise an integral role of the private sector in the SME cooperation to be implemented under this Chapter.

Article 12.2: Cooperation to Increase Trade and Investment Opportunities for SMEs

With a view to more robust cooperation between the Parties to enhance commercial opportunities for SMEs, each Party shall seek to increase trade and investment opportunities, and in particular shall:

(a) promote cooperation between the Parties' small business support infrastructure, including dedicated SME centres, incubators and accelerators, export assistance centres, and other centres as appropriate, to create an international network for sharing best practices, exchanging market research, and promoting SME participation in international trade, as well as business growth in local markets;

(b) strengthen its collaboration with the other Parties on activities to promote SMEs owned by women and youth, as well as start-ups, and promote partnership among these SMEs and their participation in international trade; and

(c) enhance its cooperation with the other Parties to exchange information and best practices, including on improving SME access to capital and credit, SME participation in covered government procurement opportunities, and helping SMEs adapt to changing market conditions;

(d) encourage participation in purpose-built mobile or web-based platforms, for business entrepreneurs and advisors to share information and best practices to help SMEs link with international suppliers, buyers, and other potential business partners.

Article 12.3: Information Sharing

1. Each Party shall establish or maintain its own free, publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement including annexes, tariff schedules and product specific rules of origin;

(b) a summary of this Agreement; and

(c) information designed for SMEs that contains:

(i) a description of the provisions of this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that the Party considers would be useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include links to:

(a) the equivalent webpage of the other Party; and

(b) the websites and/or webpages of its own government agencies and other appropriate entities that provide information the Party considers useful to any person interested in trading, investing, or doing business in that Party's territory.

3. Subject to each Party's laws and regulations, the information described in paragraph 2 (b) may include:

(a) customs regulations and procedures, including enquiry points;

(b) regulations or procedures concerning intellectual property trade secrets, and patent protection rights;

(c) technical regulations, standards, quality or conformity assessment procedures;

(d) sanitary or phytosanitary measures relating to importation or exportation;

(e) foreign investment regulations;

(f) business registration procedures;

(g) trade promotion programs including start-up promotion programs;

(i) SME investment and financing programs;

(j) taxation and accounting information;

(k) government procurement opportunities; and

(l) other information which the Party considers to be useful for SMEs.

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure the information and links are up-to-date and accurate.

5. To the extent possible, each Party shall make the information in this Article available in English. If this information is available in another authentic language of this Agreement, the Party shall endeavour to make this information available in English, as appropriate.

Article 12.4: Subcommittee on SME Issues

1. The Parties hereby establish the Subcommittee on SME Issues ("SME Subcommittee"), comprising national and local government representatives of each Party.

2. The SME Subcommittee shall:

(a) identify ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement and to strengthen SME competitiveness;

(b) identify and recommend ways for further cooperation between the Parties to develop and enhance partnerships between SMEs of the Parties;

(c) exchange and discuss each Party's experiences and best practices in supporting and assisting SME exporters with respect to, among other things, training programs, trade education, trade finance, trade missions, trade facilitation, digital trade, identifying commercial partners in other Parties, and establishing good business credentials;

(d) promote seminars, workshops, webinars, mentorship sessions, or other activities to inform SMEs of the benefits available to them under this Agreement;

(e) explore opportunities for capacity building to facilitate each Party's work in developing and enhancing SME export counselling, assistance, and training programs;

(f) recommend additional information that a Party may include on the website referred to in Article 12.3;

(g) review and coordinate its work program with the work of other subcommittees, working groups, and other subsidiary bodies established under this Agreement, as well as of other relevant international bodies, to avoid duplication of work programs and to identify appropriate opportunities for cooperation to improve the ability of SMEs to engage in trade and investment opportunities under this Agreement;

(h) review the implementation and operation of this Chapter and SME-related provisions within this Agreement and report findings and make recommendations to the Joint Committee that can be included in future work and SME assistance programs as appropriate; and

(i) consider any other matter pertaining to SMEs as the SME Subcommittee may decide, including issues raised by SMEs regarding their ability to benefit from this Agreement.

3. The SME Subcommittee shall meet as mutually decided by the Parties. Subcommittee meetings may be held in person, by videoconference, by telephone, or by other means.

4. The SME Subcommittee may seek to collaborate with appropriate experts and international donor organisations in carrying out its programs and activities.

Article 12.5: Non-Application of Dispute Settlement

Chapter 15 (Dispute Settlement) shall not apply to any matter or dispute arising from this Chapter.

CHAPTER 13
ECONOMIC COOPERATION

Article 13.1: Objectives

1. The Parties shall promote cooperation under this Agreement for their mutual benefit in order to liberalise and facilitate trade and investment between the Parties and foster economic growth.

2. Economic cooperation under this Chapter shall be built upon a common understanding between the Parties to support the implementation of this Agreement, with the objective of maximising its benefits, supporting pathways to trade and investment facilitation, and further improving market access and openness to contribute to the sustainable and inclusive economic growth and prosperity of the Parties.

Article 13.2: Scope

1. Economic cooperation under this Chapter shall support the effective and efficient implementation and utilisation of this Agreement through activities that relate to trade and investment.

2. Economic cooperation under this Chapter shall initially focus on the following areas:

(a) manufacturing industry, processing and supply chains;

(b) trade and investment promotion;

(c) digital economy;

(d) infrastructure and logistics;

(e) agriculture, including food security, fisheries and livestock;

(f) tourism;

(g) transport;

(h) shipping and maritime;

(i) energy, energy efficiency, renewable energy, alternative fuels, decarbonisation and sustainability in energy;

(j) aviation and space activities.

3. The Parties may agree in the Annual Work Programme on Economic Cooperation Activities (hereinafter "Annual Work Program") to modify the above list, including by adding other areas for economic cooperation.

Article 13.3: Competition Policy

1. The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties may cooperate to exchange information relating to the development of competition policy, subject to their domestic laws and regulations and available resources. The Parties may conduct such cooperation through their competent authorities.

2. The Parties may consult on matters related to anti-competitive practices and their adverse effects to trade. The consultations shall be without prejudice to the autonomy of each Party to develop, maintain and enforce its domestic competition laws and regulations.

Article 13.4: Resources

1. Resources for economic cooperation under this Chapter shall be provided in a manner as agreed by the Parties and in accordance with the laws and regulations of the Parties.

2. The Parties, on the basis of mutual benefit, may consider cooperation with, and contributions from, external parties to support the implementation of the Annual Work Program.

Article 13.5: Means of Cooperation

The Parties shall endeavour to encourage technical, technological and scientific economic cooperation, through the following:

(a) Joint organisation of conferences, seminars, workshops, meetings, training sessions and outreach and education programs;

(b) exchange of delegations, professionals, technicians and specialists from the academic sector, scientific research institutions dedicated to research, private sector and governmental agencies, including study visits and internship programs for professional training;

(c) dialogue and exchange of experiences between the Parties' private sector and agencies involved in trade promotion;

(d) initiation of the knowledge-sharing platform aiming to transfer experience and best practices in the field of government development and modernisation to other countries through the UAE's Government Experience Exchange Programme;

(e) promote joint business initiatives between entrepreneurs of the Parties; and

(f) any other form of cooperation that may be agreed by the Parties.

Article 13.6: Subcommittee on Economic Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Subcommittee on Economic Cooperation.

2. The Subcommittee on Economic Cooperation shall undertake the following functions:

(a) monitor and assess the implementation of this Chapter;

(b) identify new opportunities and agree on new ideas for prospective cooperation or capacity building activities;

(c) formulate and develop Annual Work Programme proposals and their implementation mechanisms;

(d) coordinate, monitor and analyse progress of the Annual Work Programme to assess its overall effectiveness and contribution to the implementation and operation of this Chapter;

(e) suggest amendments to the Annual Work Programme following periodic evaluations;

(f) cooperate with other Subcommittees and/or subsidiary bodies established under this Agreement to perform stocktaking, monitoring, and benchmarking on any issues related to the implementation of this Agreement, as well as to provide feedback and assistance in the implementation and operation of this Chapter; and

(g) report to and, if deemed necessary, consult with the Joint Committee in relation to the implementation and operation of this Chapter.

Article 13.7: Annual Work Program on Economic Cooperation Activities

1. The Subcommittee on Economic Cooperation shall adopt an Annual Work Programme based on proposals submitted by the Parties.

2. Each activity in an Annual Work Program developed under this Chapter shall:

(a) be guided by the objectives agreed in Article 13.1;

(b) be related to trade or investment and support the implementation of this Agreement;

(c) involve both Parties;

(d) address the mutual priorities of the Parties; and

(e) avoid duplicating existing economic cooperation activities.

Article 13.8: Non-application of Dispute Settlement

Chapter 15 (Dispute Settlement) shall not apply to any matter or dispute arising from this Chapter.

CHAPTER 14
GOVERNMENT PROCUREMENT

Article 14.1: Definitions

For the purpose of this Chapter:

construction service means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the *United Nations Provisional Central Product Classification* (CPC);

electronic auction means a process that involves the use of electronic means for supplier negotiations and competitive price offering;

goods or services means goods or services that a procuring entity needs to carry out its business;

in writing or **written** means any worded or numbered expression that can be read, reproduced and may be later communicated, and may include electronically transmitted and stored information;

limited tendering means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

measure means any law, regulation, policy, procedure, administrative guidance or practice, or any action of a procuring entity relating to a procurement;

multi-use list means a list of suppliers that a procuring entity has determined to satisfy the conditions for inclusion in that list, and that the procuring entity intends to use more than once;

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

open tendering means a procurement method whereby a procuring entity announces to all interested qualified suppliers to submit a tender, thereby providing equal opportunities for all suppliers interested in submitting their tenders;

procurement means the purchase by a procuring entity of goods or services. The procurement process is a sequence of activities undertaken by a procuring entity to obtain the required goods or services;

procuring entity for the United Arab Emirates means a federal government entity listed in the UAE's Market Access Schedule to this Chapter referred to in Article 14.23; and for Ukraine means the procuring entity defined by the *Law of Ukraine "On Public Procurement"* and listed in the Ukraine's Market Access Schedule to this Chapter referred to in Article 14.23;

publish means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

qualified supplier means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

services mean any service that has been specified by the procurement entity;

supplier means a person or a group of persons that provides or could provide a good or service to a procuring entity; and

technical specification means a tendering requirement that:

(a) sets out the characteristics of:

(i) goods to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production; or

(ii) services to be procured, or the processes or methods for their provision; or

(b) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

Article 14.2: General

1. The Parties recognise the importance of government procurement in trade relations and set as their objective the effective, reciprocal and gradual opening of their government procurement markets, in order to maximise, inter alia, competitive opportunities for the suppliers of the Parties.

2. The Parties recognise the importance of government procurement as a tool in furthering the expansion of domestic production and trade so as to promote growth and employment, with due consideration of the balance between optimum utilisation of resources and requirements.

3. The Parties recognise that the commitments under this Chapter should be sufficiently flexible to accommodate the specific circumstances and needs of each Party.

4. The Parties recognise the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the *United Nations Convention Against Corruption*, adopted on 31 October 2003, in New York, United States.

Article 14.3: Scope

Application of this Chapter

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means government procurement:

   (a) of a good, service or any combination thereof;

      (i) as specified in each Party's Annexes to its Market Access Schedule to this Chapter referred to in Article 14.23; and

      (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale;

   (b) by any contractual means, including purchase; rental or lease, with or without an option to buy;

   (c) by a procuring entity; and

   (d) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale.

Activities Not Covered by this Chapter

3. This Chapter shall not apply to:

   (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

   (b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;

   (c) the procurement or acquisition of fiscal agency or depository services; liquidation and management services for regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities. For greater certainty, this Chapter shall not apply to procurement of banking, financial, fiduciary, or specialised services related to the following activities:

      (i) the incurring of public indebtedness; or

(ii) public debt management;

(d) public employment contracts;

(e) procurement:

(i) conducted for the specific purpose of providing international assistance, including development aid;

(ii) funded by an international organisation or foreign or international grants, loans or other assistance to which procurement procedures or conditions of the international organisation or donor apply. If the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall be subject to Article 14.5.1;

(iii) conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project.

Compliance

4. Each Party shall ensure that its procuring entities comply with this Chapter in conducting procurements.

5. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, in order to avoid the obligations of this Chapter.

6. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

Article 14.4: Exceptions

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.

Article 14.5: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding procurement, each Party, including its procuring entities, shall make best efforts to accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services, and suppliers.

2. With respect to any measure regarding procurement, each Party, including its procuring entities, shall make best efforts to not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation to or ownership by, a person of the other Party; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

Procurement Methods

3. A procuring entity shall use an open tendering procedure for procurement unless Article 14.9 or Article 14.10 applies.

Rules of Origin

4. For the purposes of procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

Measures Not Specific to Procurement

5. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import

regulations or formalities, and measures affecting trade in services other than measures governing procurement.

Use of Electronic Means

6. The Parties shall seek to provide opportunities for procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders, generally, the full cycle of procure to pay.

7. When conducting procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using financial systems, information technology systems, and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available financial systems, information technology systems, and software; and

(b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

Article 14.6: Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application relating to procurement, and any change or addition to this information.

2. Each Party shall list the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 14.7, Article 14.9.3, and Article 14.16.

3. Each Party shall, on request, provide an explanation in response to an inquiry relating to the information referred to in paragraph 1.

Article 14.7: Notices of Intended Procurement

1. For each procurement, except in the circumstances described in Article 14.10, a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.

2. The notices shall, if accessible by electronic means, be provided free of charge:

(a) for central government entities through a single point of access; and

(b) for other entities through links at a single electronic portal.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and the cost and terms of payment to obtain the relevant documents, if any;

(b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known;

(c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;

(d) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(e) the address and the final date for the submission of tenders;

(f) the language or languages in which tenders or requests for participation may be submitted, if other than the official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers, which may include any related requirements for specific documents or certifications that suppliers must provide;

(h) if, pursuant to Article 14.9, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter.

Notice of Planned Procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (notice of planned procurement) which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

Article 14.8: Conditions for Participation

1. A procuring entity shall make best efforts to limit any conditions for participation in a procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall make best efforts to not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity, the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity[1] and

(b) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) professional misconduct or actions or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

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[1] For greater certainty, it is the responsibility of the supplier to provide accurate information, and the procuring entity may reasonably rely on information provided to it by the supplier.

Article 14.9: Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information and documentation.

Selective Tendering

2. If a procuring entity intends to use selective tendering, the procuring entity shall:

   (a) publish a notice of intended procurement that invites qualified suppliers to submit a request for participation in a procurement; and

   (b) include in the notice of intended procurement the information specified in Article 14.7.3 (a), (b), (d), (g), (h), and (i).

3. The procuring entity shall:

   (a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;

   (b) provide, by the commencement of the time period for tendering, at least the information in Article 14.7.3 (c), (e), and (f) to the qualified suppliers that it notifies as specified in Article 14.14.3 (b); and

   (c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

4. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 3 (c).

Multi-Use Lists

5. A Party, including its procuring entities, may establish or maintain a multi-use list provided that it publishes annually, or otherwise makes continuously available by electronic means, a notice inviting interested suppliers to apply for inclusion in the list. The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion in the list and the methods that the procuring entity will use to verify a supplier's satisfaction of those conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list;

(e) the deadline for submission of applications for inclusion in the list, if applicable; and

(f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 14.6.2.

6. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include in the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 5.

7. If a supplier that is not included in a multi-use list submits a request for participation in a procurement based on the multi-use list and submits all required documents, within the time period provided for in Article 14.14.2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement unless the procuring entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

Information on Procuring Entity Decisions

8. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion in a multi-use list of the decision with respect to the request or application.

9. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion in a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and on request of the supplier, promptly provide the supplier with a written explanation of the reason for its decision.

Article 14.10: Limited Tendering

1. Subject to paragraph 2, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Article 14.7, Article 14.8, Article 14.9, Article 14.11, Article 14.12, Article 14.13, Article 14.14, or Article 14.15. A procuring entity may use limited tendering taking into consideration the following circumstances:

(a) if, in response to a prior notice, invitation to participate, or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted were collusive, provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights, or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorised agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement, or due to conditions under original supplier warranties; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for a good purchased on a commodity market or exchange;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(f) if additional services that were not included in the initial contract but that were within the objectives of the original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional services may not exceed 50 per cent of the value of the initial contract;

(g) for new services consisting of the repetition of similar services which conform to a basic project for which an initial contract was awarded and for which the entity has indicated in the notice of intended procurement concerning the initial service, that limited tendering procedures might be used in awarding contracts for such new services;

(h) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, liquidation, bankruptcy, or receivership, but not for routine purchases from regular suppliers;

(i) if a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury with a view to award a design contract to the winner; or

(j) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

Article 14.11: Negotiations

1. A Party may provide for its procuring entities to conduct negotiations in the context of procurement if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 14.7;

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation;

(c) all bids exceed the allocated prices provided in the notices of intended procurement.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) if negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 14.12: Technical Specifications

1. A procuring entity shall make best efforts to not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or

supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in these cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications to promote the conservation of natural resources or the protection of the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting, or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting, or processing of such information outside the territory of the Party.

Article 14.13: Tender Documentation

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender.

2. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;

(b) any conditions for participation, including any financial guarantees, information, and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and the relative importance of those criteria;

(d) if there will be a public opening of tenders, the date, time, and place for the opening;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria on which the auction will be conducted;

(f) any other terms or conditions relevant to the evaluation of tender; and

(g) any date for delivery of a good or supply of a service.

3. To the extent possible an entity should make relevant tender documentation publicly available through electronic means or a computer-based telecommunications network openly accessible to all suppliers.

4. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such as the complexity of the procurement.

5. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

Modifications

6. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends, or re-issues a notice or tender documentation, it shall publish or provide those modifications, or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment, or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

Article 14.14: Time Periods

General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement; and

(b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

Deadlines

2. A procuring entity that uses selective tendering shall establish the final date for the submission of a request for participation based on laws and regulations of both Parties from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be based on laws and regulations of both Parties.

3. Except as provided in paragraph 4, a procuring entity shall establish the final date for the submission of tenders based on laws and regulations of both Parties from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering set out in paragraph 3 based on laws and regulations of both Parties for each of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means;

(d) the procuring entity has published a notice of planned procurement under Article 14.7 at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate deadlines for the submission of tenders or requests for participation;

(iii) the address from which documents relating to the procurement may be obtained; and

(iv) as much of the information that is required for the notice of intended procurement;

(e) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(f) the procuring entity procures commercial goods or services.

5. The use of paragraph 4, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 based on laws and regulations of both Parties.

6. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

Article 14.15: Treatment of Tenders and Awarding of Contracts

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. If the tender of a supplier is received after the time specified for receiving tenders, the procuring entity shall not penalise that supplier if the delay is due solely to the mishandling on the part of the procuring entity.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

6. Consistent with the terms of this Chapter, a procuring entity may require a supplier to comply with general terms and conditions pursuant to the terms of the contract.

7. If a procuring entity received a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

8. A procuring entity shall not use options, cancel a procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter, unless if the procuring entity gives justifications.

Article 14.16: Transparency and Post-Award Information

Information Provided to Suppliers

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing, or through the prompt publication of the notice in Article 14.7, provided that the notice includes the date of award. If a supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 14.17, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender.

Maintenance of Records

3. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for the covered procurement, including the records and reports provided for in Article 14.10.

Article 14.17: Disclosure of Information

Provision of Information to the Parties

1. On request of the other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter.

Non-Disclosure of Information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to disclose confidential information if such disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

Article 14.18: Ensuring Integrity in Procurement Practices

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

Article 14.19: Domestic Review

1. Each Party shall maintain, establish, or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent, and effective manner, a challenge or complaint by a supplier that there has been:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a procurement, in which the supplier has, or had, an interest. The procedural rules for these complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of the covered procurement in which the supplier has, or had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage, if appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. If a body other than the review authority initially reviews a complaint, a Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity that is the subject of the complaint.

4. If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to either the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

(a) a supplier shall be allowed sufficient time to prepare and submit a complaint in writing, based on laws and regulations of both Parties from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;

(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(d) the review authority shall provide its decision on a supplier's complaint in a timely manner, in writing, with an explanation of the basis for the decision.

6. Each Party shall adopt or maintain procedures that provide for:

(a) prompt interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter; and

(b) corrective action that may include compensation under paragraph 4.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

Article 14.20: Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and, accordingly, the importance of facilitating the participation of SMEs in government procurement.

2. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and where appropriate:

(a) ensure that information on how to participate in government procurement is readily available;

(b) endeavour to make all tender documentation available free of charge;

(c) conduct procurement by electronic means, including through new information and communication technologies;

(d) consider the size, design, and structure of the procurement, including subcontracting with SMEs; and

(e) promote prompt payment upon satisfactory provision of the goods or services.

Article 14.21: Financial Obligations

1. This Chapter shall not entail any financial obligations to the Parties.

2. Each Party shall be responsible for any financial expenses to fulfil its role in this Chapter.

Article 14.22: Language

To improve market access to each Party's procurement market, each Party shall, where practicable, use English in its publication of materials or information pursuant to Article 14.6.

Article 14.23: Review of the Chapter

1. The Parties shall initiate negotiations on their respective Annexes of Market Access referred to in this Chapter one year after the entry into force of this Agreement, and such negotiations shall not exceed six months.

2. The annexes shall be adopted by the Parties, enter into force, and shall constitute an integral part of this Agreement in accordance with Article18.2 (Amendments), unless otherwise agreed by the Parties.

CHAPTER 15
DISPUTE SETTLEMENT

Article 15.1: Objectives

The objectives of this Chapter is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

Article 15.2: Scope of Application

1. Except as otherwise provided in this Agreement and in paragraphs 2 and 3, this Chapter shall apply with respect to the settlement of any dispute between the Parties concerning the interpretation, or application of this Agreement (hereinafter referred to as "covered provisions"), wherever a Party considers that:

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

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

2. This Chapter shall not cover non-violation and other situation complaints of the type described in Article 26 of the DSU.

3. The Parties agree that neither Party shall have recourse to dispute settlement under this Chapter as provided for in this Agreement.

Article 15.3: Cooperation

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

Article 15.4: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.

2. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Article 15.5: Request for Information

Before a request for consultations, good offices, conciliation or mediation is made pursuant to Article 15.6 or 15.7 respectively, a Party may request in writing any relevant information with respect to a measure of the other Party. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

Article 15.6: Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 15.2 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.

2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual basis and the legal basis specifying the covered provisions that it considers applicable.

3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. Consultations shall be held within 30 days of the date of receipt of the request, unless the Parties agree otherwise. The consultations shall be deemed to be concluded within 30 days of the date of receipt of the request, unless the Parties agree otherwise.

4. Consultations on matters of urgency including those which concern perishable goods, shall be held within 15 days of the date of receipt of the request. The consultations shall be deemed to be concluded within those 15 days unless the Parties agree otherwise.

5. During consultations each Party shall provide sufficient information so as to allow a complete examination of the measure at issue including how that measure is affecting the operation and application of this Agreement.

6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

Consultations may be held in person or by any other means of communication agreed by the Parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.

7. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 15.8.

Article 15.7: Good Offices, Conciliation or Mediation

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

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

3. If the Parties agree, procedures for good offices conciliation or mediation may continue while the panel procedures proceed.

Article 15.8: Establishment of a Panel

1. The complaining Party may request the establishment of a panel if:

   (a) the respondent Party does not reply to the request for consultations in accordance with the time frames referred to in Article 15.6; or

   (b) the consultations referred to in Article 15.6 are not held or fail to settle a dispute within 30 days or 15 days in relation to urgent matters including those which concern perishable goods after the date of the receipt of the request for consultations by the respondent Party.

2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the factual basis of the complaint and the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent with those provisions.

3. When a request for the establishment of the panel is made by the complaining Party in accordance with paragraph 1, a panel shall be established.

Article 15.9: Composition of a Panel

1. Each Party shall establish within one year after the date of entry into force of this Agreement an indicative roster of three individuals who are willing and able to serve as panellists, who may be nationals or have their permanent place of residence in its territory, and who shall not be employed by either Party, nor have dealt with the dispute in any capacity. Such roster shall remain in effect until the Party constitutes a new roster. The Parties may appoint a replacement where a roster individual is no longer available to serve.

2. For the position of Chairperson of the panel, the Parties shall establish within one year after the entry into force of the Agreement and maintain a roster of three individuals, who are not nationals of either Party, and who shall not have their usual place of residence in either Party, who are willing and able to serve as Chairperson of the panel. This roster list shall be appointed by consensus.

3. The Parties may have recourse to the rosters even if the rosters are not complete. Once established, the roster shall remain in effect until the Parties constitute a new roster. The Parties may appoint a replacement where a roster individual is no longer available to serve. The Parties may appoint a panellist not from the indicative list of rosters.

4. In establishing the roster, the Parties may take into consideration the indicative list of governmental and non-governmental panellists established by the WTO.

5. The Joint Committee will approve these rosters and shall endeavour to achieve consensus on their appointment. Members of the rosters may be reappointed. If a Party fails to designate its members to the roster, the Parties may still request the establishment of the panel.

6. The panel shall be composed of three panellists.

7. Within 20 days of the date of submission of the request for the establishment of a panel, each Party shall appoint a panellist from its roster referred to in paragraph 1 and the Parties shall consult in order to reach an agreement on the third panellist who shall serve as Chairperson from the roster referred to in paragraph 2 within 20 days from the date the second panellist has been appointed.

8. In the event that the Parties are unable to agree on the composition of the panel within the time frame laid down in paragraph 7, either Party may request the Joint Committee to select all three panellists by lot from the applicable list established under this Article, one among the members proposed by the complaining Party, one among the members proposed by the respondent Party and one among the members selected by the Parties to act as Chairperson.

9. The Chairperson of the Joint Committee shall select the panellists within five days of the request referred to in paragraph 8.

10. Should any of the rosters provided for in paragraph 1 and 2 not being established at the time a request is made pursuant to Article 15.8 or if one or both of the Parties did not appoint a panellist within the time set out in paragraph 7, the three panellists shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.

11. In case that a Party raises a reasoned objection against a panellist regarding his or her compliance with the Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement established in Annex 15B (Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement) or his or her compliance with the qualifications of the panellist, the Parties may, within 20 days of the period within which the appointment should be made, remove that panellist or Chairperson and select a replacement in accordance with this Article.

12. If the Parties fail to agree that there exists proof of a violation of the Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement established in Annex 15B (Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement) by a panellist, either Party may request the Chairperson of the panel to consider and settle this matter. If the challenge is being raised against the Chairperson of the panel, the matter shall be considered by the other two panellists. If no agreement is reached between the two panellists, the Chairperson shall be removed. The decision adopted pursuant to this rule is definitive. The selection of the new panellist or Chairperson shall be done in accordance with this Article.

13. The date of composition of the panel shall be the date of which the Chairperson is appointed.

Article 15.10: Decision on Urgency

If a Party so requests, the panel shall give a preliminary ruling, within 15 days of its composition, determining whether the dispute concerns matters of urgency.

Article 15.11: Requirements for Panellists

1. Each panellist shall:

   (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement;

   (b) be independent of, and not be affiliated with or take instructions from either Party;

   (c) serve in their individual capacities and not take instructions from any organization or government with regard to matters related to the dispute;

(d) comply with the Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement established in Annex 15B (Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement);

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

(f) not have been involved in an alternative dispute settlement proceeding referred to in this Agreement regarding the same dispute.

2. The Chairperson shall also have experience in dispute settlement procedures.

3. Persons who provided good offices, conciliation or mediation to the Parties, pursuant to Article 15.7 in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panellists in that matter.

Article 15.12: Replacement of Panellists

If any of the panellists of the original panel becomes unable to act, withdraws or needs to be replaced because that panellist does not comply with the requirements of Article 15.11, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist under Article 15.9 and the work of the panel shall be suspended during the appointment of the replacement panellist.

Article 15.13: Functions of the Panel

Unless the parties otherwise agree, the panel:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity of the measure at issue with the covered provisions;

(b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

Article 15.14: Terms of Reference

1. Unless the Parties otherwise agree within 15 days after the date of establishment of the panel, the terms of reference of the panel shall be:

> "to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to resolve the dispute, and to deliver a report in accordance with Articles 15.18 and 15.19."

2. If the Parties agree on other terms of reference than those referred to in paragraph 1 within the timeline specified therein, they shall notify the agreed terms of reference to the panel no later than five days after their agreement.

Article 15.15: Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law.

2. When appropriate, the panel may also take into account relevant interpretations in reports of panels established under this Agreement and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

3. The rulings of the panel cannot add to or diminish the rights and obligations of the Parties provided under this Agreement.

Article 15.16: Procedures of the Panel

1. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure set out in Annex 15A (Rules of Procedure for the Panel).

2. There shall be no *ex parte* communications with the panel concerning matters under its consideration.

3. The deliberations of the panel and the documents submitted to it shall be kept confidential.

4. A Party asserting that a measure of the other Party is inconsistent with the provisions of this Agreement shall have the burden of establishing such inconsistency. A Party asserting that a

measure is subject to an exception under this Agreement shall have the burden of establishing that the exception applies.

5. The panel should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually agreed solution.

6. The panel shall make its decisions, including its reports by consensus, but if consensus is not possible then by majority vote. Any member may furnish separate opinions on matters not unanimously agreed, and such separate opinions shall not be disclosed.

7. Rulings of the panel shall be binding on the Parties.

Article 15.17: Receipt of Information

1. Upon the request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.

2. Upon the request of a Party or on its own initiative, the panel may seek from any source any information it considers appropriate.

3. On request of a Party, or on its own initiative, the panel may seek technical advice or expert opinion from any individual or body that it deems appropriate, and subject to any terms and conditions as the Parties agree.

4. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

Article 15.18: Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of composition of the panel. When the panel considers that this deadline cannot be met, the Chairperson of the panel shall notify the Parties and the Joint Committee in writing, stating the reasons for the delay and the date on which the panel plans to deliver its interim report. Under no circumstances shall the delay exceed 30 days after the deadline. The interim report shall not be made public.

2. The interim report shall set out a descriptive part and the panel's findings and conclusions.

3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within 15 days of the date of issuance of the interim report. A Party may comment on the others Party's request within six days of the delivery of the request.

4. After considering any written comments and requests by each Party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

Article 15.19: Final Report

1. The panel shall deliver its final report to the Parties and Joint Committee within 120 days of the date of composition of the panel. When the panel considers that this deadline cannot be met, the Chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The final report shall include a discussion of any written comments and requests made by the Parties on the interim report. The panel may, in its final report, suggest ways in which the final report could be implemented.

3. The final report shall be made public within 15 days of its delivery to the Parties unless the Parties otherwise agree to publish the final report only in parts, subject to the protection of the confidential information, or not to publish the final report.

Article 15.20: Implementation of the Final Report

1. Where the panel finds that the respondent Party has acted inconsistently with a covered provision pursuant to Article 15.2, the respondent Party shall take any measure necessary to comply promptly and in good faith with the panel ruling.

2. If it is impracticable to comply immediately, the respondent Party shall, no later than 30 days after the delivery of the final report, notify the complaining Party and the Joint Committee of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

Article 15.21: Reasonable Period of Time for Compliance

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party shall, no later than 20 days after the date of receipt of the notification made by the respondent Party in accordance with Article 15.20.2 request in writing the original panel to

determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent Party and the Joint Committee. The 20 days period referred to in this paragraph may be extended by mutual agreement of the Parties.

2. The original panel shall deliver its decision to the Parties and the Joint Committee within 20 days from the relevant request. In the event the original panel or any of its members is not available, the procedures established in Article 15.9, shall apply.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the Parties.

Article 15.22: Compliance Review

1. The respondent Party shall deliver a written notification of its progress in complying with the final report to the complaining Party and the Joint Committee at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.

2. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party and the Joint Committee of any measure that it has taken to comply with the final report along with a description on how the measure ensures compliance sufficient to allow the complaining Party to assess the measure before the expiry of the reasonable period of time.

3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to decide on the matter before compensation can be sought or suspension of benefits can be applied in accordance with Article 15.23.1 (c). Such request shall be notified simultaneously to the respondent Party and the Joint Committee.

4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the respondent Party fail to comply with the final report or are otherwise inconsistent with the covered provisions.

5. The panel shall deliver its decision to the Parties and the Joint Committee within 60 days of the date of submission of the request referred to in paragraph 3.

Article 15.23: Temporary Remedies in Case of Non-Compliance

1. If the respondent Party:

(a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time; or

(b) notifies the complaining Party in writing that it is not possible to comply with the final report within the reasonable period of time; or

(c) the original panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the respondent Party is inconsistent with the covered provisions.

The respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on mutually satisfactory compensation or any alternative arrangement.

2. If the Parties fail to reach a mutually satisfactory agreement within 30 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application of concessions or other obligations under this Agreement.

3. The complaining Party may begin the suspension of concessions or other obligations referred to in the paragraph 2 20 days after the date when it served notice on the respondent Party, unless the respondent Party made a request under paragraph 7.

4. The suspension of concessions or other obligations shall:

(a) be at a level equivalent to the nullification or impairment that is caused by the failure of the respondent Party to comply with the final report; and

(b) be restricted to benefits accruing to the respondent Party under this Agreement.

5. In considering what concessions or other obligations to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

(a) the complaining Party should first seek to suspend the concessions or other obligations in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement; and

(b) the complaining Party may suspend concessions or other obligations in other sectors, if it considers that it is not practicable or effective to suspend concessions or other obligations in the same sector(s). The communication in which it notifies such a decision shall indicate the reasons on which it is based.

6. The suspension of concessions or other obligations or the mutually satisfactory agreement foreseen in the paragraph 1 shall be temporary and shall only apply until the inconsistency of the measure with the relevant covered provisions has been removed, or until the Parties have reached a mutually agreed solution pursuant to Article 15.28.

7. If the respondent Party considers that the suspension of concessions or other obligations does not comply with paragraphs 4 and 5, that Party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party and to the Joint Committee. The original panel shall notify to the Parties and the Joint Committee its decision on the matter no later than 45 days of the receipt of the request from the respondent Party, or if the original panel cannot be established with its original members, from the date on which the last panellist of the newly established panel is appointed in conformity with Article 15.9. Concessions or other obligations shall not be suspended until the panel has delivered its decision pursuant to this paragraph. The suspension of concessions or other obligations shall be consistent with this decision.

Article 15.24: Review of Any Measure Taken to Comply after the Adoption of Temporary Remedies

1. Upon the notification by the respondent Party to the complaining Party and the Joint Committee of the measure taken to comply with the final report panel ruling:

(a) in a situation where the right to suspend concessions or other obligations has been exercised by the complaining Party in accordance with Article 15.23, the complaining Party shall terminate the suspension of concessions or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or

(b) in a situation where necessary compensation has been agreed, the respondent Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, except for the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the respondent Party and the Joint Committee. The decision of the panel shall be notified to the Parties and the Joint Committee no later than 30 days after the date of submission of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the covered provisions, the suspension of concessions or other obligations, or the application of the compensation, as the case may be, shall be terminated no later than 15 days after the date of the decision. If the panel determines that the notified measure achieves only partial compliance with

the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel. In the event the original panel or any of its members is not available, the procedures established in Article 15.9, shall apply.

Article 15.25: Suspension and Termination of Proceedings

If both Parties so request in writing, the panel shall suspend for a period agreed by the Parties and not exceeding 12 consecutive months from such request. In the event of a suspension of the work of the panel, the relevant time periods under this Chapter shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated.

Article 15.26: Choice of Forum

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.

2. If a dispute with regard to a particular measure arises under this Agreement and under another international trade agreement to which both Parties are party, including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 2, the selected forum shall be used to the exclusion of other fora, unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.

4. For the purposes of paragraph 3:

   (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 15.8;

   (b) dispute settlement proceedings under the WTO Agreement are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and

   (c) dispute settlement proceedings under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.

Article 15.27: Costs

1. Unless the Parties otherwise agree, the costs of the panel and other expenses associated with the conduct of its proceedings, including organisational matters and expenses of the assistants and other persons engaged in the panel proceeding and any general expenses customarily incurred by the routine functioning of the panel shall be borne in equal parts by both Parties.

2. Each Party shall bear its own expenses and legal costs in the panel proceedings.

Article 15.28: Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution at any time with respect to any dispute referred to in Article 15.2.

2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the Chairperson of the panel. Upon such notification, the panel shall be terminated.

3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.

4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article 15.29: Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified in this Chapter.

2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

3. In cases of urgency, the panel shall, after consulting the Parties, modify the time periods referred to in this chapter as appropriate and shall notify the Parties of any such adjustments.

Article 15.30: Annexes

The Joint Committee may modify the Annexes 15A (Rules of Procedure for the Panel) and 15B (Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings under this Agreement).

ANNEX 15A
RULES OF PROCEDURE FOR THE PANEL

Timetable

1. After consulting the Parties, the panel shall, whenever possible within seven days of the appointment of the final panellist, fix the timetable for the panel process.

2. The panel process shall, as a general rule, not exceed 120 days from the date of establishment of the panel until the date of the final report, unless the Parties otherwise agree.

3. Should the panel consider there is a need to modify the timetable, it shall inform the Parties in writing of the proposed modification and the reason for it. In cases of urgency in accordance with Article 15.10 the panel, after consulting the Parties, shall adjust the timetable as appropriate and in accordance with Article 15.29.3 and shall notify the Parties of such adjustment.

Written Submissions and other Documents

4. Unless the panel otherwise decides, the complaining Party shall deliver its first written submission to the panel no later than 20 days after the date of composition of the panel. The respondent Party shall deliver its first written submission to the panel and to the complaining Party no later than 20 days after the date of delivery of the complaining Party's first written submission unless the panel decides otherwise.

5. A Party shall provide a copy of its written submission to each of the panellists and to the other Party. The copy shall be delivered in electronic format against receipt or if agreed by the Parties, a copy of the documents shall also be provided by registered post, courier, or facsimile.

6. Within 20 days of the conclusion of the hearing, each Party may deliver to the panel and the other Party a supplementary written submission responding to any matter that arose during the hearing.

7. The Parties shall transmit all information or written submissions, written versions of oral statements and responses to questions put by the panel to the other Party to the dispute at the same time as it is submitted to the panel.

8. All written documents provided to the panel or by one Party to the other Party shall be delivered in electronic format against receipt or if agreed by the Parties, a copy of the documents shall also be provided by registered post, courier, or facsimile.

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

Operation of the Panel

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

11. Panel deliberations shall be confidential. Only panellists may take part in the deliberations of the panel. The reports of panels shall be drafted without the presence of the Parties in the light of the information provided and the statements made.

12. Opinions expressed in the panel report by individual panellists shall be anonymous.

Hearings

13. The Parties shall be given the opportunity to attend hearings and meetings of the panel.

14. The panel shall fix the date and time of the hearing in consultation with the Parties and confirm this in writing with the Parties.

15. The panel shall provide for at least one hearing for the Parties to present their case to the panel.

16. The hearing shall be held in the territory of the respondent or the complaining Party or by electronic means as mutually agreed between the Parties.

17. Unless the Party disagrees, the panel may decide to convene additional hearings or not to convene a hearing at all.

18. All panellists shall be present at hearings. Panel hearings shall be held in closed session with only the panellists, the Parties and their representatives and advisors in attendance.

However, in consultation with the Parties, the following persons may also be present at hearings to assist the panel in its work:

(a) Administrative staff, interpreters, translators and note takers; and

(b) Panellists' assistants.

Any such arrangements established by the panel may be modified with the agreement of the Parties. Only the representatives and advisers of the Parties may address the panel.

19. The hearing shall be conducted by the panel in a manner ensuring that the complaining Party and the respondent Party are afforded equal time to present their case. The panel shall, as a general rule, conduct the hearing in the following manner: argument of the complaining Party; argument of the respondent Party; the reply of the complaining Party; the counter-reply of the respondent Party; closing statement of the complaining Party; and closing statement of the

respondent Party. The Chairperson may set time limits for oral arguments to ensure that each Party is afforded equal time.

Written Questions

20. The panel may direct written questions to either Party at any time during the proceedings. A Party to whom the panel addresses a written question shall deliver a written reply to the panel and the other Party in accordance with the timetable established by the panel.

21. Each Party shall be given the opportunity to provide written comments on the response of the other Party within the timetable established by the panel.

22. Upon the request of either Party, the panel shall arrange for a transcript of each hearing to be prepared by stenographic means or by tape according and delivered as soon as possible to the Parties. The costs of making the record and the cost of transcription and copying shall be borne equally by the Parties.

Confidentiality

23. The panel's hearings and the documents submitted to it shall be confidential. Each Party and its representatives and advisors shall treat as confidential information submitted to the panel by the other Party which that Party has designated as confidential.

24. Where a Party designates as confidential its written submissions to the panel, it shall, on request of the other Party, provide the panel and the other Party with a non-confidential summary of the information contained in its written submissions that may be disclosed to the public no later than 10 days after the date of request. Nothing in these Rules shall prevent a Party from disclosing statements of its own positions to the public.

Working Language

25. The working language of the Panel proceedings, including for written submissions, oral arguments or presentations, the report of the panel and all written and oral communications between the Parties and with the panel, shall be English.

Venue

26. The venue for the hearings of the panel shall be decided by agreement between the Parties. If there is no agreement, the first hearing shall be held in the territory of the respondent Party complained against, and any additional hearings shall alternate between the territories of the Parties.

Expenses

27. The Parties shall agree on the remuneration to be paid to the panellists and to their assistants or other individuals that they retain which should be based on the WTO standards or

other standards of comparable international dispute resolution mechanisms in bilateral or multilateral agreements.

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

29. Amounts to be paid to the panellists and others engaged by the panellists do not include any possible taxes or charges applicable to them. The Parties have a duty to pay any such taxes or charges.

Ex Parte Contacts

30. The panel shall not meet or contact a Party in the absence of the other Party.

31. A Party shall not contact any panellist in relation to the dispute in the absence of the other Party or other panellists.

32. No panellist shall discuss any aspect of the subject-matter of the proceedings with a Party in the absence of the other Party and other panellists.

ANNEX 15B
CODE OF CONDUCT FOR PANELLISTS AND OTHERS ENGAGED IN DISPUTE SETTLEMENT PROCEEDINGS UNDER THIS AGREEMENT[1]

Definitions

1. For the purposes of this Annex:

adviser means a person retained by a Party to advise or assist that Party in connection with the Panel proceeding;

assistant means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist works under the direction and control of a panellist to assist with case-specific task;

candidate means a person who is under consideration for selection as a panellist;

complaining Party means any Party that requests for the establishment of a Panel under Article 15.8;

expert means an individual who provides special information, opinion or advice;

panel means a panel composed under Article 15.9;

panellist means a member of a panel;

proceeding, unless otherwise specified, means the proceeding of a panel under this Chapter; and

staff, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants.

Responsibilities to the Process

2. Every panellist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former panellists shall comply with the obligations established in paragraphs 19 through 23.

[1] For greater certainty, this Annex, is applicable for the purpose of Article 15.7, unless otherwise provided by the instruments of good offices, conciliation and mediation.

Disclosure Obligations

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

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

Performance of Duties by Panellists

5. A panellist shall comply with the provisions of the Chapter 15 (Dispute Settlement) and its Annexes.

6. On selection, a panellist shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

7. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.

8. A panellist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

9. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 19, 20 and 21.

10. A panellist shall not engage in ex parte contacts concerning the proceeding.

11. A panellist shall not communicate matters concerning actual or potential violations of this Annex by another panellist unless the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

12. Each panellist shall keep a record and render a final account of the time devoted to the panel proceedings and of his or her expenses, as well as the time and expenses of his or her staff and assistants.

Independence and Impartiality of Panellists

13. A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

14. A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

15. A panellist shall not, directly, or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panellist's duties.

16. A panellist shall not use his or her position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

17. A panellist shall not allow past or existing financial, business, professional, family, or social relationships or responsibilities to influence the panellist's conduct or judgment.

18. A panellist shall avoid entering any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

19. A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.

Maintenance of Confidentiality

20. A panellist or former panellist shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage, or advantage for others, or to affect adversely the interest of others.

21. A panellist shall not disclose a panel report, or parts thereof, prior to its publication.

22. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view, except as required by legal or constitutional requirements.

23. A panellist shall not make a public statement regarding the panel proceeding.

CHAPTER 16
EXCEPTIONS

Article 16.1: General Exceptions

For the purposes of this Agreement, Article XX and its interpretative note and Article XIV of the GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 16.2: Security Exceptions

Nothing in this Agreement shall be construed:

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

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

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

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

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

(iv) relating to the protection of critical public infrastructure, including, but not limited to, critical communications infrastructures, power infrastructures and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures;

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

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

Article 16.3: Taxation

1. Nothing in this Agreement shall apply to any taxation measure.[1]

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

Article 16.4: Balance of Payments Difficulties

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance of payments purposes.

2. A Party in serious balance of payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994, the Understanding on the Balance of Payments Provisions of the GATT 1994, and paragraphs 1 through 3 of Article XII of the GATS adopt restrictive measures with regard to trade in goods and services, which shall be of limited duration and non-discriminatory, and shall not go beyond what is necessary to remedy the balance of payments situation.

3. A Party introducing a measure under this Article shall promptly notify the other Party thereof.

[1] For the avoidance of doubt, provisions where corresponding rights and obligations are also granted or imposed under the WTO Agreement shall apply to taxation measures.

CHAPTER 17
ADMINISTRATION OF THE AGREEMENT

Article 17. 1: Joint Committee

1. The Parties hereby establish a Joint Committee, composed of representatives of each Party at the Ministerial level or their designees unless otherwise agreed by the Parties.

2. The Joint Committee shall meet within one year from the entry into force of this Agreement. Thereafter, it shall meet every two years, unless the Parties agree otherwise, to consider any matter relating to this Agreement. The regular sessions of the Joint Committee shall be held alternately in the territories of the Parties.

3. The Joint Committee shall hold special sessions without undue delay from the date of a request thereof from either Party.

4. The functions of the Joint Committee shall be as follows:

(a) to review and assess the results and overall operation of this Agreement in the light of the experience gained during its application and its objectives;

(b) to consider and recommend any amendments to this Agreement that may be proposed by either Party, including modification of concessions made under this Agreement;

(c) to endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement;

(d) to supervise and coordinate the work of all subcommittees and working groups established under this Agreement;

(e) to consider any other matter that may affect the operation of this Agreement;

(f) if requested by either Party, to propose mutually agreed interpretation to be given to the provisions of this Agreement;

(g) to adopt decisions or make recommendations as envisaged by this Agreement; and

(h) to carry out any other functions as may be agreed by the Parties.

5. The Joint Committee may establish its own rules of work procedures. Decisions of the Joint Committee shall be taken by mutual agreement of the Parties. The Joint Committee may establish standing or ad hoc committees, subcommittees or working groups and assign any of its powers thereto.

6. Meetings of the Joint Committee and of any standing or ad hoc committees, subcommittees or working groups may be conducted in person or by any other means as determined by the Parties.

Article 17.2: Communications

1. Each Party shall designate a contact point to receive and facilitate official communications between the Parties on any matter relating to this Agreement. Each Party shall notify its contact point to the other Party within 60 days following the entry into force of this Agreement.

2. All official communications in relation to this Agreement shall be in the English language.

CHAPTER 18
FINAL PROVISIONS

Article 18.1: Annexes, Side Letters, Record of Understanding and Footnotes

The Annexes, Side Letters, Record of Understanding and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 18.2: Amendments

1. This Agreement may be amended in writing by mutual agreement of the Parties.

2. Amendments to this Agreement, as well as to its Annexes, shall enter into force and constitute an integral part of this Agreement in accordance with the procedures set forth in Article 18.5, unless otherwise agreed by the Parties.

Article 18.3: Accession

Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between the country or group of countries and the Parties and following approval in accordance with the applicable legal requirements and procedures of each Party and acceding country.

Article 18.4: Duration and Withdrawal

1. This Agreement shall be valid for an indefinite period.

2. Either Party may withdraw from this Agreement by means of a written Diplomatic Note to the other Party. Such withdrawal shall become effective six months after the date of receipt of such notification by the other Party.

Article 18.5: Entry into Force

This Agreement shall enter into force 60 days following the date of the latest Diplomatic Note by which the Parties notify each other that their internal legal procedures for the entry into force of the Agreement have been completed, unless otherwise agreed by the Parties.

Article 18.6: Review Clause

Without prejudice to the obligations to review specific obligations of this Agreement, the Parties undertake to review this Agreement within three years of its entry into force and every five years thereafter, unless otherwise agreed by the Parties in the light of further developments.

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

DONE at Abu Dhabi, United Arab Emirates, on the 17th day of February 2025, in two original copies, each in Arabic, Ukrainian and English languages, all texts being equally authentic. In case of divergence of interpretation or any discrepancies, the English text shall prevail.

For the Government of Ukraine

Yuliia SVYRYDENKO

First Deputy Prime Minister of Ukraine –
Minister of Economy of Ukraine

For the Government of the United Arab Emirates

Dr. Thani bin Ahmed AL ZEYOUDI

Minister of State for Foreign Trade
Ministry of Economy
of the United Arab Emirates