PREAMBLE

The Parties to this Agreement, resolving to:

ESTABLISH a comprehensive regional agreement that promotes economic integration to liberalise trade and investment, bring economic growth and social benefits, create new opportunities for workers and businesses, contribute to raising living standards, benefit consumers, reduce poverty and promote sustainable growth;

STRENGTHEN the bonds of friendship and cooperation between them and their peoples;

BUILD on their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization*;

RECOGNISE the differences in their levels of development and diversity of economies;

STRENGTHEN the competitiveness of their businesses in global markets and enhance the competitiveness of their economies by promoting opportunities for businesses, including promoting the development and strengthening of regional supply chains;

SUPPORT the 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;

ESTABLISH a predictable legal and commercial framework for trade and investment through mutually advantageous rules;

FACILITATE regional trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

RECOGNISE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;

RECOGNISE further their inherent right to adopt, maintain or modify health care systems;

AFFIRM that state-owned enterprises can play a legitimate role in the diverse economies of the Parties, while recognising that the provision of unfair advantages to state-owned enterprises undermines fair and open trade and investment, and resolve to establish rules for state-owned enterprises that promote a level playing field with privately owned businesses, transparency and sound business practices;

PROMOTE high levels of environmental protection, including through effective enforcement of environmental laws, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;

PROTECT and enforce labour rights, improve working conditions and living standards, strengthen cooperation and the Parties' capacity on labour issues;

PROMOTE transparency, good governance and the rule of law, and eliminate bribery and corruption in trade and investment;

RECOGNISE the important work that their relevant authorities are doing to strengthen macroeconomic cooperation, including on exchange rate issues, in appropriate fora;

RECOGNISE the importance of cultural identity and diversity among and within the Parties, and that trade and investment can expand opportunities to enrich cultural identity and diversity at home and abroad;

CONTRIBUTE to the harmonious development and expansion of world trade and provide a catalyst to broader regional and international cooperation;

ESTABLISH an Agreement to address future trade and investment challenges and opportunities, and contribute to advancing their respective priorities over time; and

EXPAND their partnership by encouraging the accession of other States or separate customs territories in order to further enhance regional economic integration and create the foundation of a Free Trade Area of the Asia Pacific,

HAVE AGREED as follows:

CHAPTER 1

INITIAL PROVISIONS AND GENERAL DEFINITIONS

Section A: Initial Provisions

Article 1.1: Establishment of a Free Trade Area

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

Article 1.2: Relation to Other Agreements

1. Recognising the Parties' intention for this Agreement to coexist with their existing international agreements, each Party affirms:

(a) in relation to existing international agreements to which all Parties are party, including the WTO Agreement, its existing rights and obligations with respect to the other Parties; and

(b) in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be.

2. If a Party considers that a provision of this Agreement is inconsistent with a provision of another agreement to which it and at least one other Party are party, on request, the relevant Parties to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph is without prejudice to a Party's rights and obligations under Chapter 28 (Dispute Settlement).[1]

[1] For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of paragraph 2.

Section B: General Definitions

Article 1.3: General Definitions

For the purposes of this Agreement, unless otherwise provided in this Agreement:

AD Agreement means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

Agreement means the Trans-Pacific Partnership Agreement;

APEC means Asia-Pacific Economic Cooperation;

central level of government has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

Commission means the Trans-Pacific Partnership Commission established under Article 27.1 (Establishment of the Trans-Pacific Partnership Commission);

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;

customs administration means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and, where applicable, policies, and has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

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 Article III:2 of 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;

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

days means calendar days;

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

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

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

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

goods means any merchandise, product, article or material;

goods of a Party means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of a Party;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

Harmonized System (HS) means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes as adopted and implemented by the Parties in their respective laws;

heading means the first four digits in the tariff classification number under the Harmonized System;

measure includes any law, regulation, procedure, requirement or practice;

national means a "natural person who has the nationality of a Party" according to Annex 1-A (Party-Specific Definitions) or a permanent resident of a Party;

originating means qualifying as originating under the rules of origin set out in Chapter 3 (Rules of Origin and Origin Procedures) or Chapter 4 (Textile and Apparel Goods);

Party means any State or separate customs territory for which this Agreement is in force;

person means a natural person or an enterprise;

person of a Party means a national or an enterprise of a Party;

preferential tariff treatment means the customs duty rate applicable to an originating good, pursuant to each Party's Tariff Schedule set out in Annex 2-D (Tariff Commitments);

recovered material means a material in the form of one or more individual parts that results from:

(a) the disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

regional level of government has for each Party the meaning set out in Annex 1-A (Party-Specific Definitions);

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

sanitary or phytosanitary measure means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;

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

SME means a small and medium-sized enterprise, including a micro-sized enterprise;

SPS Agreement means the *Agreement on the Application of Sanitary and Phytosanitary Measures*, set out in Annex 1A to the WTO Agreement;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

subheading means the first six digits in the tariff classification number under the Harmonized System;

territory has for each Party the meaning set out at Annex 1-A (Party-Specific Definitions);

textile or apparel good means a good listed in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin);

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;[2]

WTO means the World Trade Organization; and

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

[2] For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

ANNEX 1-A

PARTY-SPECIFIC DEFINITIONS

Further to Article 1.3 (General Definitions), for the purposes of this Agreement, unless provided elsewhere in this Agreement:

central level of government means:

(a) for Australia, the Commonwealth Government;

(b) for Brunei Darussalam, the national level of government;

(c) for Canada, the Government of Canada;

(d) for Chile, the national level of government;

(e) for Japan, the Government of Japan;

(f) for Malaysia, the federal level of government;

(g) for Mexico, the federal level of government;

(h) for New Zealand, the national level of government;

(i) for Peru, the national level of government;

(j) for Singapore, the national level of government;

(k) for the United States, the federal level of government; and

(l) for Viet Nam, the national level of government;

customs administration means:

(a) for Australia, the Department of Immigration and Border Protection;

(b) for Brunei Darussalam, the Royal Customs and Excise Department;

(c) for Canada, the Canada Border Services Agency;

(d) for Chile, the National Customs Service of Chile (*Servicio Nacional de Aduanas*);

(e) for Japan, the Ministry of Finance;

(f) for Malaysia, the Royal Malaysian Customs Department;

(g) for Mexico, the Ministry of Finance and Public Credit *(Secretaría de Hacienda y Crédito Público)*;

(h) for New Zealand, the New Zealand Customs Service;

(i) for Peru, the National Superintendence of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y de Administración Tributaria*);

(j) for Singapore, the Singapore Customs;

(k) for the United States, U.S. Customs and Border Protection; and, with respect to provisions that concern enforcement, information sharing and investigations, this also means U.S. Immigration and Customs Enforcement, as applicable; and

(l) for Viet Nam, the General Department of Viet Nam Customs,

or any successor of such customs administration;

natural person who has the nationality of a Party means:

(a) for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007*, as amended from time to time, or any successor legislation;

(b) for Brunei Darussalam, a subject of His Majesty the Sultan and Yang Di-Pertuan in accordance with the laws of Brunei Darussalam;

(c) for Canada, a natural person who is a citizen of Canada under Canadian legislation;

(d) for Chile, a Chilean as defined in Article 10 of the Political Constitution of the Republic of Chile (*Constitución Política de la República de Chile*);

(e) for Japan, a natural person who has the nationality of Japan under its laws;

(f) for Malaysia, a natural person who is a citizen of Malaysia in accordance with its laws and regulations;

(g) for Mexico, a person who has the nationality of Mexico in accordance with its applicable laws;

(h) for New Zealand, a natural person who is a citizen as defined in the *Citizenship Act 1977*, as amended from time to time, or any successor legislation;

(i) for Peru, a natural person who has the nationality of Peru by birth, naturalisation or option in accordance with the Political Constitution of Peru (*Constitución Política del Perú*) and other relevant domestic legislation;

(j) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws;

(k) for the United States, a "national of the United States" as defined in the *Immigration and Nationality Act*; and

(l) for Viet Nam, a natural person who is a citizen of Viet Nam within the meaning of its Constitution and its domestic laws;

regional level of government means:

(a) for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory;

(b) for Brunei Darussalam, the term regional level of government is not applicable;

(c) for Canada, a provincial or territorial government;

(d) for Chile, as a unitary Republic, the term regional level of government is not applicable;

(e) for Japan, the term regional level of government is not applicable;

(f) for Malaysia, a State of the Federation of Malaysia in accordance with the Federal Constitution of Malaysia;

(g) for Mexico, a state of the United Mexican States;

(h) for New Zealand, the term regional level of government is not applicable;

(i) for Peru, regional government in accordance with the Political Constitution of Peru (*Constitución Política del Perú*) and other applicable legislation;

(j) for Singapore, the term regional level of government is not applicable;

(k) for the United States, a state of the United States, the District of Columbia, or Puerto Rico; and

(l) for Viet Nam, the term regional level of government is not applicable; and

territory means:

(a) for Australia, the territory of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

(b) for Brunei Darussalam, the land territory, internal waters and territorial sea of Brunei Darussalam, extending to the air space above its territorial sea, as well as to its sea-bed and subsoil over which it exercises sovereignty, and the maritime area beyond its territorial sea, which has been or may hereafter be designated under the laws of Brunei Darussalam in accordance with international law as an area over which Brunei Darussalam exercises sovereign rights and jurisdiction with respect to the seabed, the subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

(c) for Canada:

(i) the land territory, air space, internal waters and territorial seas of Canada;

(ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* done at Montego Bay on December 10, 1982 (UNCLOS); and

(iii) the continental shelf of Canada, as determined by its

domestic law, consistent with Part VI of UNCLOS;

(d) for Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(e) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law including the UNCLOS and the laws and regulations of Japan;

(f) for Malaysia, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea as designated or that might in the future be designated under its national law, in accordance with international law, as an area within which Malaysia exercises sovereign rights and jurisdiction with regards to the seabed, subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

(g) for Mexico:

(i) the states of the Federation and the Federal District;

(ii) the islands, including the reefs and keys, in the adjacent seas;

(iii) the islands of Guadalupe and Revillagigedo, situated in the Pacific Ocean;

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs;

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;

(vi) the space located above the national territory, in accordance with international law; and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea* done at Montego Bay on December 10, 1982, and its domestic law, Mexico may exercise sovereign rights or jurisdiction;

(h) for New Zealand, the territory of New Zealand and the exclusive

economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;

(i) for Peru, the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (*Constitución Política del Perú*) and other relevant domestic law and international law;

(j) for Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

(k) for the United States:

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) the foreign trade zones located in the United States and Puerto Rico; and

(iii) the territorial sea of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea*, the United States may exercise sovereign rights or jurisdiction; and

(l) for Viet Nam, the land territory, islands, internal waters, territorial sea, and air space above them, the maritime areas beyond territorial sea including seabed, subsoil and natural resources thereof over which Viet Nam exercises its sovereignty, sovereign rights or jurisdiction in accordance with its domestic laws and international law.

CHAPTER 2

NATIONAL TREATMENT AND MARKET ACCESS FOR GOODS

Section A: Definitions and Scope

Article 2.1: Definitions

For the purposes of this Chapter:

advertising films and recordings means recorded visual media or audio materials, consisting essentially of images or sound, showing the nature or operation of goods or services offered for sale or lease by a person of a Party, that are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

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

commercial samples of negligible value means commercial or trade samples: having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar or the equivalent amount in the currency of another Party; or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

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

consumed means, with respect to a good:

(a) actually consumed; or

(b) further processed or manufactured:

(i) so as to result in a substantial change in the value, form or use of the good; or

(ii) in the production of another good;

duty-free means free of customs duty;

goods admitted for sports purposes means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations or training in the territory of that Party;

goods intended for display or demonstration includes their component parts, ancillary apparatuses and accessories;

import licensing means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the importing Party as a prior condition for importation into the territory of that Party;

Import Licensing Agreement means the *Agreement on Import Licensing Procedures*, set out in Annex 1A to the WTO Agreement;

performance requirement means a requirement that:

(a) a given level or percentage of goods or services be exported;

(b) domestic goods or services of the Party granting a waiver of customs duties or an import licence be substituted for imported goods;

(c) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;

(d) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or the import licence, with a given level or percentage of domestic content; or

(e) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows,

but does not include a requirement that an imported good be:

(f) subsequently exported;

(g) used as a material in the production of another good that is subsequently exported;

(h) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(i) substituted by an identical or similar good that is subsequently exported; and

printed advertising materials means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge.

Article 2.2: Scope

Unless otherwise provided in this Agreement, this Chapter applies to trade in goods of a Party.

Section B: National Treatment and Market Access for Goods

Article 2.3: National Treatment

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

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment that the regional level of government accords to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. Paragraph 1 shall not apply to the measures set out in Annex 2-A (National Treatment and Import and Export Restrictions).

Article 2.4: Elimination of Customs Duties

1. Unless otherwise provided in this Agreement, no Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good.

2. Unless otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods in accordance with its Schedule to Annex 2-D (Tariff Commitments).

3. On request of any Party, the requesting Party and one or more other Parties shall consult to consider accelerating the elimination of customs duties set out in their Schedules to Annex 2-D (Tariff Commitments).

4. An agreement between two or more of the Parties to accelerate the elimination of a customs duty on an originating good shall supersede any duty rate or staging category determined pursuant to those Parties' Schedules to Annex 2-D (Tariff Commitments) for that good once approved by each Party to that agreement in accordance with its applicable legal procedures. The parties to that agreement shall inform the other Parties as early as practicable before the new rate of customs duty takes effect.

5. A Party may at any time unilaterally accelerate the elimination of customs duties set out in its Schedule to Annex 2-D (Tariff Commitments) on originating goods of one or more of the other Parties. A Party shall inform the other Parties as early as practicable before the new rate of customs duty takes effect.

6. For greater certainty, no Party shall prohibit an importer from claiming for an originating good the rate of customs duty applied under the WTO Agreement.

7. For greater certainty, a Party may raise a customs duty to the level set out in its Schedule to Annex 2-D (Tariff Commitments) following a unilateral reduction for the respective year.

Article 2.5: Waiver of Customs Duties

1. No Party shall adopt any new waiver of a customs duty, or expand with respect to an existing recipient or extend to any new recipient the application of an existing waiver of a customs duty, that is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement.

2. No Party shall, explicitly or implicitly, condition the continuation of any existing waiver of a customs duty on the fulfilment of a performance requirement.

Article 2.6: Goods Re-entered after Repair and Alteration

1. No Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.[1]

[1] For Canada, this paragraph shall not apply to certain ships of Chapter 89 that have been repaired or altered. These ships will be treated in a manner consistent with the notes associated with the relevant tariff items in Canada's Schedule to Annex 2-D (Tariff Commitments).

2. No Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

3. For the 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; or

(b) transforms an unfinished good into a finished good.

Article 2.7: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising material imported from the territory of another Party, regardless of their origin, but may require that:

(a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

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

Article 2.8: Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is 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 or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes.

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

3. No Party shall condition the duty-free temporary admission of the goods referred to in paragraph 1, other than to require that those goods:

(a) be used solely by or under the personal supervision of a national of another Party in the exercise of the business activity, trade, profession or sport of that national of another Party;

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

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;

(f) be admitted in no greater quantity than is reasonable for their intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, that are in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this paragraph, **container** means an article of transport equipment that is: fully or partially enclosed to constitute a compartment intended for containing goods; substantial and has an internal volume of one cubic metre or more; of a permanent character and accordingly strong enough to be suitable for repeated use; used in significant numbers in international traffic; specially designed to facilitate the carriage of goods by more than one mode of transport without intermediate reloading; and designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does

not include vehicles, accessories or spare parts of vehicles or packaging.[2]

(b) For the purposes of this paragraph, **pallet** means a small, portable platform, which consists of two decks separated by bearers or a single deck supported by feet, on which goods can be moved, stacked and stored, and which is designed essentially for handling by means of fork lift trucks, pallet trucks or other jacking devices.

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

6. Each Party shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, those procedures shall provide that when a good admitted under this Article accompanies a national of another Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

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

8. Each Party shall, in accordance with its law, provide that the importer or other person responsible for 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 was destroyed within the period fixed for temporary admission, including any lawful extension.

9. Subject to Chapter 9 (Investment) and Chapter 10 (Cross-Border Trade in Services):

(a) each Party shall allow a vehicle or container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economical and prompt departure of that vehicle or container;[3]

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[2] Each Party shall eliminate customs duties on containers classified in HS 86.09 that have an internal volume of less than one cubic metre on the date of entry into force of this Agreement for that Party as set out in that Party's Schedule to Annex 2-D (Tariff Commitments).

[3] For greater certainty, nothing in this subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway safety measures of general application, or from preventing a vehicle or container from entering or exiting its territory in a location where the Party does not maintain a customs port.

(b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the customs port of entry and the customs port of departure of a vehicle or container;

(c) no Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a vehicle or container into its territory on the exit of that vehicle or container through any particular customs port of departure; and

(d) no Party shall require that the vehicle or carrier bringing a container from the territory of another Party into its territory be the same vehicle or carrier that takes that container to the territory of that other Party, or to the territory of any other Party.

10. For the purposes of paragraph 9, **vehicle** means a truck, a truck tractor, a tractor, a trailer unit or trailer, a locomotive, or a railway car or other railroad equipment.

Article 2.9: *Ad hoc* Discussions

1. Each Party shall designate and notify a contact point in accordance with Article 27.5 (Contact Points), to facilitate communications between the Parties on any matter covered by this Chapter, including any request or information conveyed under Article 26.5 (Provision of Information) relating to a measure of a Party that may affect the operation of this Chapter.

2. A Party (the requesting Party) may request *ad hoc* discussions on any matter arising under this Chapter (including a specific non-tariff measure) that the requesting Party believes may adversely affect its interests in trade in goods, except a matter that could be addressed under a Chapter-specific consultation mechanism established under another Chapter, by delivering a written request to another Party (the requested Party) through its contact point for this Chapter. The request shall be in writing and identify the reasons for the request, including a description of the requesting Party's concerns and an indication of the provisions of this Chapter to which the concerns relate. The requesting Party may provide all the other Parties with a copy of the request.

3. If the requested Party considers that the matter that is the subject of the request should be addressed under a Chapter-specific consultation mechanism established under another Chapter, it shall promptly notify the contact point for this Chapter of the requesting Party and include in its notice the reasons it considers that the request should be addressed under the other mechanism. The requested Party shall promptly forward the request and its notice to the overall contact points of the requesting and requested Parties designated under Article 27.5 (Contact Points) for appropriate action.

4. Within 30 days of receipt of a request under paragraph 2, the requested Party shall provide a written reply to the requesting Party. Within 30 days of the requesting Party's receipt of the reply, the requesting and requested Parties (the discussing Parties) shall meet in person or via electronic means to discuss the matter identified in the request. If the discussing Parties choose to meet in person, the meeting shall take place in the territory of the requested Party, unless the discussing Parties decide otherwise.

5. Any Party may submit a written request to the discussing Parties to participate in the *ad hoc* discussions. If the matter has not been resolved prior to the receipt of a Party's request to participate and the discussing Parties agree, the Party may participate in these *ad hoc* discussions subject to any conditions that the discussing Parties may decide.

6. If the requesting Party believes that the matter is urgent, it may request that *ad hoc* discussions take place within a shorter time frame than that provided for under paragraph 4. Any Party may request urgent *ad hoc* discussions if a measure:

(a) is applied without prior notice or without an opportunity for a Party to avail itself of *ad hoc* discussions under paragraphs 2, 3 and 4; and

(b) may threaten to impede the importation, sale or distribution of an originating good which is in the process of being transported from the exporting Party to the importing Party, or has not been released from customs control, or is in storage in a warehouse regulated by the customs administration of the importing Party.

7. *Ad hoc* discussions under this Article shall be confidential and without prejudice to the rights of any Party, including being without prejudice to rights pertaining to dispute settlement proceedings under Chapter 28 (Dispute Settlement).

Article 2.10: Import and Export Restrictions

1. Unless otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another 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 part of this Agreement, *mutatis mutandis.*

2. The Parties understand that GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. For greater certainty, paragraph 1 applies to the importation of commercial cryptographic goods.

4. For the purposes of paragraph 3:

commercial cryptographic goods means any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made available to the public.

5. Paragraphs 1 and 2 shall not apply to the measures set out in Annex 2-A (National Treatment and Import and Export Restrictions).

6. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent that Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of another Party; or

(b) requiring, as a condition for exporting the good of that Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

7. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of any Party, shall consult with a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in another Party.

8. No Party shall, as a condition for engaging in importation or for the importation of a good, require a person of another Party to establish or maintain a contractual or other relationship with a distributor in its territory.[4]

9. For greater certainty, paragraph 8 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

10. For the purposes of paragraph 8:

distributor means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party of goods of another Party.

Article 2.11: Remanufactured Goods

1. For greater certainty, Article 2.10.1 (Import and Export Restrictions) shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods.[5, 6]

Article 2.12: Import Licensing

1. No Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force for a Party, that Party shall notify the other Parties of its existing import licensing procedures, if any. The notice shall include the information specified in Article 5.2 of the Import Licensing Agreement and any information required under paragraph 6.

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[4] This paragraph shall not apply to the importation or distribution of rice and paddy in Malaysia.

[5] For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods:

(a) be identified as such for distribution or sale in its territory; and

(b) meet all applicable technical requirements that apply to equivalent goods in new condition.

[6] This paragraph shall not apply to the treatment of certain remanufactured goods by Viet Nam as set out in Annex 2-B (Remanufactured Goods).

3. A Party shall be deemed to be in compliance with the obligations in paragraph 2 with respect to an existing import licensing procedure if:

(a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement;

(b) in the most recent annual submission due before the date of entry into force of this Agreement for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire; and

(c) it has included in either the notice described in subparagraph (a) or the annual submission described in subparagraph (b) any information required to be notified to the other Parties under paragraph 6.

4. Each Party shall comply with Article 1.4(a) of the Import Licensing Agreement with respect to any new or modified import licensing procedure. Each Party shall also publish on an official government website any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement.

5. Each Party shall notify the other Parties of any new import licensing procedures it adopts and any modifications it makes to its existing import licensing procedures, if possible, no later than 60 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of its publication. The notification shall include any information required under paragraph 6. A Party shall be deemed to be in compliance with this obligation if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with Article 5.1, 5.2 or 5.3 of the Import Licensing Agreement, and includes in its notification any information required to be notified to the other Parties under paragraph 6.

6. (a) A notice under paragraph 2, 3 or 5 shall state if, under any import licensing procedure that is a subject of the notice:

(i) the terms of an import licence for any product limit the permissible end users of the product; or

(ii) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:

(A) membership in an industry association;

(B) approval by an industry association of the request for an import licence;

(C) a history of importing the product or similar products;

(D) minimum importer or end user production capacity;

(E) minimum importer or end user registered capital; or

(F) a contractual or other relationship between the importer and a distributor in the Party's territory.

(b) A notice that states, under subparagraph (a), that there is a limitation on permissible end users or a licence-eligibility condition shall:

(i) list all products for which the end-user limitation or licence-eligibility condition applies; and

(ii) describe the end-user limitation or licence-eligibility condition.

7. Each Party shall respond within 60 days to a reasonable enquiry from another Party concerning its licensing rules and its procedures for the submission of an application for an import licence, including the eligibility of persons, firms and institutions to make an application, the administrative body or bodies to be approached and the list of products subject to the licensing requirement.

8. If a Party denies an import licence application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial.

9. No Party shall apply an import licensing procedure to a good of another Party unless it has, with respect to that procedure, met the requirements of paragraph 2 or 4, as applicable.

Article 2.13: Transparency in Export Licensing Procedures[7]

1. For the purposes of this Article:

export licensing procedure means a requirement that a Party adopts or maintains under which an exporter must, as a condition for exporting a good from the

[7] The obligations in this Article shall apply only to procedures for applying for an export licence.

Party's territory, submit an application or other documentation to an administrative body or bodies, but does not include customs documentation required in the normal course of trade or any requirement that must be fulfilled prior to introduction of the good into commerce within the Party's territory.

2. Within 30 days of the date of entry into force of this Agreement for a Party, that Party shall notify the other Parties in writing of the publications in which its export licensing procedures, if any, are set out, including addresses of relevant government websites. Thereafter, each Party shall publish in the notified publications and websites any new export licensing procedure, or any modification of an export licensing procedure, that it adopts as soon as practicable but no later than 30 days after the new procedure or modification takes effect.

3. Each Party shall ensure that it includes in the publications it notifies under paragraph 2:

(a) the texts of its export licensing procedures, including any modifications it makes to those procedures;

(b) the goods subject to each licensing procedure;

(c) for each procedure, a description of:

(i) the process for applying for a licence; and

(ii) any criteria an applicant must meet to be eligible to apply for a licence, such as possessing an activity licence, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;

(d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export licence;

(e) the administrative body or bodies to which an application for a licence or other relevant documentation must be submitted;

(f) a description of or a citation to a publication reproducing in full any measure or measures that the export licensing procedure is designed to implement;

(g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;

(h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if practicable, value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions available to the public that replace the requirement to obtain an export licence, how to request or use these exemptions or exceptions and the criteria for them.

4. Except where doing so would reveal business proprietary or other confidential information of a particular person, on request of another Party that has a substantial trade interest in the matter, a Party shall provide, to the extent possible, the following information regarding a particular export licensing procedure that it adopts or maintains:

(a) the aggregate number of licences that the Party has granted over a recent period that the requesting Party has specified; and

(b) measures, if any, that the Party has taken in conjunction with the licensing procedure to restrict domestic production or consumption or to stabilise production, supply or prices for the relevant good.

5. Nothing in this Article shall be construed in a manner that would require a Party to grant an export licence, or that would prevent a Party from implementing its obligations or commitments under United Nations Security Council Resolutions, as well as multilateral non-proliferation regimes, including: the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*; the Nuclear Suppliers Group; the Australia Group; the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, done at Paris, January 13, 1993; the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, done at Washington, London, and Moscow, April 10, 1972; the *Treaty on the Non-Proliferation of Nuclear Weapons*, done at London, Moscow and Washington, July 1, 1968; and the Missile Technology Control Regime.

Article 2.14: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretative notes, that all fees and charges of whatever character (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of 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.

2. No Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Party.

3. Each Party shall make publicly available online a current list of the fees and charges it imposes in connection with importation or exportation.

4. No Party shall levy fees and charges on or in connection with importation or exportation on an *ad valorem* basis.[8]

5. Each Party shall periodically review its fees and charges, with a view to reducing their number and diversity if practicable.

Article 2.15: Export Duties, Taxes or Other Charges

Except as provided for in Annex 2-C (Export Duties, Taxes or Other Charges), no Party shall adopt or maintain any duty, tax or other charge on the export of any good to the territory of another Party, unless such duty, tax or charge is adopted or maintained on that good when destined for domestic consumption.

Article 2.16: Publication

Each Party shall promptly publish the following information in a non-discriminatory and easily accessible manner, in order to enable interested parties to become acquainted with it:

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

(b) applied rates of duties, and taxes of any kind imposed on or in connection with importation or exportation;

(c) rules for the classification or the valuation of products for customs purposes;

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

[8] The Merchandise Processing Fee (MPF) shall be the only fee or charge of the United States to which this paragraph shall apply. In addition, this paragraph shall not apply to any fee or charge of the United States until three years after the date of entry into force of this Agreement for the United States. Further, this paragraph shall not apply to any fee or charge of Mexico on or in connection with the importation or exportation of a non-originating good until five years after the date of entry into force of this Agreement for Mexico.

(e) import, export or transit restrictions or prohibitions;

(f) fees and charges imposed on or in connection with importation, exportation or transit;

(g) penalty provisions against breaches of import, export or transit formalities;

(h) appeal procedures;

(i) agreements or parts of agreements with any country relating to importation, exportation or transit;

(j) administrative procedures relating to the imposition of tariff quotas; and

(k) correlation tables showing correspondence between any new national nomenclature and the previous national nomenclature.

Article 2.17: Trade in Information Technology Products

Each Party shall be a participant in the WTO *Ministerial Declaration on Trade in Information Technology Products* (Information Technology Agreement), 13 December 1996, and have completed the procedures for modification and rectification of its Schedule of Tariff Concessions set out in the Decision of 26 March 1980, L/4962, in accordance with paragraph 2 of the Information Technology Agreement.[9, 10]

Article 2.18: Committee on Trade in Goods

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

2. The Committee shall meet as necessary to consider any matters arising under this Chapter. During the first five years after entry into force of this Agreement, the Committee shall meet no less than once a year.

3. The Committee's functions shall include:

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[9] This Article shall not apply to Brunei Darussalam until one year after the date of entry into force of this Agreement for Brunei Darussalam.

[10] Notwithstanding this Article, Chile and Mexico shall endeavour to become participants in the Information Technology Agreement. The eventual participation of Chile and Mexico in that agreement shall be subject to the completion of their respective internal legal procedures.

(a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;

(b) addressing barriers to trade in goods between the Parties, other than those within the competence of other committees, working groups or any other subsidiary bodies established under this Agreement, especially those related to the application of non-tariff measures and, if appropriate, refer these matters to the Commission for its consideration;

(c) reviewing the future amendments to the Harmonized System to ensure that each Party's obligations under this Agreement are not altered, including by establishing, as needed, guidelines for the transposition of Parties' Schedules to Annex 2-D (Tariff Commitments) and consulting to resolve any conflicts between:

    (i) amendments to the Harmonized System and Annex 2-D (Tariff Commitments); or

    (ii) Annex 2-D (Tariff Commitments) and national nomenclatures;

(d) consulting on and endeavouring to resolve any differences that may arise between the Parties on matters related to the classification of goods under the Harmonized System and Annex 2-D (Tariff Commitments); and

(e) undertaking any additional work that the Commission may assign to it.

4. The Committee shall consult, as appropriate, with other committees established under this Agreement when addressing issues of relevance to those committees.

5. The Committee shall, within two years of the date of entry into force of this Agreement, submit to the Commission an initial report on its work under paragraphs 3(a) and 3(b). In producing this report, the Committee shall consult, as appropriate, with the Committee on Agricultural Trade established under Article 2.25 (Committee on Agricultural Trade) and the Committee on Textile and Apparel Trade Matters established under Chapter 4 (Textile and Apparel Goods) of this Agreement on portions of the report of relevance to those committees.

Section C: Agriculture

Article 2.19: Definitions

For the purposes of this Section:

agricultural goods means those goods referred to in Article 2 of the Agreement on Agriculture*;*

export subsidies shall have the meaning assigned to that term in Article 1(e) of the Agreement on Agriculture, including any amendment of that Article;

modern biotechnology means the application of:

(a) *in vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (rDNA) and direct injection of nucleic acid into cells or organelles; or

(b) fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection; and

products of modern biotechnology means agricultural goods, as well as fish and fish products[11], developed using modern biotechnology, but does not include medicines and medical products.

Article 2.20: Scope

This Section shall apply to measures adopted or maintained by a Party relating to trade in agricultural goods.

Article 2.21: Agricultural Export Subsidies

1. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together to achieve an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.

2. No Party shall adopt or maintain any export subsidy on any agricultural good destined for the territory of another Party.[12]

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[11] For the purposes of Article 2.27 (Trade of Products of Modern Biotechnology) and the definition of "products of modern biotechnology", "fish and fish products" are defined as products in Chapter 3 of the Harmonized System.

Article 2.22: Export Credits, Export Credit Guarantees or Insurance Programmes

Recognising the ongoing work in the WTO in the area of export competition and that export competition remains a key priority in multilateral negotiations, Parties shall work together in the WTO to develop multilateral disciplines to govern the provision of export credits, export credit guarantees and insurance programmes, including disciplines on matters such as transparency, self-financing and repayment terms.

Article 2.23: Agricultural Export State Trading Enterprises

The Parties shall work together toward an agreement in the WTO on export state trading enterprises that requires:

(a) the elimination of trade distorting restrictions on the authorisation to export agricultural goods;

(b) the elimination of any special financing that a WTO Member grants directly or indirectly to state trading enterprises that export for sale a significant share of the Member's total exports of an agricultural good; and

(c) greater transparency regarding the operation and maintenance of export state trading enterprises.

Article 2.24: Export Restrictions – Food Security

1. Parties recognise that under Article XI:2(a) of GATT 1994, a Party may temporarily apply an export prohibition or restriction that is otherwise prohibited under Article XI:1 of GATT 1994 on foodstuffs[13] to prevent or relieve a critical shortage of foodstuffs, subject to meeting the conditions set out in Article 12.1 of the Agreement on Agriculture.

2. In addition to the conditions set out in Article 12.1 of the Agreement on Agriculture under which a Party may apply an export prohibition or restriction, other than a duty, tax or other charge, on foodstuffs:

(a) a Party that:

(i) imposes such a prohibition or restriction on the exportation or sale for export of foodstuffs to another Party to prevent

[12] For greater certainty and without prejudice to any Party's position in the WTO, this Article does not cover measures referred to in Article 10 of the Agreement on Agriculture.

[13] For the purpose of this Article, foodstuffs include fish and fisheries products, intended for human consumption.

or relieve a critical shortage of foodstuffs, shall in all cases notify the measure to the other Parties prior to the date it takes effect and, except when the critical shortage is caused by an event constituting *force majeure,* shall notify the measure to the other Parties at least 30 days prior to the date it takes effect; or

(ii) as of the date of entry into force of this Agreement for that Party, maintains such a prohibition or restriction, shall, within 30 days of that date, notify the measure to the other Parties.

(b) A notification under this paragraph shall include the reasons for imposing or maintaining the prohibition or restriction, as well as an explanation of how the measure is consistent with Article XI:2(a) of GATT 1994, and shall note alternative measures, if any, that the Party considered before imposing the prohibition or restriction.

(c) A measure shall not be subject to notification under this paragraph or paragraph 4 if it prohibits or restricts the exportation or sale for export only of a foodstuff or foodstuffs of which the Party imposing the measure has been a net importer during each of the three calendar years preceding the imposition of the measure, excluding the year in which the Party imposes the measure.

(d) If a Party that adopts or maintains a measure referred to in subparagraph (a) has been a net importer of each foodstuff subject to that measure during each of the three calendar years preceding imposition of the measure, excluding the year in which the Party imposes the measure, and that Party does not provide the other Parties with a notification under subparagraph (a), the Party shall, within a reasonable period of time, provide to the other Parties trade data demonstrating that it was a net importer of the foodstuff or foodstuffs during these three calendar years.

3. A Party that is required to notify a measure under paragraph 2(a) shall:

(a) consult, on request, with any other Party having a substantial interest as an importer of the foodstuffs subject to the measure, with respect to any matter relating to the measure;

(b) on the request of any Party having a substantial interest as an importer of the foodstuffs subject to the measure, provide that Party with relevant economic indicators bearing on whether a critical shortage within the meaning of Article XI:2(a) of GATT 1994 exists or is likely to occur in the absence of the measure, and on how the measure will prevent or relieve the critical shortage; and

(c) respond in writing to any question posed by any other Party regarding the measure within 14 days of receipt of the question.

4. A Party which considers that another Party should have notified a measure under paragraph 2(a) may bring the matter to the attention of that other Party. If the matter is not satisfactorily resolved promptly thereafter, the Party which considers that the measure should have been notified may itself bring the measure to the attention of the other Parties.

5. A Party should ordinarily terminate a measure subject to notification under paragraph 2(a) or 4 within six months of the date it is imposed. A Party contemplating continuation of a measure beyond six months from the date it is imposed shall notify the other Parties no later than five months after the date the measure is imposed and provide the information specified in paragraph 2(b). Unless the Party has consulted with the other Parties that are net importers of any foodstuff the exportation of which is prohibited or restricted under the measure, the Party shall not continue the measure beyond 12 months from the date it is imposed. The Party shall immediately discontinue the measure when the critical shortage, or threat thereof, ceases to exist.

6. No Party shall apply any measure that is subject to notification under paragraph 2(a) or 4 to food purchased for non-commercial humanitarian purposes.

Article 2.25: Committee on Agricultural Trade

1. The Parties hereby establish a Committee on Agricultural Trade, composed of government representatives of each Party.

2. The Committee on Agricultural Trade shall provide a forum for:

(a) promoting trade in agricultural goods between the Parties under this Agreement and other issues as appropriate;

(b) monitoring and promoting cooperation on the implementation and administration of this Section, including notification of export restrictions on foodstuffs as stipulated in Article 2.24 (Export Restrictions – Food Security), and discussing the cooperative work identified in Article 2.21 (Agricultural Export Subsidies), Article 2.22 (Export Credits, Export Credit Guarantees or Insurance Programmes) and Article 2.23 (Agricultural Export State Trading Enterprises);

(c) consultation among the Parties on matters related to this Section in coordination with other committees, working groups or any other subsidiary bodies established under this Agreement; and

(d) undertaking any additional work that the Committee on Trade in Goods and the Commission may assign.

3. The Committee on Agricultural Trade shall meet as necessary. During the first five years after entry into force of this Agreement, the Committee on Agricultural Trade shall meet no less than once a year.

Article 2.26: Agricultural Safeguards

Originating agricultural goods from any Party shall not be subject to any duties applied by a Party pursuant to a special safeguard taken under the Agreement on Agriculture.

Article 2.27: Trade of Products of Modern Biotechnology

1. The Parties confirm the importance of transparency, cooperation and exchanging information related to the trade of products of modern biotechnology.

2. Nothing in this Article shall prevent a Party from adopting measures in accordance with its rights and obligations under the WTO Agreement or other provisions of this Agreement.

3. Nothing in this Article shall require a Party to adopt or modify its laws, regulations and policies for the control of products of modern biotechnology within its territory.

4. Each Party shall, when available and subject to its laws, regulations and policies, make available publicly:

(a) any documentation requirements for completing an application for the authorisation of a product of modern biotechnology;

(b) a summary of any risk or safety assessment that has led to the authorisation of a product of modern biotechnology; and

(c) a list or lists of the products of modern biotechnology that have been authorised in its territory.

5. Each Party shall designate and notify a contact point or contact points for the sharing of information on issues related to low level presence (LLP)[14] occurrences, in accordance with Article 27.5 (Contact Points).

[14] For the purposes of this Article, "LLP occurrence" means the inadvertent low level presence in a shipment of plants or plant products, except for a plant or plant product that is a medicine or medical product, of rDNA plant material that is authorised for use in at least one country, but not in the importing country, and if authorised for food use, a food safety assessment has been done

6. In order to address an LLP occurrence, and with a view to preventing a future LLP occurrence, on request of an importing Party, an exporting Party shall, when available and subject to its laws, regulations and policies:

(a) provide a summary of the risk or safety assessment or assessments, if any, that the exporting Party conducted in connection with an authorisation of a specific plant product of modern biotechnology;

(b) provide, if known to the exporting Party, contact information for any entity within its territory that received authorisation for the plant product of modern biotechnology and which the Party believes is likely to possess:

(i) any validated methods that exist for the detection of the plant product of modern biotechnology found at a low level in a shipment;

(ii) any reference samples necessary for the detection of the LLP occurrence; and

(iii) relevant information that can be used by the importing Party to conduct a risk or safety assessment or, if a food safety assessment is appropriate, relevant information for a food safety assessment in accordance with Annex 3 of the *Codex Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants* (CAC/GL 45-2003); and

(c) encourage an entity referred to in subparagraph (b) to share the information referred to in subparagraphs (b)(i), (b)(ii) and (b)(iii) with the importing Party.

7. In the event of an LLP occurrence, the importing Party shall, subject to its laws, regulations and policies:

(a) inform the importer or the importer's agent of the LLP occurrence and of any additional information that the importer will be required to submit to allow the importing Party to make a decision on the disposition of the shipment in which the LLP occurrence has been found;

(b) if available, provide to the exporting Party a summary of any risk or safety assessment that the importing Party has conducted in connection with the LLP occurrence; and

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based on the *Codex Guideline for the Conduct of a Food Safety Assessment of Foods Derived from Recombinant-DNA Plants* (CAC/GL 45-2003).

(c) ensure that the measures[15] applied to address the LLP occurrence are appropriate to achieve compliance with its laws, regulations and policies.

8. To reduce the likelihood of trade disruptions from LLP occurrences:

(a) each exporting Party shall, consistent with its laws, regulations and policies, endeavour to encourage technology developers to submit applications to Parties for authorisation of plants and plant products of modern biotechnology; and

(b) a Party authorising plant and plant products derived from modern biotechnology shall endeavour to:

(i) allow year-round submission and review of applications for authorisation of plants and plant products of modern biotechnology; and

(ii) increase communications between the Parties regarding new authorisations of plants and plant products of modern biotechnology so as to improve global information exchange.

9. The Parties hereby establish a working group on products of modern biotechnology (Working Group) under the Committee on Agricultural Trade for information exchange and cooperation on trade-related matters associated with products of modern biotechnology. The Working Group shall be comprised of government representatives of Parties that inform, in writing, the Committee on Agricultural Trade that they will participate in the Working Group and name one or more government representatives to the Working Group.

10. The Working Group shall provide a forum to:

(a) exchange, subject to a Party's laws, regulations and policies, information on issues, including on actual and proposed laws, regulations and policies, related to the trade of products of modern biotechnology; and

(b) further enhance cooperation between two or more Parties, when there is mutual interest, related to the trade of products of modern biotechnology.

[15] For the purposes of this paragraph, "measures" does not include penalties.

Section D: Tariff-Rate Quota Administration

Article 2.28: Scope and General Provisions

1. Each Party shall implement and administer tariff-rate quotas (TRQs[16]) in accordance with Article XIII of GATT 1994, including its interpretative notes, the Import Licensing Agreement and Article 2.12 (Import Licensing). All TRQs established by a Party under this Agreement shall be incorporated into that Party's Schedule to Annex 2-D (Tariff Commitments).

2. Each Party shall ensure that its procedures for administering its TRQs are made available to the public, are fair and equitable, are no more administratively burdensome than absolutely necessary, are responsive to market conditions and are administered in a timely manner.

3. The Party administering a TRQ shall publish all information concerning its TRQ administration, including the size of quotas and eligibility requirements; and, if the TRQ will be allocated, application procedures, the application deadline, and the methodology or procedures that will be used for the allocation or reallocation, on its designated publicly available website at least 90 days prior to the opening date of the TRQ concerned.

Article 2.29: Administration and Eligibility

1. Each Party shall administer its TRQs in a manner that allows importers the opportunity to utilise TRQ quantities fully.

2. (a) Except as provided in subparagraphs (b) and (c), no Party shall introduce a new or additional condition, limit or eligibility requirement on the utilisation of a TRQ for importation of a good, including in relation to specification or grade, permissible end-use of the imported product or package size, beyond those set out in its Schedule to Annex 2-D (Tariff Commitments).[17]

   (b) A Party seeking to introduce a new or additional condition, limit or eligibility requirement on the utilisation of a TRQ for importation of a good shall notify the other Parties at least 45 days prior to the proposed effective date of the new or additional condition, limit or

[16] For the purposes of this Section, TRQs means only TRQs that are established under this Agreement as set out in a Party's Schedule to Annex 2-D (Tariff Commitments). For greater certainty, this Section shall not apply to TRQs set out in a Party's Schedule to the WTO Agreement.

[17] For greater certainty, this paragraph shall not apply to conditions, limits or eligibility requirements that apply regardless of whether or not the importer utilises the TRQ when importing the good.

eligibility requirement. Any Party with a demonstrable commercial interest in supplying the good may submit a written request for consultations to the Party seeking to introduce the new or additional condition, limit or eligibility requirement. On receipt of such a request for consultations, the Party seeking to introduce the new or additional condition, limit or eligibility requirement shall promptly undertake consultations with the Party that submitted the request, in accordance with Article 2.32.6 (Transparency).

(c) The Party seeking to introduce the new or additional condition, limit or eligibility requirement may do so if:

(i) it has consulted with any Party with a demonstrable commercial interest in supplying the good that has submitted a written request for consultations pursuant to subparagraph (b); and

(ii) no Party with a demonstrable commercial interest in supplying the good that submitted a written request for consultations pursuant to subparagraph (b) objected, after the consultation, to the introduction of the new or additional condition, limit or eligibility requirement.

(d) A new or additional condition, limit or eligibility requirement that is the outcome of any consultation held pursuant to subparagraph (c), shall be circulated to the Parties prior to its implementation.

Article 2.30: **Allocation**[18]

1. In the event that access under a TRQ is subject to an allocation mechanism, each importing Party shall ensure that:

(a) any person of a Party that fulfils the importing Party's eligibility requirements is able to apply and to be considered for a quota allocation under the TRQ;

(b) unless otherwise agreed, it does not allocate any portion of the quota to a producer group, condition access to an allocation on the purchase of domestic production or limit access to an allocation to processors;

[18] For the purposes of this Section, "allocation mechanism" means any system where access to the TRQ is granted on a basis other than first-come first-served.

(c) each allocation is made in commercially viable shipping quantities and, to the maximum extent possible, in the amounts that importers request;

(d) an allocation for in-quota imports is applicable to any tariff lines subject to the TRQ and is valid throughout the TRQ year;

(e) if the aggregate TRQ quantity requested by applicants exceeds the quota size, allocation to eligible applicants shall be conducted by equitable and transparent methods;

(f) applicants have at least four weeks after the opening of the application period to submit their applications; and

(g) quota allocation takes place no later than four weeks before the opening of the quota period, unless the allocation is based in whole or in part on import performance during the 12-month period immediately preceding the quota period. If the Party bases the allocation in whole or in part on import performance during the 12-month period immediately preceding the quota period, the Party shall make a provisional allocation of the full quota amount no later than four weeks before the opening of the quota period. All final allocation decisions, including any revisions, shall be made and communicated to applicants by the beginning of the quota period.

2. During the first TRQ year that this Agreement is in force for a Party, if less than 12 months remain in the TRQ year on the date of entry into force of this Agreement for that Party, the Party shall make available to quota applicants, beginning on the date of entry into force of this Agreement for that Party, the quota quantity established in its Schedule to Annex 2-D (Tariff Commitments), multiplied by a fraction the numerator of which shall be a whole number consisting of the number of months remaining in the TRQ year on the date of entry into force of this Agreement for that Party, including the entirety of the month in which this Agreement enters into force for that Party, and the denominator of which shall be 12. The Party shall make the entire quota quantity established in its Schedule to Annex 2-D (Tariff Commitments) available to quota applicants beginning on the first day of each TRQ year thereafter that the quota is in operation.

3. The Party administering a TRQ shall not require the re-export of a good as a condition for application for, or utilisation of, a quota allocation.

4. Any quantity of goods imported under a TRQ under this Agreement shall not be counted towards, or reduce the quantity of, any other TRQ provided for

such goods in a Party's Schedule to the WTO Agreement or under any other trade agreements.[19]

Article 2.31: **Return and Reallocation of TRQs**

1. When a TRQ is administered by an allocation mechanism, a Party shall ensure that there is a mechanism for the return and reallocation of unused allocations in a timely and transparent manner that provides the greatest possible opportunity for the TRQ to be filled.

2. Each Party shall publish on a regular basis on its designated publicly available website all information concerning amounts allocated, amounts returned and, if available, quota utilisation rates. In addition, each Party shall publish on the same website amounts available for reallocation and the application deadline, at least two weeks prior to the date on which the Party will begin accepting applications for reallocations.

Article 2.32: **Transparency**

1. Each Party shall identify the entity or entities responsible for administering its TRQs and designate and notify at least one contact point, in accordance with Article 27.5 (Contact Points), to facilitate communications between the Parties on matters relating to the administration of its TRQs. Each Party shall promptly notify the other Parties of any amendments to the details of its contact point.

2. When a TRQ is administered by an allocation mechanism, the name and address of allocation holders shall be published on the designated publicly available website.

3. When a TRQ is administered on a first-come, first-served basis, over the course of each year, the importing Party's administering authority shall publish, in a timely and continually on-going manner on its designated publicly available website, utilisation rates and remaining available quantities for each TRQ.

4. When a TRQ of an importing Party that is administered on a first-come, first-served basis fills, that Party shall publish a notice to this effect on its designated publicly available website within 10 days.

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[19] For greater certainty, nothing in this paragraph shall prevent a Party from applying a different in-quota rate of customs duty to goods from other Parties, as set out in that Party's Schedule to Annex 2-D (Tariff Commitments), than that applied to the same goods of non-Parties under a TRQ established under the WTO Agreement. Further, nothing in this paragraph requires a Party to change the in-quota quantity of any TRQ established under the WTO Agreement.

5. When a TRQ of an importing Party that is administered by an allocation mechanism fills, that Party shall publish a notice to this effect on its designated publicly available website as early as practicable.

6. On written request of an exporting Party or Parties, the Party administrating a TRQ shall consult with the requesting Party or Parties regarding the administration of its TRQ.

ANNEX 2-A

NATIONAL TREATMENT AND IMPORT AND EXPORT RESTRICTIONS

1. For greater certainty, nothing in this Annex shall affect the rights or obligations of any Party under the WTO Agreement with respect to any measure listed in this Annex.

2. Article 2.3.1 (National Treatment), Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to the continuation, renewal, or amendment made to any law, statute, decree or administrative regulations giving rise to a measure set out in this Annex to the extent that the continuation, renewal, or amendment does not decrease the conformity of the measure listed with Article 2.3 (National Treatment) and Article 2.10 (Import and Export Restrictions).

Measures of Brunei Darussalam

Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to the goods specified in section 31 of *Customs Order 2006*.

Measures of Canada

1. Article 2.3.1 (National Treatment), Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to:

(a) the export of logs of all species;

(b) the export of unprocessed fish pursuant to applicable provincial legislation;

(c) the importation of goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff*;

(d) Canadian excise duties on absolute alcohol, as listed under tariff item 2207.10.90 in Canada's Schedule of Concessions annexed to GATT 1994 (Schedule V), used in manufacturing under the provisions of the *Excise Act*, *2001*, Statutes of Canada 2002, c.22, as amended;

(e) the use of ships in the coasting trade of Canada; and

(f) the internal sale and distribution of wine and distilled spirits.

2. Article 2.3.1 (National Treatment) shall not apply, as specified in Article 2.3.3, to a measure affecting the production, publication, exhibition or sale of goods[20] that supports the creation, development or accessibility of Canadian artistic expression or content.

Measures of Chile

Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to measures of Chile relating to imports of used vehicles.

Measures of Mexico

1. Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply:

(a) to restrictions pursuant to Article 48 of the Hydrocarbons Law (*Ley de Hidrocarburos*) published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on August 11, 2014, on the exportation from Mexico of the goods provided for in the following items of Mexico's tariff schedule of the General Import and Export Duties Law (*Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación*) published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on June 18, 2007 and June 29, 2012:

HS 2012	Description
2709.00.01	Crude petroleum oils
2709.00.99	Other
2710.12.04	Gasoline, excluding those of code 2710.12.03
2710.19.04	Gasoil (diesel) or diesel oil and mixtures thereof
2710.19.05	Fuel oil
2710.19.07	Paraffin oil
2710.19.08	Turbosine (kerosene, lamp oil) and blends thereof
2710.19.99	Other
2711.11.01	Natural gas
2711.12.01	Propane
2711.13.01	Butanes
2711.19.01	Butane and propane, mixed and liquefied
2711.19.99	Other
2711.21.01	Natural gas

[20] Such goods include books, magazines, and media carrying video or music recordings.

2711.29.99	Other
2712.20.01	Paraffin wax containing less than 0.75% of oil, by weight
2712.90.02	Microcrystalline waxes
2712.90.04	Waxes, excluding those of codes 2712.90.01 and 2712.90.02
2712.90.99	Other

(b) during the period prior to January 1, 2019, to prohibitions or restrictions on the importation into Mexico of gasoline and diesel fuel set forth in Article 123 of the Hydrocarbons Law (*Ley de Hidrocarburos*), published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on August 11, 2014; and

(c) to prohibitions or restrictions on the importation into Mexico of used tyres, used apparel, used vehicles and used chassis equipped with vehicle motors set forth in paragraphs 1(I) and 5 of Annex 2.2.1 of the Resolution through which the Ministry of Economy establishes Rules and General Criteria on International Trade (*Acuerdo por el que la Secretaría de Economía emite reglas y criterios de carácter general en materia de Comercio Exterior*), published in Mexico's Official Gazette (*Diario Oficial de la Federación*) on December 31, 2012.

2. The Commission shall review paragraph 1(a) pursuant to any review conducted under Article 27.2.1(b) (Functions of the Commission).

Measures of Peru

Article 2.3.1 (National Treatment), Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to:

(a) used clothing and footwear pursuant to Law No. 28514 of May 23, 2005;

(b) used vehicles and used automotive engines, parts and replacements pursuant to Legislative Decree No. 843 of August 30, 1996, Urgent Decree No. 079-2000 of September 20, 2000, Urgent Decree No. 050-2008 of December 18, 2008;

(c) used tyres pursuant to Supreme Decree No. 003-97-SA of June 7, 1997; and

(d) used goods, machinery and equipment which utilise radioactive energy sources pursuant to Law No. 27757 of June 19, 2002.

Measures of the United States

Article 2.3.1 (National Treatment), Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to:

(a) controls on the export of logs of all species; and

(b) measures under existing provisions of the *Merchant Marine Act of 1920*, the *Passenger Vessel Act*, and 46 U.S.C. § 12102, § 12113, and § 12116, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of GATT 1947.

Measures of Viet Nam

Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to:

(a) a prohibition on importation, set out in *Decree No. 187/2013/ND-CP* dated 20 November 2013 of the Government of Viet Nam or *Circular No. 04/2014/TT-BCT* dated 27 January 2014 of the Ministry of Industry and Trade guiding the implementation of the *Decree No. 187/2013/ND-CP*, with respect to a good listed in (i) through (iv) of this subparagraph. The goods listed in (i) through (iv) of this subparagraph are:

(i) right-hand drive motor vehicles (including right-hand drive motor vehicles modified after manufacture to be left-hand drive vehicles), except specialised right-hand drive vehicles that generally operate in small areas such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger transportation buses, fork-lifts used at warehouses and ports;

(ii) vehicle components usable exclusively in right-hand drive motor vehicles that are not specialised right-hand drive vehicles;

(iii) motor vehicles more than five years old;

(iv) used:[21]

[21] For greater certainty, this subparagraph does not apply with respect to remanufactured goods, in accordance with Article 2.11 (Remanufactured Goods).

(A) textiles, clothing and footwear;

(B) computer printers, fax machines, and computer disk drives;

(C) laptop computers;

(D) refrigeration equipment;

(E) household electrical appliances;

(F) medical equipment;

(G) furniture;

(H) household goods made from porcelain, clay, glass, metal, resin, rubber, and plastic;

(I) frames, tyres (outer and inner), tubes, accessories, and engines, of automobiles, tractors, and other motor vehicles;

(J) internal combustion engines with a capacity below 30 CV and machines with an internal combustion engine with a capacity below 30 CV; and

(K) bicycles and tricycles; and

(b) a prohibition on exportation, set out in *Decree No. 187/2013/ND-CP* dated 20 November 2013 of the Government of Viet Nam or *Circular No. 04/2014/TT-BCT* dated 27 January 2014 of the Ministry of Industry and Trade guiding the implementation of the *Decree No. 187/2013/ND-CP*, with respect to a good listed in (i) and (ii) of this subparagraph. The goods listed in (i) and (ii) of this subparagraph are:

(i) round and sawn timber produced from domestic natural forests; and

(ii) wooden products (except handicrafts and products produced from wood of cultivated forests, imported wood or artificial pallet).

Kimberley Process Certification Scheme

Article 2.10.1 (Import and Export Restrictions) and Article 2.10.2 shall not apply to the import and export of rough diamonds (HS codes 7102.10, 7102.21 and 7102.31), pursuant to the Kimberley Process Certification Scheme and any subsequent amendments to that scheme.

ANNEX 2-B

REMANUFACTURED GOODS

1. Article 2.11.2 (Remanufactured Goods) shall not apply to measures of Viet Nam prohibiting or restricting the importation of remanufactured goods for three years after the date of entry into force of this Agreement for Viet Nam. Thereafter, Article 2.11.2 (Remanufactured Goods) shall apply to all measures of Viet Nam, except as provided in paragraph 2 of this Annex.

2. Article 2.11.2 (Remanufactured Goods) shall not apply to a prohibition or restriction set out in *Decree No. 187/2013/ND-CP* dated 20 November 2013 of the Government of Viet Nam or *Circular No. 04/2014/TT-BCT* dated 27 January 2014 of the Ministry of Industry and Trade on the importation of a good listed in Table 2-B-1.

3. For greater certainty, Viet Nam shall not:

(a) apply any prohibition or restriction on the importation of a remanufactured good that is more stringent than the prohibition or restriction it applies to the importation of the same good when used; or

(b) re-impose any prohibition or restriction on the importation of a remanufactured good following the removal of the prohibition or restriction.

Table 2-B-1

HS 2012	Description
8414.51.91	- - - - With protective screen
8414.51.99	- - - - Other
8415.10.10	- - Of an output not exceeding 26.38 kW
8415.10.90	- - Other
8419.11.10	- - - Household type
8419.19.10	- - - Household type
8421.12.00	- - Clothes-dryers
8421.21.11	- - - - Filtering machinery and apparatus for domestic use
8421.91.10	- - - Of goods of subheading 8421.12.00
8422.11.00	- - Of the household type
8422.90.10	- - Of machines of subheading 8422.11
8452.10.00	- Sewing machines of the household type

8508.19.10	- - - Of a kind suitable for domestic use
8508.70.10	- - Of vacuum cleaners of subheading 8508.11.00 or 8508.19.10
8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side cars
8712	Bicycles and other cycles (including delivery tricycles), not motorised (except for racing bicycles in 8712.00.10)

ANNEX 2-C

EXPORT DUTIES, TAXES OR OTHER CHARGES

1. Article 2.15 (Export Duties, Taxes or Other Charges) shall apply to goods provided for in the items listed in a Party's Section to this Annex only as specified below.

2. With respect to a good provided for in an item listed in Section 1 to this Annex, Malaysia shall not apply any export duties, taxes or other charges in an amount greater than that specified for that item in Section 1 to this Annex.

3. With respect to a good provided for in an item listed in Section 2 to this Annex, Viet Nam shall eliminate any export duties, taxes or other charges in accordance with the following categories, as indicated for each item listed in Section 2 to this Annex:

(a) export duties, taxes or other charges on goods provided for in the items in category A may remain in place for five years but shall not exceed the base rate. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 6;

(b) export duties, taxes or other charges on goods provided for in the items in category B may remain in place for seven years but shall not exceed the base rate. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 8;

(c) export duties, taxes or other charges on goods provided for in the items in category C shall be eliminated in 11 equal annual stages. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 11;

(d) export duties, taxes or other charges on goods provided for in the items in category D may remain in place for 10 years but shall not exceed the base rate. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 11;

(e) export duties, taxes or other charges on goods provided for in the items in category E shall be eliminated in 13 equal annual stages. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 13;

(f) export duties, taxes or other charges on goods provided for in the items in category F may remain in place for 12 years but shall not

exceed the base rate. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 13;

(g) export duties, taxes or other charges on goods provided for in the items in category G shall be eliminated in 16 equal annual stages. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 16;

(h) export duties, taxes or other charges on goods provided for in the items in category H may remain in place for 15 years but shall not exceed the base rate. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 16;

(i) export duties, taxes or other charges on goods provided for in the items in category I shall be reduced to 20 per cent in six equal, annual stages from year 1 to year 6. From January 1 of year 6 until December 31 of year 15, export duties, taxes or other charges on such goods shall not exceed 20 per cent. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 16;

(j) export duties, taxes or other charges on goods provided for in the items in category J shall be reduced to 10 per cent in 11 equal, annual stages from year 1 to year 11. From January 1 of year 11 until December 31 of year 15, export duties, taxes or other charges on such goods shall not exceed 10 per cent. Viet Nam shall not apply any export duty, tax or other charge on such goods from January 1 of year 16; and

(k) export duties, taxes or other charges on goods provided for in the items in category K may remain in place but shall not exceed the base rate.

4. For the purposes of paragraph 3 and Section 2 to this Annex, **year 1** means the year of entry into force of this Agreement for Viet Nam. Export duties, taxes or other charges on goods provided for in the items in categories C, E, G, I and J shall be initially reduced on the date of entry into force of this Agreement for Viet Nam. From year 2, each annual stage of reduction of export duties, taxes and other charges shall take effect on January 1 of the relevant year.

5. The base rate of export duties, taxes and other charges is indicated for each item in this Annex.

6. Parties that have listed goods in this Annex shall autonomously endeavour to minimise the application and level of their export duties, taxes and other charges.

Section 1: Malaysia

HS 2012	Description	Export Duty[22]	Cess[23]
0602.90	- - Budded stumps of the genus Hevea	RM 0.30 each	-
1207.10	Palm nuts and kernels: - - Suitable for sowing	5%	-
1207.99	- - - Illipe seeds (Illipe nuts)	RM 0.08267/kg	-
1209.99	Seeds, fruit and spores, of a kind used for sowing – other.	RM 22.05/kg	-
1401.20	Rattans- - Whole	RM 2.70/kg	-
1511.10	- Crude palm oil	0% to 8.5%	-
1513.21	- - - Palm kernel	10%	-
1513.29	- - - - Palm kernel oil, refined, bleached and deodorised (RBD)	5%	-
1516.20	Vegetable fats and oils and their fractions - - - Of palm oil: Crude	10%	-
2620.21	Slag, ash and residues (other than from the manufacture of iron or steel) containing metals, arsenic or their compounds. - Containing mainly lead: --Leaded gasoline sludges and leaded anti-knock compound sludges	5%	-
2620.29	- Containing mainly lead: --Other	5%	-
2620.30	- Containing mainly copper	5%	-
2620.40	- Containing mainly aluminium	5%	-
2620.60	- Containing arsenic, mercury, thallium or their mixtures, of a kind used for the extraction of arsenic or those metals or for the manufacture of their chemical compounds	5%	-
2620.91	-Other: - Containing antimony, beryllium, cadmium, chromium or their mixtures	5%	-
2620.99	-Other: --Other:	5%	-
2621.10	Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste - Ash and residues from the incineration of municipal waste	5%	-
2621.90	-Other:	5%	-
2709.00	Petroleum oils and oils obtained from bituminous minerals, crude.	10%	-
4007.00	Vulcanised rubber thread and cord.	-	0.20%
4008.11	Plates, sheets, strip, rods and profile shapes, of vulcanised rubber other than hard rubber. -Of cellular rubber : - - Plates, sheets and strip	-	0.20%
4008.19	-Of cellular rubber : --Other	-	0.20%
4008.21	-Of non-cellular rubber: - - Plates, sheets and strip:	-	0.20%
4008.29	-Of non-cellular rubber : -- Other	-	0.20%

[22] *Customs Duties Order 2012 - Customs Act 1967.*

[23] *Malaysian Rubber Board (Incorporation) Act 1996*, *Malaysian Rubber Board (CESS) Order 1999 and Malaysian Timber Industry Board (Incorporation) Act 1973 - Timber CESS Order 2000* [P.U.(A) 56/2000].

HS 2012	Description	Export Duty[22]	Cess[23]
4009.11	Tubes, pipes and hoses, of vulcanised rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges). -Not reinforced or otherwise combined with other materials : -- Without fittings	-	0.20%
4009.12	-Not reinforced or otherwise combined with other materials : -- With fittings	-	0.20%
4009.21	-Reinforced or otherwise combined only with metal: -- Without fittings	-	0.20%
4009.22	-Reinforced or otherwise combined only with metal: -- With fittings	-	0.20%
4009.31	-Reinforced or otherwise combined only with textile materials : -- Without fittings	-	0.20%
4009.32	-Reinforced or otherwise combined only with textile materials : -- With fittings	-	0.20%
4009.41	-Reinforced or otherwise combined with other materials : -- Without fittings	-	0.20%
4009.42	-Reinforced or otherwise combined with other materials : - - With fittings	-	0.20%
4010.11	Conveyor or transmission belts or belting, of vulcanised rubber. -Conveyor belts or belting : -- Reinforced only with metal	-	0.20%
4010.12	-Conveyor belts or belting : -- Reinforced only with textile materials	-	0.20%
4010.19	-Conveyor belts or belting : -- Other	-	0.20%
4010.31	-Transmission belts or belting : -- Endless transmission belts of trapezoidal cross-section (V-belts), V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm	-	0.20%
4010.32	-Transmission belts or belting : - - Endless transmission belts of trapezoidal cross-section (V-belts), other than V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm	-	0.20%
4010.33	-Transmission belts or belting : - - Endless transmission belts of trapezoidal cross-section (V-belts), V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm	-	0.20%
4010.34	-Transmission belts or belting : - - Endless transmission belts of trapezoidal cross-section (V-belts), other than V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm	-	0.20%
4010.35	-Transmission belts or belting : - - Endless synchronous belts, of an outside circumference exceeding 60 cm but not exceeding 150 cm	-	0.20%
4010.36	-Transmission belts or belting : - - Endless synchronous belts, of an outside circumference exceeding 150 cm but not exceeding 198 cm	-	0.20%
4010.39	-Transmission belts or belting : --Other	-	0.20%
4012.90	Retreaded or used pneumatic tyres of rubber; solid or cushion tyres, tyre treads and tyre flaps, of rubber. -Other:	-	0.20%
4014.10	Hygienic or pharmaceutical articles (including teats), of vulcanized rubber other than hard rubber, with or without fittings of hard rubber - Sheath contraceptives	-	0.20%
4014.90	-Other:	-	0.20%

HS 2012	Description	Export Duty[22]	Cess[23]
4015.11	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanised rubber other than hard rubber. -Gloves, mittens and mitts : -- Surgical	-	0.20%
4015.19	-Gloves, mittens and mitts : --Other:	-	0.20%
4015.90	- Other	-	0.20%
4016.10	Other articles of vulcanized rubber other than hard rubber. -Of cellular rubber:	-	0.20%
4016.91	-Other: - - Floor coverings and mats	-	0.20%
4016.92	-Other: - - Eraser	-	0.20%
4016.93	-Other: --Gaskets, washers and other seals.	-	0.20%
4016.94	-Other: - - Boat or dock fenders, whether or not inflatable	-	0.20%
4016.95	-Other: - - Other inflatable articles	-	0.20%
4016.99	-Other: --Other:	-	0.20%
4017.00	Hard rubber (for example, ebonite) in all forms, including waste and scrap; articles of hard rubber. -Hard rubber (for example, ebonite) in all forms, including waste and scrap.	-	0.20%
4401.21	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms. -Wood in chips or particles: - - Coniferous	-	RM 2.00/m3
4401.22	-Wood in chips or particles: - - Non-coniferous	-	RM 2.00/m3
4403.10	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared -Treated with paint, stains, creosote or other preservatives:	15%	RM 5.00/m3
4403.20	-Other, coniferous:	15%	RM 5.00/m3
4403.41	-Other, of tropical wood specified in Subheading Note 2 to this Chapter --Dark Red Meranti, Light Red Meranti and Meranti Bakau:	15%	RM 5.00/m3
4403.49	-Other, of tropical wood specified in Subheading Note 2 to this Chapter --Other:	15%	RM 5.00/m3
4403.91	-Other --Of oak (Quercus spp):	15%	RM 5.00/m3
4403.92	-Other --Of beech (Fagus spp)	15%	RM 5.00/m3
4403.99	-Other --Other	15%	RM 5.00/m3
4406.10	Railway or tramway sleepers (cross-ties) of wood. -Not impregnated	-	RM 5.00/m3
4406.90	-Other	-	RM 5.00/m3
4407.10	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6mm. -Coniferous:	-	RM 5.00/m3
4407.21	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Mahogany (Swietenia spp):	-	RM 5.00/m3

HS 2012	Description	Export Duty[22]	Cess[23]
4407.22	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Virola, Imbuia and Balsa:	-	RM 5.00/m3
4407.25	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Dark Red Meranti, Light Red Meranti and Meranti Bakau:	-	RM 125.00/m3
4407.26	-Of tropical wood specified in Subheading Note 2 to this Chapter: --White Lauan, White Meranti, White Seraya, Yellow Meranti and Alan:	-	RM 5.00/m3
4407.27	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Sapelli:	-	RM 5.00/m3
4407.28	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Iroko:	-	RM 5.00/m3
4407.29	-Of tropical wood specified in Subheading Note 2 to this Chapter: --Other:	-	RM 5.00/m3
4407.91	-Other: --Of oak (Quercus spp.):	-	RM 5.00/m3
4407.92	-Other: --Of beech (Fagus spp.):	-	RM 5.00/m3
4407.93	-Other: --Of maple (Acer spp.):	-	RM 5.00/m3
4407.94	-Other: --Of cherry (Prunus spp.):	-	RM 5.00/m3
4407.95	-Other: --Of ash (Fraxinus spp.):	-	RM 5.00/m3
4407.99	-Other: --Other:	-	RM 5.00/m3
4408.10	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6mm. -Coniferous:	-	RM 255.00/m3
4408.31	-Of tropical wood specified in Subheading Note 2 to this Chapter --Dark Red Meranti, Light Red Meranti and Meranti Bakau:	-	RM 255.00/m3
4408.39	-Of tropical wood specified in Subheading Note 2 to this Chapter --Other:	-	RM 255.00/m3
4408.90	-Other:	-	RM 255.00/m3
4409.10	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed. -Coniferous:	-	RM 5.00/m3
4409.21	-Non-coniferous: --Of bamboo:	-	RM 5.00/m3
4409.29	-Non-coniferous: --Other:	-	RM 5.00/m3
4410.11	Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances. - Of wood: --Particle board	-	RM 2.00/m3
4410.12	- Of wood: - - Oriented strand board (OSB)	-	RM 2.00/m3
4410.19	- Of wood: - - Other	-	RM 2.00/m3
4410.90	- Other	-	RM 2.00/m3

HS 2012	Description	Export Duty[22]	Cess[23]
4412.10	Plywood, veneered panels and similar laminated wood. - Of bamboo	-	RM 5.00/m3
4412.31	- Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm thickness: - - With at least one outer ply of tropical wood specified in Subheading Note 2 to this Chapter	-	RM 5.00/m3
4412.32	- Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm thickness: - - Other, with at least one outer ply of non-coniferous wood	-	RM 5.00/m3
4412.39	- Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm thickness: - - Other	-	RM 5.00/m3
4412.94	- Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm thickness: - Other: - - Blockboard, laminboard and battenboard	-	RM 5.00/m3
4412.99	- Other: --Other:	-	RM 5.00/m3
5906.10	Rubberised textile fabrics, other than those of heading 59.02. - Adhesive tape of a width not exceeding 20 cm	-	0.20%
5906.99	-Other: - - Other	-	0.20%
6506.91	Other headgear, whether or not lined or trimmed. - Other: - - Of rubber or of plastics:	-	0.20%
6807.10	Articles of asphalt or of similar material (for example, petroleum bitumen or coal tar pitch) - In rolls	5%	-
6808.00	Panels, boards, tiles, blocks and similar articles of vegetable fibre, of straw or of shavings, chips, particles, sawdust or other waste, of wood, agglomerated with cement, plaster or other mineral binders.	5%	-
7106.10	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form. - Powder	5%	-
7106.91	- Other: - - Unwrought	5%	-
7106.92	- Other: -- Semi-manufactured	5%	-
7107.00	Base metals clad with silver, not further worked than semi-manufactured.	5%	-
7110.11	Platinum, unwrought or in semi-manufactured forms, or in powder form. -Platinum: - - Unwrought or in powder form	5%	-
7110.19	- Platinum: - - Other	5%	-
7110.21	-Palladium -- Unwrought or in powder form	5%	-
7110.29	-Palladium -- Other	5%	-
7110.31	-Rhodium -- Unwrought or in powder form	5%	-
7110.39	-Rhodium -- Other	5%	-
7110.41	-Iridium, osmium and ruthenium -- Unwrought or in powder form	5%	-

HS 2012	Description	Export Duty[22]	Cess[23]
7110.49	-Iridium, osmium and ruthenium -- Other	5%	-
7111.00	Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured.	5%	-
7204.10	Ferrous waste and scrap; remelting scrap ingots of iron or steel. -Waste and scrap of cast iron	10%	-
7204.21	-Waste and scrap of alloy steel : -- Of stainless steel	10%	-
7204.29	-Waste and scrap of alloy steel : -- Other	10%	-
7204.30	-Waste and scrap of tinned iron or steel	10%	-
7204.41	-Other waste and scrap : -- Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles	10%	-
7204.49	-Other waste and scrap : -- Other	10%	-
7204.50	-Remelting scrap ingots	10%	-
7401.00	Copper mattes; cement copper (precipitated copper).	5%	-
7402.00	Unrefined copper; copper anodes for electrolytic refining.	5%	-
7403.11	Refined copper and copper alloys, unwrought. - Refined copper: - - Cathodes and sections of cathodes	5%	-
7403.12	- Refined copper: - - Wire-bars	5%	-
7403.13	- Refined copper: - - Billets	5%	-
7403.19	-Refined copper : -- Other	5%	-
7403.21	- Copper alloys: - - Copper-zinc base alloys (brass)	5%	-
7403.22	- Copper alloys: - - Copper-tin base alloys (bronze)	5%	-
7403.29	- Copper alloys: - - Other copper alloys (other than master alloys of heading 74.05)	5%	-
7404.00	Copper waste and scrap.	10%	-
7405.00	Master alloys of copper.	10%	-
7501.10	Nickel mattes, nickel oxide sinters and other intermediate products of nickel metallurgy. - Nickel mattes	10%	-
7501.20	- Nickel oxide sinters and other intermediate products of nickel metallurgy	10%	-
7502.10	Unwrought nickel. - Nickel, not alloyed	10%	-
7502.20	- Nickel alloys	10%	-
7602.00	Aluminium waste and scrap.	10%	-
7801.99	Unwrought lead. - Other: -- Other:	15%	-
7802.00	Lead waste and scrap.	15%	-
7901.11	Unwrought zinc -Zinc, not alloyed : -- Containing by weight 99.99 % or more of zinc	5%	-
7901.12	-Zinc, not alloyed : -- Containing by weight less than 99.99 % of zinc	5%	-

HS 2012	Description	Export Duty[22]	Cess[23]
7901.20	- Zinc alloys	5%	-
8544.20	Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors. - Co-axial cable and other co-axial electric conductors:	-	0.20%
8544.30	- Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships:	-	0.20%
8544.42	- Other electric conductors, for a voltage not exceeding 1000 V: -- Fitted with connectors:	-	0.20%
8544.49	- Other electric conductors, for a voltage not exceeding 1000 V: --Other:	-	0.20%
9004.90	Spectacles, goggles and the like, corrective, protective or other. - Other:	-	0.20%
9018.39	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments. - Syringes, needles, catheters, cannulae and the like: - - Other:	-	0.20%
9404.10	Mattress supports; articles of bedding and similar furnishing (for example, mattress, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered. - Mattress supports	-	0.20%
9404.21	- Mattresses: - - Of cellular rubber or plastics, whether or not covered	-	0.20%
9404.90	- Other	-	0.20%
9506.32	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and paddling pools. - Golf clubs and other golf equipment: - - Balls	-	0.20%
9506.61	- Balls, other than golf balls and table-tennis balls: - - Lawn-tennis balls	-	0.20%
9506.62	- Balls, other than golf balls and table-tennis balls: - - Inflatable	-	0.20%
9506.69	- Balls, other than golf balls and table-tennis balls: - - Other	-	0.20%

Section 2: Viet Nam

HS 2012	Description	Base Rate	Category
1211.90.14	- - - - Aquilaria Crassna Pierre	15%	C
1211.90.19	- - - - Aquilaria Crassna Pierre	15%	C
1211.90.98	- - - - Aquilaria Crassna Pierre	15%	C
1211.90.99	- - - - Aquilaria Crassna Pierre	15%	C
2502.00.00	Unroasted iron pyrites.	10%	D
2503.00.00	Sulphur of all kinds, other than sublimed sulphur, precipitated sulphur and colloidal sulphur.	10%	D
2504.10.00	- In powder or in flakes	10%	D
2504.90.00	- Other	10%	D
2505.10.00	- Silica sands and quartz sands	30%	K
2505.90.00	- Other	30%	K
2506.10.00	- Quartz	10%	D
2506.20.00	- Quartzite	10%	K
2507.00.00	Kaolin and other kaolinic clays, whether or not calcined.	10%	F
2508.10.00	- Bentonite	10%	F
2508.30.00	- Fire-clay	10%	F
2508.40.10	- - Fuller's earth	10%	F
2508.40.90	- - Other	10%	F
2508.50.00	- Andalusite, kyanite and sillimanite	10%	F
2508.60.00	- Mullite	10%	F
2508.70.00	- Chamotte or dinas earths	10%	F
2509.00.00	Chalk.	17%	G
2510.10.10	- - Apatite	40%	G
2510.20.10	- - - Microspheres having dimension less than or equal 0.25 mm	15%	G
2510.20.10	- - - Granules having dimension more than 0.25 mm but not exceeding 15 mm	25%	G
2510.20.10	- - - Other	40%	G
2511.10.00	- Natural barium sulphate (barytes)	10%	K
2511.20.00	- Natural barium carbonate (witherite)	10%	K
2512.00.00	Siliceous fossil meals (for example, kieselguhr, tripolite and diatomite) and similar siliceous earths, whether or not calcined, of an apparent specific gravity of 1 or less.	15%	E
2513.10.00	- Pumice stone	10%	F
2513.20.00	- Emery, natural corundum, natural garnet and other natural abrasives	10%	F
2514.00.00	Slate, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.	17%	K
2515.11.00	- - Crude or roughly trimmed	17%	G
2515.12.10	- - - Blocks	17%	G

HS 2012	Description	Base Rate	Category
2515.12.20	- - - Slabs	17%	G
2515.20.00	- - White limestone (white marble) in blocks	30%	G
2515.20.00	- - Other	17%	G
2516.11.00	- - Crude or roughly trimmed	17%	K
2516.12.10	- - - Blocks	25%	K
2516.12.20	- - - Slabs	17%	K
2516.20.10	- - Crude or roughly trimmed	17%	K
2516.20.20	- - Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape	17%	K
2516.90.00	- Other monumental or building stone	17%	H
2517.10.00	- Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling or for railway or other ballast, shingle and flint, whether or not heat-treated	17%	E
2517.20.00	- Macadam of slag, dross or similar industrial waste, whether or not incorporating the materials cited in subheading 2517.10	17%	E
2517.30.00	- Tarred macadam	17%	E
2517.41.00	- - - Of dimension of 1-400 mm	14%	E
2517.41.00	- - - Other	17%	E
2517.49.00	- - - Calcium carbonate powder of stones of heading 25.15, of dimension 0.125mm or less	5%	F
2517.49.00	- - - Calcium carbonate powder manufactured from stones of heading 25.15, of dimension above 0.125mm to less than 1 mm	10%	F
2517.49.00	- - - Of dimension of 1-400 mm	14%	E
2517.49.00	- - - Other	17%	E
2518.10.00	- Dolomite, not calcined or sintered	10%	K
2518.20.00	- Calcined or sintered dolomite	10%	K
2518.30.00	- Dolomite ramming mix	10%	K
2519.10.00	- Natural magnesium carbonate (magnesite)	10%	D
2519.90.10	- - Fused magnesia; dead-burned (sintered) magnesia	10%	D
2519.90.20	- - Other	10%	D
2520.10.00	- Gypsum; anhydrite	10%	H
2520.20.10	- - Of a kind suitable for use in dentistry	10%	H
2520.20.90	- - Other	10%	H
2521.00.00	Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement.	17%	K
2522.10.00	- Quicklime	5%	F
2522.20.00	- Slaked lime	5%	F
2522.30.00	- Hydraulic lime	5%	F
2524.10.00	- Crocidolite	10%	K
2524.90.00	- Other	10%	K
2526.10.00	- Not crushed, not powdered	30%	K

HS 2012	Description	Base Rate	Category
2526.20.10	- - Talc powder	30%	K
2526.20.90	- - Other	30%	K
2528.00.00	Natural borates and concentrates thereof (whether or not calcined), but not including borates separated from natural brine; natural boric acid containing not more than 85% of H3BO3 calculated on the dry weight.	10%	D
2529.10.00	- Feldspar	10%	H
2529.21.00	- - Containing by weight 97% or less of calcium fluoride	10%	D
2529.22.00	- - Containing by weight more than 97% of calcium fluoride	10%	D
2529.30.00	- - Leucite; nepheline and nepheline syenite	10%	H
2530.10.00	- Vermiculite, perlite and chlorites, unexpanded	10%	H
2530.20.10	- - Kieserite	10%	H
2530.20.20	- - Epsomite	10%	H
2530.90.10	- - Zirconium silicates of a kind used as opacifiers	10%	H
2530.90.90	- - Other	10%	H
2601.11.00	- - Non-agglomerated	40%	I
2601.12.00	- - Agglomerated	40%	I
2601.20.00	- Roasted iron pyrites	40%	I
2602.00.00	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.	40%	I
2603.00.00	Copper ores and concentrates.	40%	K
2604.00.00	- Coarse	30%	I
2604.00.00	- Concentrates	20%	J
2605.00.00	- Coarse	30%	K
2605.00.00	- Concentrates	20%	K
2606.00.00	- Coarse	30%	K
2606.00.00	- Concentrates	20%	K
2607.00.00	Lead ores and concentrates.	40%	K
2608.00.00	Zinc ores and concentrates.	40%	I
2609.00.00	- Coarse	30%	G
2609.00.00	- Concentrates	20%	G
2610.00.00	Chromium ores and concentrates.	30%	G
2611.00.00	- Coarse	30%	G
2611.00.00	- Concentrates	20%	G
2612.10.00	- - Coarse	30%	K
2612.10.00	- - Concentrates	20%	K
2612.20.00	- - Coarse	30%	K
2612.20.00	- - Concentrates	20%	K
2613.10.00	- Roasted	20%	E

HS 2012	Description	Base Rate	Category
2613.90.00	- - Coarse	30%	E
2613.90.00	- - Concentrates	20%	E
2614.00.10	- - Ilmenite reduction ($TiO_2 \geq 56\%$ and $FeO \leq 11\%$)	15%	K
2614.00.10	- - Ilmenite concentrates	30%	K
2614.00.10	- - Other	40%	K
2614.00.90	- - Rutile concentrates 83%≤TiO2≤ 87%	30%	K
2614.00.90	- - Other	40%	K
2615.10.00	- - Coarse	30%	K
2615.10.00	- - - Zirconium powder with dimension less than 75µm	10%	K
2615.10.00	- - - Other	20%	K
2615.90.00	- - - Coarse	30%	K
2615.90.00	- - - Concentrates	20%	K
2615.90.00	- - - Coarse	30%	K
2615.90.00	- - - Concentrates	20%	K
2616.10.00	- - Coarse	30%	K
2616.10.00	- - Concentrates	20%	K
2616.90.00	- - Gold ores and concentrates	30%	K
2616.90.00	- - - Coarse	30%	K
2616.90.00	- - - Concentrates	20%	K
2617.10.00	- - Coarse	30%	K
2617.10.00	- - Concentrates	20%	K
2617.90.00	- - Coarse	30%	K
2617.90.00	- - Concentrates	20%	K
2621.90.00	- - Slag	7%	K
2701.11.00	- - Anthracite	10%	K
2701.12.10	- - - Coking coal	10%	H
2701.12.90	- - - Other	10%	K
2701.19.00	- - Other coal	10%	K
2701.20.00	- Briquettes, ovoids and similar solid fuels manufactured from coal	10%	K
2702.10.00	- Lignite, whether or not pulverised, but not agglomerated	15%	K
2702.20.00	- Agglomerated lignite	15%	K
2703.00.10	- Peat, whether or not compressed into bales, but not agglomerated	15%	K
2703.00.20	- Agglomerated peat	15%	K
2704.00.10	- Coke and semi-coke of coal	13%	H
2704.00.20	- Coke and semi-coke of lignite or of peat	13%	H
2704.00.30	- Retort carbon	13%	H
2709.00.10	- Crude petroleum oils	10%	K

HS 2012	Description	Base Rate	Category
2709.00.20	- Condensates	10%	K
2804.70.00	- - Phosphorus	5%	B
2817.00.10	- - Zinc oxide in powder	5%	B
2823.00.00	- Titanium slag ($TiO_2 \geq 85\%$, $FeO \leq 10\%$)	10%	B
2823.00.00	- Titanium slag ($70\% \leq TiO_2 < 85\%$, $FeO \leq 10\%$)	10%	B
2823.00.00	- Rutile ($TiO_2 > 87\%$)	10%	B
3824.90.99	- - - - Calcium carbonate powder impregnated with stearic acid, manufactured from stones of heading 25.15, of dimension less than 1 mm	3%	A
4002.11.00	- - Latex	1%	D
4002.19.10	- - - In primary forms or in unvulcanised, uncompounded plates, sheets or strip	1%	D
4002.19.90	- - - Other	1%	D
4002.20.10	- - In primary forms	1%	D
4002.20.90	- - Other	1%	D
4002.31.10	- - - Unvulcanised, uncompounded plates, sheets or strip	1%	D
4002.31.90	- - - Other	1%	D
4002.39.10	- - - Unvulcanised, uncompounded plates, sheets or strip	1%	D
4002.39.90	- - - Other	1%	D
4002.41.00	- - Latex	1%	D
4002.49.10	- - - In primary forms	1%	D
4002.49.90	- - - Other	1%	D
4002.51.00	- - Latex	1%	D
4002.59.10	- - - In primary forms	1%	D
4002.59.90	- - - Other	1%	D
4002.60.10	- - In primary forms	1%	D
4002.60.90	- - Other	1%	D
4002.70.10	- - In primary forms	1%	D
4002.70.90	- - Other	1%	D
4002.80.10	- - Mixtures of natural rubber latex with synthetic rubber latex	1%	D
4002.80.90	- - Other	1%	D
4002.91.00	- - Latex	1%	D
4002.99.20	- - - - Of synthetic rubber latex	1%	D
4002.99.90	- - - - Of synthetic rubber latex	1%	D
4005.10.10	- - Of natural gums	1%	D
4005.10.90	- - Other	1%	D
4005.20.00	- Solutions; dispersions other than those of subheading 4005.10	1%	D
4005.91.10	- - - Of natural gums	1%	D
4005.91.90	- - - Other	1%	D

HS 2012	Description	Base Rate	Category
4005.99.10	- - - Latex	1%	D
4005.99.90	- - - Other	1%	D
4101.20.10	- - Pre-tanned	10%	A
4101.20.90	- - Other	10%	A
4101.50.10	- - Pre-tanned	10%	A
4101.50.90	- - Other	10%	A
4101.90.10	- - Pre-tanned	10%	A
4101.90.90	- - Other	10%	A
4102.10.00	- With wool on	5%	A
4102.21.00	- - Pickled	5%	A
4102.29.10	- - - Pre-tanned	5%	A
4102.29.90	- - - Other	5%	A
4103.20.10	- - - Other	5%	A
4103.20.90	- - - Other	5%	A
4103.30.00	- Of swine	10%	A
4103.90.00	- Other	10%	A
4401.10.00	- Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms	5%	D
4402.10.00	- Of bamboo	10%	D
4402.90.90	- - Other	5%	D
4402.90.90	- - Other	10%	D
4403.10.10	- - Baulks, sawlogs and veneer logs	10%	D
4403.10.90	- - Other	10%	D
4403.20.10	- - Baulks, sawlogs and veneer logs	10%	D
4403.20.90	- - Other	10%	D
4403.41.10	- - - Baulks, sawlogs and veneer logs	10%	D
4403.41.90	- - - Other	10%	D
4403.49.10	- - - Baulks, sawlogs and veneer logs	10%	D
4403.49.90	- - - Other	10%	D
4403.91.10	- - - Baulks, sawlogs and veneer logs	10%	D
4403.91.90	- - - Other	10%	D
4403.92.10	- - - Baulks, sawlogs and veneer logs	10%	D
4403.92.90	- - - Other	10%	D
4403.99.10	- - - Baulks, sawlogs and veneer logs	10%	D
4403.99.90	- - - Other	10%	D
4404.10.00	- Coniferous	5%	D
4404.20.10	- - Chipwood	5%	D
4404.20.90	- - Other	5%	D

HS 2012	Description	Base Rate	Category
4406.10.00	- Not impregnated	20%	C
4406.90.00	- Other	20%	C
4407.10.00	- - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.10.00	- - Other	20%	C
4407.21.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.21.10	- - - - Other	20%	C
4407.21.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.21.90	- - - - Other	20%	C
4407.22.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.22.10	- - - - Other	20%	C
4407.22.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.22.90	- - - - Other	20%	C
4407.25.11	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.25.11	- - - - - Other	20%	C
4407.25.19	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.25.19	- - - - - Other	20%	C
4407.25.21	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.25.21	- - - - - Other	20%	C
4407.25.29	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.25.29	- - - - - Other	20%	C
4407.26.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.26.10	- - - - Other	20%	C
4407.26.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.26.90	- - - - Other	20%	C
4407.27.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.27.10	- - - - Other	20%	C
4407.27.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.27.90	- - - - Other	20%	C
4407.28.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.28.10	- - - - Other	20%	C
4407.28.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D

HS 2012	Description	Base Rate	Category
4407.28.90	- - - - Other	20%	C
4407.29.11	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.11	- - - - - Other	20%	C
4407.29.19	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.19	- - - - - Other	20%	C
4407.29.21	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.21	- - - - - Other	20%	C
4407.29.29	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.29	- - - - - Other	20%	C
4407.29.31	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.31	- - - - - Other	20%	C
4407.29.39	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.39	- - - - - Other	20%	C
4407.29.41	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.41	- - - - - Other	20%	C
4407.29.49	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.49	- - - - - Other	20%	C
4407.29.51	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.51	- - - - - Other	20%	C
4407.29.59	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.59	- - - - - Other	20%	C
4407.29.61	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.61	- - - - - Other	20%	C
4407.29.69	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.69	- - - - - Other	20%	C
4407.29.71	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.71	- - - - - Other	20%	C
4407.29.79	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.79	- - - - - Other	20%	C
4407.29.81	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.81	- - - - - Other	20%	C

HS 2012	Description	Base Rate	Category
4407.29.89	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.89	- - - - - Other	20%	C
4407.29.91	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.91	- - - - - Other	20%	C
4407.29.92	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.92	- - - - - Other	20%	C
4407.29.93	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.93	- - - - - Other	20%	C
4407.29.99	- - - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.29.99	- - - - - Other	20%	C
4407.91.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.91.10	- - - - Other	20%	C
4407.91.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.91.90	- - - - Other	20%	C
4407.92.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.92.10	- - - - Other	20%	C
4407.92.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.92.90	- - - - Other	20%	C
4407.93.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.93.10	- - - - Other	20%	C
4407.93.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.93.90	- - - - Other	20%	C
4407.94.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.94.10	- - - - Other	20%	C
4407.94.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.94.90	- - - - Other	20%	C
4407.95.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.95.10	- - - - Other	20%	C
4407.95.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.95.90	- - - - Other	20%	C
4407.99.10	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D

HS 2012	Description	Base Rate	Category
4407.99.10	- - - - Other	20%	C
4407.99.90	- - - - Of thickness of 30 mm or less, width of 95 mm or less, length of 1,050 mm or less	5%	D
4407.99.90	- - - - Other	20%	C
4408.10.10	- - Cedar wood slats of a kind used for pencil manufacture; radiata pinewood of a kind used for blockboard manufacture	5%	D
4408.10.30	- - Face veneer sheets	5%	D
4408.10.90	- - Other	5%	D
4408.31.00	- - Dark Red Meranti, Light Red Meranti and Meranti Bakau	5%	D
4408.39.10	- - - Jelutong wood slats of a kind used for pencil manufacture	5%	D
4408.39.90	- - - Other	5%	D
4408.90.00	- Other	5%	D
4409.10.00	- Coniferous	5%	D
4409.21.00	- - Of bamboo	5%	A
4409.29.00	- - Other	5%	D
7102.10.00	- - Unworked or simply sawn, cleaved or bruted	15%	C
7102.10.00	- - Other	5%	D
7102.21.00	- - Unworked or simply sawn, cleaved or bruted	15%	C
7102.29.00	- - Other	5%	D
7102.31.00	- - Unworked or simply sawn, cleaved or bruted	15%	D
7102.39.00	- - Other	5%	D
7103.10.10	- - Rubies	15%	C
7103.10.20	- - Jade (nephrite and jadeite)	15%	C
7103.10.90	- - Other	15%	C
7103.91.10	- - - Rubies	5%	D
7103.91.90	- - - Other	5%	D
7103.99.00	- - Other	5%	D
7104.10.10	- - Unworked	10%	D
7104.10.20	- - Worked	5%	D
7104.20.00	- Other, unworked or simply sawn or roughly shaped	10%	D
7104.90.00	- Other	5%	D
7105.10.00	- Of diamonds	3%	D
7105.90.00	- Other	3%	D
7106.10.00	- Powder	5%	D
7106.91.00	- - Unwrought	5%	D
7106.92.00	- - Semi-manufactured	5%	D
7108.11.00	- - Powder	2%	K
7108.12.00	- - Other unwrought forms	2%	K

HS 2012	Description	Base Rate	Category
7108.13.00	- - Other semi-manufactured forms	2%	K
7108.20.00	- Monetary	2%	K
7113.19.10	- - - Parts	2%	K
7113.19.90	- - - Other	2%	K
7114.19.00	- - Of other precious metal, whether or not plated or clad with precious metal	2%	K
7115.90.10	- - Of gold or silver	2%	K
7204.10.00	- Waste and scrap of cast iron	17%	H
7204.21.00	- - Of stainless steel	15%	H
7204.29.00	- - Other	17%	H
7204.30.00	- Waste and scrap of tinned iron or steel	17%	H
7204.49.00	- - Other	17%	H
7204.50.00	- Remelting scrap ingots	17%	H
7401.00.00	- Copper mattes	15%	C
7401.00.00	- Other	20%	C
7403.11.00	- - - Pure Refined copper:	10%	D
7403.11.00	- - - Other	20%	C
7403.12.00	- - Wire-bars	20%	C
7403.13.00	- - Billets	20%	C
7403.19.00	- - Other	20%	C
7403.21.00	- - Copper-zinc base alloys (brass)	20%	C
7403.22.00	- - Copper-tin base alloys (bronze)	20%	C
7403.29.00	- - Other copper alloys (other than master alloys of heading 74.05)	20%	C
7404.00.00	- Other	22%	H
7405.00.00	Master alloys of copper.	15%	C
7406.10.00	- Powders of non-lamellar structure	15%	C
7406.20.00	- Powders of lamellar structure; flakes	15%	C
7407.10.30	- - Profiles	10%	D
7407.10.40	- - Bars and rods	10%	D
7407.21.00	- - Of copper-zinc base alloys (brass)	10%	D
7407.29.00	- - Other	10%	D
7501.10.00	- Nickel mattes	5%	A
7502.10.00	- Nickel, not alloyed	5%	A
7502.20.00	- Nickel alloys	5%	A
7503.00.00	- Other	22%	G
7504.00.00	Nickel powders and flakes.	5%	A
7505.11.00	- - Of nickel, not alloyed	5%	D
7505.12.00	- - Of nickel alloys	5%	D

HS 2012	Description	Base Rate	Category
7601.10.00	- - Ingots	15%	D
7601.20.00	- - Ingots	15%	D
7602.00.00	- Other	22%	H
7603.10.00	- Powders of non-lamellar structure	10%	D
7603.20.00	- Powders of lamellar structure; flakes	10%	D
7801.10.00	- - Ingots	15%	C
7801.91.00	- - - Ingots	15%	C
7801.99.00	- - - Ingots	15%	C
7802.00.00	- Other	22%	G
7804.20.00	- Powders and flakes	5%	A
7806.00.20	- - Bars, rods, profiles	5%	D
7901.11.00	- - - Ingots	10%	D
7901.12.00	- - - Ingots	10%	D
7901.20.00	- - Ingots	10%	D
7902.00.00	- Other	22%	G
7903.10.00	- Zinc dust	5%	A
7903.90.00	- Other	5%	A
7904.00.00	- Bars, rods, profiles	5%	D
8001.10.00	- - Ingots	10%	D
8001.20.00	- - Ingots	10%	D
8002.00.00	- Other	22%	G
8003.00.10	- Soldering bars	5%	A
8003.00.90	- - Tin bars, rods, profiles	5%	A
8007.00.30	- - Powders and flakes	5%	A
8101.10.00	- Powders	5%	D
8101.94.00	- - Unwrought tungsten, including Bars and rods obtained simply by sintering	5%	D
8101.96.00	- - Wire	5%	D
8101.97.00	- - Waste and scrap	22%	G
8101.99.10	- - - Bars and rods, other than those obtained simply by sintering; profiles, sheets, strip and foil	5%	D
8101.99.90	- - - Other	5%	D
8102.10.00	- Powders	5%	D
8102.94.00	- - Unwrought molybdenum, including bars and rods obtained simply by sintering	5%	D
8102.95.00	- - Bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil	5%	D
8102.96.00	- - Wire	5%	D
8102.97.00	- - Waste and scrap	22%	G
8102.99.00	- - Other	5%	D

HS 2012	Description	Base Rate	Category
8103.20.00	- Unwrought tantalum, including bars and rods obtained simply by sintering; powders	5%	D
8103.30.00	- Waste and scrap	22%	G
8103.90.00	- Other	5%	D
8104.11.00	- - Containing at least 99.8% by weight of magnesium	15%	C
8104.19.00	- - Other	15%	C
8104.20.00	- Waste and scrap	22%	G
8104.30.00	- Raspings, turnings and granules, graded according to size; powders	15%	C
8104.90.00	- Other	15%	C
8105.20.10	- - Unwrought cobalt	5%	B
8105.20.90	- - Semi-manufactured	5%	B
8105.20.90	- - - Other	5%	B
8105.30.00	- Waste and scrap	22%	G
8105.90.00	- Other	5%	B
8106.00.10	- - Waste and scrap	22%	G
8106.00.10	- - Other	5%	D
8106.00.90	- - Semi-manufactured	5%	D
8106.00.90	- - Other	5%	D
8107.20.00	- Unwrought cadmium; powders	5%	D
8107.30.00	- Waste and scrap	22%	G
8107.90.00	- - Semi-manufactured	5%	D
8107.90.00	- - Other	5%	D
8108.20.00	- Unwrought titanium; powders	5%	D
8108.30.00	- Waste and scrap	22%	G
8108.90.00	- - Semi-manufactured	5%	D
8108.90.00	- - Other	5%	D
8109.20.00	- Unwrought zirconium; powders	5%	D
8109.30.00	- Waste and scrap	22%	G
8109.90.00	- - Semi-manufactured	5%	D
8109.90.00	- - Other	5%	D
8110.10.00	- Unwrought antimony; powders	5%	D
8110.20.00	- Waste and scrap	22%	G
8110.90.00	- - Semi-manufactured	5%	D
8110.90.00	- - Other	5%	D
8111.00.00	- Waste and scrap	22%	G
8111.00.00	- - Semi-manufactured	5%	D
8111.00.00	- - Other	5%	D

HS 2012	Description	Base Rate	Category
8112.12.00	- - Unwrought; powders	5%	D
8112.13.00	- - Waste and scrap	22%	G
8112.19.00	- - - Semi-manufactured	5%	D
8112.19.00	- - - Other	5%	D
8112.21.00	- - Unwrought; powders	5%	D
8112.22.00	- - Waste and scrap	22%	G
8112.29.00	- - Semi-manufactured	5%	D
8112.29.00	- - - Other	5%	D
8112.51.00	- - Unwrought; powders	5%	D
8112.52.00	- - Waste and scrap	22%	G
8112.59.00	- - - Semi-manufactured	5%	D
8112.59.00	- - - Other	5%	D
8112.92.00	- - - Unwrought; waste and scrap; powders	22%	G
8112.92.00	- - - Other	5%	D
8112.99.00	- - - Semi-manufactured	5%	D
8112.99.00	- - - Other	5%	D
8113.00.00	- - Waste and scrap	22%	G
8113.00.00	- - Semi-manufactured	5%	D
8113.00.00	- - Other	5%	D

ANNEX 2-D

TARIFF COMMITMENTS

Section A: Tariff Elimination and Reduction

1. The base rate of customs duty and staging category for determining the interim rate of customs duty at each stage of reduction for an item are indicated for that item in each Party's Schedule.

2. Interim staged rates shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, as specified in each Party's Schedule.

3. (a) Except as otherwise provided for in paragraph 4(a), when this Agreement enters into force for a Party in accordance with Article 30.5.1 (Entry into Force), Article 30.5.2 or Article 30.5.3:

   (i) the rates of customs duties provided for in any tariff line in that Party's Schedule in any staging category other than "EIF" shall be initially reduced on the date of entry into force of this Agreement for that Party; and

   (ii) except as otherwise provided in that Party's Schedule, the second stage of tariff reduction shall take effect on January 1 of the following year, and each subsequent annual stage of tariff reduction for that Party shall take effect on January 1 of each subsequent year.

   (b) Except as provided for in paragraph 4(b)(i), when this Agreement enters into force for a Party in accordance with Article 30.5.4 (Entry into Force) and Article 30.5.5:

   (i) on the date of entry into force of this Agreement for that Party, that Party shall implement all stages of tariff reduction that it would have implemented up to that date as if this Agreement had entered into force for that Party in accordance with Article 30.5.1 (Entry into Force) Article 30.5.2 or Article 30.5.3; and

   (ii) except as otherwise provided in that Party's Schedule, the next annual stage of tariff reduction following those stages implemented in accordance with subparagraph (b)(i) shall take effect on January 1 of the year after the date of entry

into force of this Agreement for that Party, and each subsequent annual stage of tariff reduction for that Party shall take effect on January 1 of each subsequent year.

4. (a) A Party for which this Agreement has entered into force in accordance with Article 30.5.1 (Entry into Force), Article 30.5.2 or Article 30.5.3 (original Party) may elect, with respect to a Party for which the Agreement has entered into force in accordance with Article 30.5.4 or Article 30.5.5 (new Party), either to:

(i) apply its Schedule to this Annex as if this Agreement had entered into force for both Parties on the date of entry into force of this Agreement for that new Party; or

(ii) apply its Schedule to this Annex as if this Agreement had entered into force for both Parties on the date of entry into force of this Agreement for that original Party.

(b) If the original Party applies its Schedule as if this Agreement had entered into force for both Parties on the date of entry into force of this Agreement for the new Party pursuant to subparagraph (a)(i), that new Party may elect to apply its Schedule with respect to that original Party, either:

(i) as if this Agreement had entered into force for both Parties on the date of entry into force of this Agreement for that new Party; or

(ii) as if this Agreement had entered into force for both Parties on the date of entry into force of this Agreement for that original Party.

(c) An original Party shall, no later than 12 days after the date of the affirmative determination by the Commission referred to in Article 30.5.5 (Entry into Force) for a signatory, notify that signatory and the other Parties of its election under subparagraph (a) with respect to that signatory. That signatory shall, no later than 24 days after the date of the affirmative determination by the Commission referred to in Article 30.5.5 (Entry into Force) for that signatory, notify the Parties of its election under subparagraph (b) with respect to each original Party that notified its election to apply its Schedule pursuant to subparagraph (a)(i) for that signatory.

(d) If an original Party does not notify an election under subparagraph (a) as provided for in subparagraph (c), that original Party shall, on the date of entry into force of this Agreement for the new Party, apply its Schedule to the new Party as provided for in

subparagraph (a)(ii). If a new Party does not notify an election under subparagraph (b) as provided for in subparagraph (c), the new Party shall, on the date of entry into force of this Agreement for that new Party, apply its Schedule to that original Party as provided for in subparagraph (b)(ii).

(e) For greater certainty:

(i) an original Party that applies its Schedule to a new Party as provided for in subparagraph (a)(i) may unilaterally accelerate the elimination of customs duties on an originating good set out in its Schedule to this Annex with respect to the new Party in accordance with Article 2.4.5 (Elimination of Customs Duties); and

(ii) a new Party that applies its Schedule to an original Party as provided for in subparagraph (b)(i) may unilaterally accelerate the elimination of customs duties on an originating good set out in its Schedule to this Annex with respect to the original Party in accordance with Article 2.4.5 (Elimination of Customs Duties).

(f) Notwithstanding any other provision of this Agreement, if, on the date of entry into force of this Agreement for a new Party for which an original Party has elected to apply its Schedule as provided for in subparagraph (a)(i):

(i) that original Party unilaterally accelerates the elimination of customs duties on an originating good of the new Party, that original Party shall not subsequently reverse that acceleration; and

(ii) the new Party unilaterally accelerates the elimination of customs duties on an originating good of that original Party, the new Party shall not subsequently reverse that acceleration.

5. In the event of a discrepancy in a Party's Schedule to this Annex between the staging category specified for an item and any tariff rate specified for that item for a particular year, that Party shall apply the rate required in accordance with the staging category specified for the item.

6. For the purposes of this Annex and a Party's Schedule:

(a) **year 1** means:

(i) except as provided for in subparagraphs (a)(ii) and (a)(iii), the year of entry into force of this Agreement for any Party in accordance with Article 30.5.1, Article 30.5.2 and Article 30.5.3 (Entry into Force);

(ii) in the Schedule of an original Party, with respect to goods of a new Party for which that original Party has elected to apply its Schedule as provided for in paragraph 4(a)(i), the year of entry into force of this Agreement for that new Party; and

(iii) in the Schedule of a new Party, with respect to goods of an original Party for which that new Party has elected to apply its Schedule as provided for in paragraph 4(b)(i), the year of entry into force of this Agreement for the new Party; but

(iv) notwithstanding subparagraphs (a)(ii) and (a)(iii):

A) for the purposes of any tariff-rate quota or safeguard measure set out in the Schedule of a Party and applicable to originating goods of all Parties, year 1 means the year this Agreement enters into force for any Party in accordance with Article 30.5.1 (Entry into Force); and

B) for the purposes of any tariff-rate quota or safeguard measure set out in the Schedule of a Party and applicable to originating goods of more than one Party, but not all Parties, year 1 shall have the meaning set out in the Schedule of that Party;

(b) **year 2** means the year after year 1; **year 3** means the year after year 2, **year 4** means the year after year 3, and so on; and

(c) **year** means a calendar year beginning on January 1 and ending on December 31, except as otherwise provided in a Party's Schedule.

7. For tariff lines where a safeguard is applicable as identified in a Party's Schedule to this Annex, the modalities of that safeguard as it applies to originating goods are specified in Appendix B to that Party's Schedule.

Section B: Tariff Differentials

8. Except as otherwise provided in a Party's Schedule to this Annex, if an importing Party applies different preferential tariff treatment to other Parties for the same originating good at the time a claim for preferential tariff treatment is made in accordance with the importing Party's Schedule to this Annex, that importing Party shall apply the rate of customs duty for the originating good of the Party where the last production process, other than a minimal operation, occurred.

9. For the purposes of paragraph 8, a **minimal operation** is:

(a) an operation to ensure the preservation of a good in good condition for the purposes of transport and storage;

(b) packaging, re-packaging, breaking up of consignments or putting up a good for retail sale, including placing a good in bottles, cans, flasks, bags, cases or boxes;

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

(d) collection of goods intended to form sets, assortments, kits or composite goods; and

(e) any combination of operations referred to in subparagraphs (a) through (d).

10. Notwithstanding paragraph 8 and any applicable rules and conditions set out in a Party's Schedule to this Annex, the importing Party shall allow an importer to make a claim for preferential tariff treatment at either:

(a) the highest rate of customs duty applicable to an originating good from any of the Parties; or

(b) the highest rate of customs duty applicable to an originating good from any Party where a production process occurred.

CHAPTER 3

RULES OF ORIGIN AND ORIGIN PROCEDURES

Section A: Rules of Origin

Article 3.1: Definitions

For the purposes of this Chapter:

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

fungible goods or materials means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

Generally Accepted Accounting Principles means those principles recognised by consensus or with 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 principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

good means any merchandise, product, article or material;

indirect material means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

(a) fuel, energy, catalysts and solvents;

(b) equipment, devices and supplies used to test or inspect the good;

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

(d) tools, dies and moulds;

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

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

(g) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

material means a good that is used in the production of another good;

non-originating good or **non-originating material** means a good or material that does not qualify as originating in accordance with this Chapter;

originating good or **originating material** means a good or material that qualifies as originating in accordance with this Chapter;

packing materials and containers for shipment means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

producer means a person who engages in the production of a good;

production means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

transaction value means the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement; and

value of the good means the transaction value of the good excluding any costs incurred in the international shipment of the good.

Article 3.2: Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or more of the Parties as established in Article 3.3 (Wholly Obtained or Produced Goods);

(b) produced entirely in the territory of one or more of the Parties, exclusively from originating materials; or

(c) produced entirely in the territory of one or more of the Parties using non-originating materials provided the good satisfies all

applicable requirements of Annex 3-D (Product-Specific Rules of Origin),

and the good satisfies all other applicable requirements of this Chapter.

Article 3.3: Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 3.2 (Originating Goods), a good is wholly obtained or produced entirely in the territory of one or more of the Parties if it is:

(a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) through (e), extracted or taken from there;

(g) fish, shellfish and other marine life taken from the sea, seabed or subsoil outside the territories of the Parties and, in accordance with international law, outside the territorial sea of non-Parties[1] by vessels that are registered, listed or recorded with a Party and entitled to fly the flag of that Party;

(h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has

[1] Nothing in this Chapter shall prejudice the positions of the Parties with respect to matters relating to the law of the sea.

the right to exploit that seabed or subsoil in accordance with international law;

(j) a good that is:

(i) waste or scrap derived from production there; or

(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) through (j), or from their derivatives.

Article 3.4: Treatment of Recovered Materials Used in Production of a Remanufactured Good

1. Each Party shall provide that a recovered material derived in the territory of one or more of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(a) a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods); and

(b) a recovered material that is not used or incorporated in the production of a remanufactured good is originating only if it satisfies the applicable requirements of Article 3.2 (Originating Goods).

Article 3.5: Regional Value Content

1. Each Party shall provide that a regional value content requirement specified in this Chapter, including related Annexes, to determine whether a good is originating, is calculated as follows:

(a) Focused Value Method: Based on the Value of Specified Non-Originating Materials

$$\text{RVC} = \frac{\text{Value of the Good} - \text{FVNM}}{\text{Value of the Good}} \times 100$$

(b) Build-down Method: Based on the Value of Non-Originating Materials

$$RVC = \frac{\text{Value of the Good} - VNM}{\text{Value of the Good}} \times 100$$

(c) Build-up Method: Based on the Value of Originating Materials

$$RVC = \frac{VOM}{\text{Value of the Good}} \times 100$$

or

(d) Net Cost Method (for Automotive Goods Only)

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where:

RVC is the regional value content of a good, expressed as a percentage;

VNM is the value of non-originating materials, including materials of undetermined origin, used in the production of the good;

NC is the net cost of the good determined in accordance with Article 3.9 (Net Cost);

FVNM is the value of non-originating materials, including materials of undetermined origin, specified in the applicable product-specific-rule (PSR) in Annex 3-D (Product-Specific Rules of Origin) and used in the production of the good. For greater certainty, non-originating materials that are not specified in the applicable PSR in Annex 3-D (Product-Specific Rules of Origin) are not taken into account for the purpose of determining FVNM; and

VOM is the value of originating materials used in the production of the good in the territory of one or more of the Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

Article 3.6: Materials Used in Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and

(b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

Article 3.7: Value of Materials Used in Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

Article 3.8: Further Adjustments to the Value of Materials

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 3.7 (Value of Materials Used in Production):

(a) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by-product.

3. If the cost or expense listed in paragraph 1 or 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

Article 3.9: Net Cost

1. If Annex 3-D (Product-Specific Rules of Origin) specifies a regional value content requirement to determine whether an automotive good of subheading 8407.31 through 8407.34, 8408.20, subheading 8409.91 through 8409.99, heading 87.01 through 87.09 or heading 87.11 is originating, each Party shall provide that the requirement to determine the origin of that good based on the Net Cost Method is calculated as set out under Article 3.5 (Regional Value Content).

2. For the purposes of this Article:

(a) **net cost** means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost; and

(b) **net cost of the good** means the net cost that can be reasonably allocated to the good, using one of the following methods:

(i) calculating the total cost incurred with respect to all automotive goods produced by that producer, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all those goods, and then reasonably allocating the resulting net cost of those goods to the good;

(ii) calculating the total cost incurred with respect to all automotive goods produced by that producer, reasonably allocating the total cost to the good, and then subtracting any sales promotion, marketing and after-sales service costs; royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the good, so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs, provided that the allocation of all those costs is consistent with the provisions regarding the reasonable allocation of costs set out in Generally Accepted Accounting Principles.

3. Each Party shall provide that, for the purposes of the Net Cost Method for motor vehicles of heading 87.01 through 87.06 or heading 87.11, the calculation may be averaged over the producer's fiscal year using any one of the following categories, on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of another Party:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a Party;

(b) the same class of motor vehicles produced in the same plant in the territory of a Party;

(c) the same model line of motor vehicles produced in the territory of a Party; or

(d) any other category as the Parties may decide.

4. Each Party shall provide that, for the purposes of the Net Cost Method in paragraphs 1 and 2, for automotive materials of subheading 8407.31 through 8407.34, 8408.20, heading 84.09, 87.06, 87.07, or 87.08, produced in the same plant, a calculation may be averaged:

(a) over the fiscal year of the motor vehicle producer to whom the good is sold;

(b) over any quarter or month; or

(c) over the fiscal year of the producer of the automotive material,

provided that the good was produced during the fiscal year, quarter or month forming the basis for the calculation, in which:

(i) the average in subparagraph (a) is calculated separately for those goods sold to one or more motor vehicle producers; or

(ii) the average in subparagraph (a) or (b) is calculated separately for those goods that are exported to the territory of another Party.

5. For the purposes of this Article:

(a) **class of motor vehicles** means any one of the following categories of motor vehicles:

(i) motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, or heading 87.05 or 87.06;

(ii) motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90;

(iii) motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.21 or 8704.31;

(iv) motor vehicles classified under subheadings 8703.21 through 8703.90; or

(v) motor vehicles classified under heading 87.11.

(b) **model line of motor vehicles** means a group of motor vehicles having the same platform or model name;

(c) **non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the yield on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

(d) **reasonably allocate** means to apportion in a manner appropriate under Generally Accepted Accounting Principles;

(e) **royalty** means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright; literary, artistic or scientific work; patent; trademark; design; model; plan; secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

(i) personnel training, without regard to where that training is performed; or

(ii) engineering, tooling, die-setting, software design and similar computer services, or other services, if performed in the territory of one or more of the Parties;

(f) **sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:

(i) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature

(good brochures, catalogues, technical literature, price lists, service manuals and sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; and entertainment;

(ii) sales and marketing incentives; consumer, retailer or wholesaler rebates; and merchandise incentives;

(iii) salaries and wages; sales commissions; bonuses; benefits (for example, medical, insurance or pension benefits); travelling and living expenses; and membership and professional fees for sales promotion, marketing and after-sales service personnel;

(iv) recruiting and training of sales promotion, marketing and after-sales service personnel and after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(v) liability insurance for goods;

(vi) office supplies for sales promotion, marketing and after-sales service of goods, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(vii) telephone, mail and other communications, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(viii) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;

(ix) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(x) payments by the producer to other persons for warranty repairs;

(g) **shipping and packing costs** means the costs incurred to pack a good for shipment and to ship the good from the point of direct shipment to the buyer, excluding costs to prepare and package the good for retail sale; and

(h) **total cost** means all product costs, period costs and other costs for a good incurred in the territory of one or more of the Parties, where:

(i) product costs are costs that are associated with the production of a good and include the value of materials, direct labour costs and direct overheads;

(ii) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and

(iii) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes.

Article 3.10: Accumulation

1. Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 (Originating Goods) and all other applicable requirements in this Chapter.

2. Each Party shall provide that an originating good or material of one or more of the Parties that is used in the production of another good in the territory of another Party is considered as originating in the territory of the other Party.

3. Each Party shall provide that production undertaken on a non-originating material in the territory of one or more of the Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

Article 3.11: *De Minimis*

1. Except as provided in Annex 3-C (Exceptions to Article 3.11 (*De Minimis*)), each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 3-D (Product-Specific Rules of Origin) for the good is nonetheless an originating good if the value of all those materials does not exceed 10 per cent of the value of the good, as defined under Article 3.1 (Definitions), and the good meets all the other applicable requirements of this Chapter.

2. Paragraph 1 applies only when using a non-originating material in the production of another good.

3. If a good described in paragraph 1 is also subject to a regional value content requirement, the value of those non-originating materials shall be included in the value of non-originating materials for the applicable regional value content requirement.

4. With respect to a textile or apparel good, Article 4.2 (Rules of Origin and Related Matters) applies in place of paragraph 1.

Article 3.12: Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as originating based on the:

(a) physical segregation of each fungible good or material; or

(b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Article 3.13: Accessories, Spare Parts, Tools and Instructional or Other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in Annex 3-D (Product-Specific Rules of Origin), accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; and

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, and instructional or other information materials are covered when:

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

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

Article 3.14: Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 3-D (Product-Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

Article 3.15: Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

Article 3.16: Indirect materials

Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

Article 3.17: Sets of Goods

1. Each Party shall provide that for a set classified as a result of the application of rule 3(a) or (b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product-specific rule of origin that applies to the set.

2. Each Party shall provide that for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 10 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non-originating materials and the value of the good.

Article 3.18: Transit and Transhipment

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

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good:

(a) does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party; and

(b) remains under the control of the customs administration in the territory of a non-Party.

Section B: Origin Procedures

Article 3.19: Application of Origin Procedures

Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall apply the procedures in this Section.

Article 3.20: Claims for Preferential Treatment

1. Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer.[2, 3]

2. An importing Party may:

   (a) require that an importer who completes a certification of origin provide documents or other information to support the certification;

   (b) establish in its law conditions that an importer shall meet to complete a certification of origin;

   (c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or

   (d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from making a subsequent claim for preferential tariff treatment for the same importation based on a certification of origin completed by the exporter or producer.

3. Each Party shall provide that a certification of origin:

   (a) need not follow a prescribed format;

   (b) be in writing, including electronic format;

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[2] Nothing in this Chapter shall prevent a Party from requiring an importer, exporter or producer in its territory that completes a certification of origin to demonstrate that it is able to support that certification.

[3] For Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than five years after their respective dates of entry into force of this Agreement.

(c) specifies that the good is both originating and meets the requirements of this Chapter; and

(d) contains a set of minimum data requirements as set out in Annex 3-B (Minimum Data Requirements).

4. Each Party shall provide that a certification of origin may apply to:

(a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.

5. Each Party shall provide that a certification of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

6. Each Party shall allow an importer to submit a certification of origin in English. If the certification of origin is not in English, the importing Party may require the importer to submit a translation in the language of the importing Party.

Article 3.21: Basis of a Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of:

(a) the importer having documentation that the good is originating; or

(b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. For greater certainty, nothing in paragraph 1 or 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin to another person.

Article 3.22: Discrepancies

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

Article 3.23: Waiver of Certification of Origin

No Party shall require a certification of origin if:

(a) the customs value of the importation does not exceed US $1,000 or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or

(b) it is a good for which the importing Party has waived the requirement or does not require the importer to present a certification of origin,

provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

Article 3.24: Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) make a declaration[4] that the good qualifies as an originating good;

(b) have a valid certification of origin in its possession at the time the declaration referred to in subparagraph (a) is made;

(c) provide a copy of the certification of origin to the importing Party if required by the Party; and

[4] A Party shall specify its declaration requirements in its laws, regulations or procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

(d) if required by a Party to demonstrate that the requirements in Article 3.18 (Transit and Transhipment) have been satisfied, provide relevant documents, such as transport documents, and in the case of storage, storage or customs documents.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's law.

Article 3.25: Obligations Relating to Exportation

1. Each Party shall provide that an exporter or producer in its territory that completes a certification of origin shall submit a copy of that certification of origin to the exporting Party, on its request.

2. Each Party may provide that a false certification of origin or other false information provided by an exporter or a producer in its territory to support a claim that a good exported to the territory of another Party is originating has the same legal consequences, with appropriate modifications, as those that would apply to an importer in its territory that makes a false statement or representation in connection with an importation.

3. Each Party shall provide that if an exporter or a producer in its territory has provided a certification of origin and has reason to believe that it contains or is based on incorrect information, the exporter or producer shall promptly notify, in writing, every person and every Party to whom the exporter or producer provided the certification of origin of any change that could affect the accuracy or validity of the certification of origin.

Article 3.26: Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

(a) the documentation related to the importation, including the certification of origin that served as the basis for the claim; and

(b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall endeavour to make available information on types of records that may be used to demonstrate that a good is originating.

3. Each Party shall provide that an importer, exporter or producer in its territory may choose to maintain the records specified in paragraphs 1 and 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with that Party's law.

Article 3.27: Verification of Origin

1. For the purpose of determining whether a good imported into its territory is originating, the importing Party may conduct a verification of any claim for preferential tariff treatment by one or more of the following:[5]

(a) a written request for information from the importer of the good;

(b) a written request for information from the exporter or producer of the good;

(c) a verification visit to the premises of the exporter or producer of the good;

(d) for a textile or apparel good, the procedures set out in Article 4.6 (Verification); or

(e) other procedures as may be decided by the importing Party and the Party where an exporter or producer of the good is located.

2. If an importing Party conducts a verification, it shall accept information directly from the importer, exporter or producer.

3. If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer and, in response to a request for

[5] For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

information by an importing Party under paragraph 1(a), the importer does not provide information to the importing Party or the information provided is not sufficient to support a claim for preferential tariff treatment, the importing Party shall request information from the exporter or producer under paragraph 1(b) or 1(c) before it may deny the claim for preferential tariff treatment. The importing Party shall complete the verification, including any additional request to the exporter or producer under paragraph 1(b) or 1(c), within the time provided in paragraph 6(e).[6]

4. A written request for information or for a verification visit under paragraphs 1(a) through 1(c) shall:

(a) be in English or in an official language of the Party of the person to whom the request is made;

(b) include the identity of the government authority issuing the request;

(c) state the reason for the request, including the specific issue the requesting Party seeks to resolve with the verification;

(d) include sufficient information to identify the good that is being verified;

(e) include a copy of relevant information submitted with the good, including the certification of origin; and

(f) in the case of a verification visit, request the written consent of the exporter or producer whose premises are going to be visited, and state the proposed date and location for the visit and its specific purpose.

5. If an importing Party has initiated a verification in accordance with paragraph 1(b) or 1(c), it shall inform the importer of the initiation of the verification.

6. For a verification under paragraphs 1(a) through 1(c), the importing Party shall:

(a) ensure that a written request for information, or for documentation to be reviewed during a verification visit, is limited to information and documentation to determine whether the good is originating;

[6] For greater certainty, a Party is not required to request information from the exporter or producer to support a claim for preferential tariff treatment or complete a verification through the exporter or producer if the claim for preferential tariff treatment is based on the importer's certification of origin.

(b) describe the information or documentation in sufficient detail to allow the importer, exporter or producer to identify the information and documentation necessary to respond;

(c) allow the importer, exporter or producer at least 30 days from the date of receipt of the written request for information under paragraph 1(a) or 1(b) to respond;

(d) allow the exporter or producer 30 days from the date of receipt of the written request for a visit under paragraph 1(c) to consent or refuse the request; and

(e) make a determination following a verification as expeditiously as possible and no later than 90 days after it receives the information necessary to make the determination, including, if applicable, any information received under paragraph 9, and no later than 365 days after the first request for information or other action under paragraph 1. If permitted by its law, a Party may extend the 365 day period in exceptional cases, such as where the technical information concerned is very complex.

7. If an importing Party makes a verification request under paragraph 1(b), it shall, on request of the Party where the exporter or producer is located and in accordance with the importing Party's laws and regulations, inform that Party. The Parties concerned shall decide the manner and timing of informing the Party where the exporter or producer is located of the verification request. In addition, on request of the importing Party, the Party where the exporter or producer is located may, as it deems appropriate and in accordance with its laws and regulations, assist with the verification. This assistance may include providing a contact point for the verification, collecting information from the exporter or producer on behalf of the importing Party, or other activities in order that the importing Party may make a determination as to whether the good is originating. The importing Party shall not deny a claim for preferential tariff treatment solely on the ground that the Party where the exporter or producer is located did not provide requested assistance.

8. If an importing Party initiates a verification under paragraph 1(c), it shall, at the time of the request for the visit, inform the Party where the exporter or producer is located and provide the opportunity for the officials of the Party where the exporter or producer is located to accompany them during the visit.

9. Prior to issuing a written determination, the importing Party shall inform the importer and any exporter or producer that provided information directly to the importing Party, of the results of the verification and, if the importing Party intends to deny preferential tariff treatment, provide those persons a period of at

least 30 days for the submission of additional information relating to the origin of the good.

10. The importing Party shall:

(a) provide the importer with a written determination of whether the good is originating that includes the basis for the determination; and

(b) provide the importer, exporter or producer that provided information during the verification or certified that the good was originating with the results of the verification and the reasons for that result.

11. During verification, the importing Party shall allow the release of the good, subject to payment of duties or provision of security as provided for in its law. If as a result of the verification the importing Party determines that the good is an originating good, it shall grant preferential tariff treatment to the good and refund any excess duties paid or release any security provided, unless the security also covers other obligations.

12. If verifications of identical goods by a Party indicate a pattern of conduct by an importer, exporter or producer of false or unsupported representations relevant to a claim that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods imported, exported or produced by that person until that person demonstrates that the identical goods qualify as originating. For the purposes of this paragraph, "identical goods" means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

13. For the purpose of a verification request, it is sufficient for a Party to rely on the contact information of an exporter, producer or importer in a Party provided in a certification of origin.

Article 3.28: Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2 or Article 4.7 (Determinations), each Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good that arrives in its territory on or after the date of entry into force of this Agreement for that Party. In addition, if permitted by the importing Party, the importing Party shall grant a claim for preferential tariff treatment made in accordance with this Chapter for a good which is imported into its territory or released from customs control on or after the date of entry into force of this Agreement for that Party.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 3.27 (Verification of Origin), it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 3.27 (Verification of Origin);

(d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 3.27 (Verification of Origin); or

(e) the importer, exporter or producer fails to comply with the requirements of this Chapter.

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party. If an invoice is issued in a non-Party, a Party shall require that the certification of origin be separate from the invoice.

Article 3.29: Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

2. As a condition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

(a) make a claim for preferential tariff treatment;

(b) provide a statement that the good was originating at the time of importation;

(c) provide a copy of the certification of origin; and

(d) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

Article 3.30: Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

Article 3.31: Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

Section C: Other Matters

Article 3.32: Committee on Rules of Origin and Origin Procedures

1. The Parties hereby establish a Committee on Rules of Origin and Origin Procedures (Committee), composed of government representatives of each Party, to consider any matters arising under this Chapter.

2. The Committee shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

3. The Committee shall consult to discuss possible amendments or modifications to this Chapter and its Annexes, taking into account developments in technology, production processes or other related matters.

4. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

5. With respect to a textile or apparel good, Article 4.8 (Committee on Textile and Apparel Trade Matters) applies in place of this Article.

6. The Committee shall consult on the technical aspects of submission and the format of the electronic certification of origin.

ANNEX 3-A

OTHER ARRANGEMENTS

1. This Annex shall remain in force for a period of 12 years from the date of entry into force of this Agreement according to Article 30.5.1 (Entry into Force).

2. A Party may apply the arrangements under paragraph 5 only if it has notified the other Parties of its intention to apply those arrangements at the time of entry into force of this Agreement for that Party. That Party (the notifying Party) may apply these arrangements for a period not exceeding five years after the date of entry into force of this Agreement for that Party.

3. The notifying Party may extend the period under paragraph 2 for one additional period of no more than five years if it notifies the other Parties no later than 60 days prior to the expiration of the initial period.

4. In no case shall a Party apply the arrangements under paragraph 5 beyond 12 years from the date of entry into force of this Agreement according to Article 30.5.1 (Entry into Force).

5. An exporting Party may require that a certification of origin for a good exported from its territory be either:

(a) issued by a competent authority; or

(b) completed by an approved exporter.

6. If an exporting Party applies the arrangements under paragraph 5, it shall provide the requirements for those arrangements in publicly available laws or regulations, inform the other Parties at the time of the notification under paragraph 2, and inform the other Parties at least 90 days before any modification to the requirements comes into effect.

7. An importing Party may treat a certification of origin issued by a competent authority or completed by an approved exporter in the same manner as a certification of origin under Section B.

8. An importing Party may condition acceptance of a certification of origin issued by a competent authority or completed by an approved exporter on the authentication of elements such as stamps, signatures or approved exporter numbers. To facilitate that authentication, the Parties concerned shall exchange information on those elements.

9. If a claim for preferential tariff treatment is based on a certification of origin issued by a competent authority or completed by an approved exporter, the importing Party may make a verification request to the exporter or producer in accordance with Article 3.27 (Verification of Origin) or to the competent authority that issued the certification of origin.

10. If a Party makes a verification request to the competent authority, the competent authority shall respond to it in the same manner as an exporter or producer under Article 3.27 (Verification of Origin). A competent authority shall maintain records in the same manner as an exporter or producer under Article 3.26 (Record Keeping Requirements). If the competent authority that issued the certification of origin fails to respond to a verification request, the importing Party may deny the claim for preferential tariff treatment.

11. If an importing Party makes a verification request under Article 3.27.1(b) (Verification of Origin), it shall, on request of the Party where the exporter or producer is located and in accordance with the importing Party's laws and regulations, inform that Party. The Parties concerned shall decide the manner and timing of informing the Party where the exporter or producer is located of the verification request. In addition, on request of the importing Party, the competent authority of the Party where the exporter or producer is located may, as it deems appropriate and in accordance with the laws and regulations of the Party where the exporter or producer is located, assist in the verification in the same manner as Article 3.27.7 (Verification of Origin).

ANNEX 3-B

MINIMUM DATA REQUIREMENTS

A certification of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include the following elements:

1. Importer, Exporter or Producer Certification of Origin

Indicate whether the certifier is the exporter, producer or importer in accordance with Article 3.20 (Claims for Preferential Treatment).

2. Certifier

Provide the certifier's name, address (including country), telephone number and e-mail address.

3. Exporter

Provide the exporter's name, address (including country), e-mail address and telephone number if different from the certifier. This information is not required if the producer is completing the certification of origin and does not know the identity of the exporter. The address of the exporter shall be the place of export of the good in a TPP country.

4. Producer

Provide the producer's name, address (including country), e-mail address and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities". The address of a producer shall be the place of production of the good in a TPP country.

5. Importer

Provide, if known, the importer's name, address, e-mail address and telephone number. The address of the importer shall be in a TPP country.

6. Description and HS Tariff Classification of the Good

(a) Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification; and

(b) If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

7. Origin Criterion

Specify the rule of origin under which the good qualifies.

8. Blanket Period

Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 3.20.4 (Claims for Preferential Treatment).

9. Authorised Signature and Date

The certification must be signed and dated by the certifier and accompanied by the following statement:

> I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

ANNEX 3-C

EXCEPTIONS TO ARTICLE 3.11 (*De Minimis*)

Each Party shall provide that Article 3.11 (*De Minimis*) shall not apply to:

(a) non-originating materials of heading 04.01 through 04.06, or non-originating dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of heading 04.01 through 04.06 other than a good of subheading 0402.10 through 0402.29 or 0406.30[7];

(b) non-originating materials of heading 04.01 through 04.06, or non-originating dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90, used in the production of the following goods:

(i) infant preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.10;

(ii) mixes and doughs, containing over 25 per cent by dry weight of butterfat, not put up for retail sale of subheading 1901.20;

(iii) dairy preparations containing over 10 per cent by dry weight of milk solids of subheading 1901.90 or 2106.90;

(iv) goods of heading 21.05;

(v) beverages containing milk of subheading 2202.90; or

(vi) animal feeds containing over 10 per cent by dry weight of milk solids of subheading 2309.90;

(c) non-originating materials of heading 08.05 or subheading 2009.11 through 2009.39, used in the production of a good of subheading 2009.11 through 2009.39 or a fruit or vegetable juice of any single

[7] For greater certainty, milk powder of subheading 0402.10 through 0402.29, and processed cheese of subheading 0406.30, that is originating as a result of the application of the 10 per cent *de minimis* allowance in Article 3.11 (De Minimis), shall be an originating material when used in the production of any good of heading 04.01 through 04.06 as referred to in subparagraph (a) or the goods listed in subparagraph (b).

fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, of subheading 2106.90 or 2202.90;

(d) non-originating materials of Chapter 15 of the Harmonized System, used in the production of a good of headings 15.07, 15.08, 15.12, or 15.14; or

(e) non-originating peaches, pears or apricots of Chapter 8 or 20 of the Harmonized System, used in the production of a good of heading 20.08.

CHAPTER 4

TEXTILE AND APPAREL GOODS

Article 4.1: Definitions

For the purposes of this Chapter:

customs offence means any act committed for the purpose of, or having the effect of, avoiding a Party's laws or regulations pertaining to the terms of this Agreement governing importations or exportations of textile or apparel goods between the Parties, specifically those that violate a customs law or regulation for restrictions or prohibitions on imports or exports, duty evasion, falsification of documents relating to the importation or exportation of goods, fraud or smuggling; and

transition period means the period beginning on the date of entry into force of this Agreement between the Parties concerned until five years after the date on which the importing Party eliminates duties on a good for the exporting Party pursuant to this Agreement.

Article 4.2: Rules of Origin and Related Matters

Application of Chapter 3

1. Except as provided in this Chapter, Chapter 3 (Rules of Origin and Origin Procedures) shall apply to textile and apparel goods.

De Minimis

2. A textile or apparel good classified outside of Chapters 61 through 63 of the Harmonized System that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those materials is not more than 10 per cent of the total weight of the good and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

3. A textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibres or yarns in the component of the good that determines the tariff classification of the good that do not satisfy the applicable change in tariff classification set out in Annex 4-A

(Textiles and Apparel Product-Specific Rules of Origin), shall nonetheless be considered to be an originating good if the total weight of all those fibres or yarns is not more than 10 per cent of the total weight of that component and the good meets all the other applicable requirements of this Chapter and Chapter 3 (Rules of Origin and Origin Procedures).

4. Notwithstanding paragraphs 2 and 3, a good described in paragraph 2 containing elastomeric yarn or a good described in paragraph 3 containing elastomeric yarn in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of one or more of the Parties.[1, 2]

Treatment of Sets

5. Notwithstanding the textile and apparel product-specific rules of origin set out in Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), textile and apparel goods put up in sets for retail sale, classified as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System, shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 per cent of the value of the set.

6. For the purposes of paragraph 5:

(a) the value of non-originating goods in the set shall be calculated in the same manner as the value of non-originating materials in Chapter 3 (Rules of Origin and Origin Procedures); and

(b) the value of the set shall be calculated in the same manner as the value of the good in Chapter 3 (Rules of Origin and Origin Procedures).

Treatment of Short Supply List Materials

7. Each Party shall provide that, for the purposes of determining whether a textile or apparel good is originating under Article 3.2(c) (Originating Goods), a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A

[1] For greater certainty, this paragraph shall not be construed to require a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) to be produced from elastomeric yarns wholly formed in the territory of one or more of the Parties.

[2] For the purposes of this paragraph, “wholly formed” means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibres into yarn, or both, and ending with a finished yarn or plied yarn.

(Textiles and Apparel Product-Specific Rules of Origin) is originating provided that the material meets any requirement, including any end use requirement, specified in the Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin).

8. If a claim that a textile or apparel good is originating relies on the incorporation of a material listed in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin), the importing Party may require in the importation documentation, such as a certification of origin, the number or description of the material on Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin).

9. Non-originating materials marked as temporary in Appendix 1 (Short Supply List of Products) to Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin) may be considered as originating under paragraph 7 for five years from the date of entry into force of this Agreement.

Treatment for Certain Handmade or Folkloric Goods

10. An importing Party may identify particular textile or apparel goods of an exporting Party to be eligible for duty-free or preferential tariff treatment that the importing and exporting Parties mutually agree fall within:

(a) hand-loomed fabrics of a cottage industry;

(b) hand-printed fabrics with a pattern created with a wax-resistance technique;

(c) hand-made cottage industry goods made of such hand-loomed or hand-printed fabrics; or

(d) traditional folklore handicraft goods;

provided that any requirements agreed by the importing and exporting Parties for such treatment are met.

Article 4.3: Emergency Actions

1. Subject to this Article if, as a result of the reduction or elimination of a customs duty under this Agreement, a textile or apparel good benefiting from preferential tariff treatment under this Agreement is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to the domestic market for that good, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing a like or directly competitive good, the importing Party may, to the extent and for such

time as may be necessary to prevent or remedy such damage and to facilitate adjustment, take emergency action in accordance with paragraph 6, consisting of an increase in the rate of duty on the good of the exporting Party or Parties to a level not to exceed the lesser of:

(a) the most-favoured-nation applied rate of customs duty in effect at the time the action is taken; and

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

2. Nothing in this Article shall be construed to limit the rights and obligations of a Party under Article XIX of GATT 1994 and the Safeguards Agreement, or Chapter 6 (Trade Remedies).

3. In determining serious damage, or actual threat thereof, the importing Party:

(a) shall examine the effect of increased imports from the exporting Party or Parties of a textile or apparel good benefiting from preferential tariff treatment under this Agreement on the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment, none of which either alone or combined with other factors shall necessarily be decisive; and

(b) shall not consider changes in technology or consumer preference in the importing Party as factors supporting a determination of serious damage, or actual threat thereof.

4. The importing Party may take an emergency action under this Article only following its publication of procedures that identify the criteria for a finding of serious damage, or actual threat thereof, and an investigation by its competent authorities. Such an investigation must use data based on the factors described in paragraph 3(a) that serious damage or actual threat thereof is demonstrably caused by increased imports of the product concerned as a result of this Agreement.

5. The importing Party shall submit to the exporting Party or Parties, without delay, written notice of the initiation of the investigation provided for in paragraph 4, as well as of its intent to take emergency action and, on the request of the exporting Party or Parties, shall enter into consultations with that Party or Parties regarding the matter. The importing Party shall provide the exporting Party or Parties with the full details of the emergency action to be taken. The Parties concerned shall begin consultations without delay and, unless otherwise decided, shall complete them within 60 days of receipt of the request. After

completion of the consultations, the importing Party shall notify the exporting Party or Parties of any decision. If it decides to take an emergency action, the notification shall include the details of the emergency action, including when it will take effect.

6. The following conditions and limitations shall apply to any emergency action taken under this Article:

(a) no emergency action shall be maintained for a period exceeding two years unless extended for an additional period of up to two years;

(b) no emergency action shall be taken or maintained beyond the expiration of the transition period;

(c) no emergency action shall be taken by an importing Party against any particular good of another Party or Parties more than once; and

(d) on termination of the emergency action, the importing Party shall accord to the good that was subject to the emergency action the tariff treatment that would have been in effect but for the emergency action.

7. The Party taking an emergency action under this Article shall provide to the exporting Party or Parties against whose goods the emergency action is taken mutually agreed trade liberalising compensation in the form of concessions either having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. Such concessions shall be limited to textile and apparel goods, unless the Parties concerned otherwise agree. If the Parties concerned are unable to agree on compensation within 60 days or a longer period agreed by the Parties concerned, the Party or Parties against whose good the emergency action is taken may take tariff action that has trade effects substantially equivalent to the trade effects of the emergency action taken under this Article. The tariff action may be taken against any goods of the Party taking the emergency action. The Party taking the tariff action shall apply it only for the minimum period necessary to achieve the substantially equivalent trade effects. The importing Party's obligation to provide trade compensation and the exporting Party's right to take tariff action shall terminate when the emergency action terminates.

8. No Party shall take or maintain an emergency action under this Article against a textile or apparel good that is subject, or becomes subject, to a transitional safeguard measure under Chapter 6 (Trade Remedies), or to a safeguard measure that a Party takes pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

9. The investigations referred to in this Article shall be carried out according to procedures established by each Party. Each Party shall, on the date of entry into force of this Agreement for that Party or before it initiates an investigation, notify the other Parties of these procedures.

10. Each Party shall, in any year where it takes or maintains an emergency action under this Article, provide a report on such actions to the other Parties.

Article 4.4: Cooperation

1. Each Party shall, in accordance with its laws and regulations, cooperate with other Parties for the purposes of enforcing or assisting in the enforcement of their respective measures concerning customs offences for trade in textile or apparel goods between the Parties, including ensuring the accuracy of claims for preferential tariff treatment under this Agreement.

2. Each Party shall take appropriate measures, which may include legislative, administrative, judicial or other action for:

(a) enforcement of its laws, regulations and procedures related to customs offences; and

(b) cooperation with an importing Party in the enforcement of its laws, regulations and procedures related to the prevention of customs offences.

3. For the purposes of paragraph 2, "appropriate measures" means measures a Party takes, in accordance with its laws, regulations and procedures, such as:

(a) providing its government officials with the legal authority to meet the obligations under this Chapter;

(b) enabling its law enforcement officials to identify and address customs offences;

(c) establishing or maintaining criminal, civil or administrative penalties that are aimed at deterring customs offences;

(d) undertaking appropriate enforcement action when it believes, based on a request from another Party that includes relevant facts, that a customs offence has occurred or is occurring in the requested Party's territory with regard to a textile or apparel good, including in free trade zones of the requested Party; and

(e) cooperating with another Party, on request, to establish facts regarding customs offences in the requested Party's territory with

regard to a textile or apparel good, including in free trade zones of the requested Party.

4. A Party may request information from another Party if it has relevant facts, such as historical evidence, indicating that a customs offence is occurring or is likely to occur.

5. Any request under paragraph 4 shall be made in writing, by electronic means or any other method that acknowledges receipt, and shall include a brief statement of the matter at issue, the cooperation requested, the relevant facts indicating a customs offence, and sufficient information for the requested Party to respond in accordance with its laws and regulations.

6. To enhance cooperative efforts under this Article between Parties to prevent and address customs offences, a Party that receives a request under paragraph 4 shall, subject to its laws, regulations and procedures, including those related to confidentiality referred to in Article 4.9.4 (Confidentiality) provide to the requesting Party, upon receipt of a request in accordance with paragraph 5, available information on the existence of an importer, exporter or producer, goods of an importer, exporter or producer, or other matters related to this Chapter. The information may include any available correspondence, reports, bills of lading, invoices, order contracts or other information regarding enforcement of laws or regulations related to the request.

7. A Party may provide information requested in this Article on paper or in electronic form.

8. Each Party shall designate and notify a contact point for cooperation under this Chapter in accordance with Article 27.5 (Contact Points) and shall notify the other Parties promptly of any subsequent changes.

Article 4.5: Monitoring

1. Each Party shall establish or maintain programmes or practices to identify and address textiles and apparel customs offences. This may include programmes or practices to ensure the accuracy of claims for preferential tariff treatment for textile and apparel goods under this Agreement.

2. Through those programmes or practices, a Party may collect or share information related to textiles or apparel goods for use for risk management purposes.

3. In addition to paragraphs 1 and 2, some Parties have bilateral agreements that apply between those Parties.

Article 4.6: Verification

1. An importing Party may conduct a verification with respect to a textile or apparel good pursuant to Article 3.27.1(a), Article 3.27.1(b) or Article 3.27.1(e) (Verification of Origin) and their associated procedures to verify whether a good qualifies for preferential tariff treatment or through a request for a site visit as described in this Article.[3]

2. An importing Party may request a site visit under this Article from an exporter or producer of textile or apparel goods to verify whether:

(a) a textile or apparel good qualifies for preferential tariff treatment under this Agreement; or

(b) customs offences are occurring or have occurred.

3. During a site visit under this Article, an importing Party may request access to:

(a) records and facilities relevant to the claim for preferential tariff treatment; or

(b) records and facilities relevant to the customs offences being verified.

4. If an importing Party seeks to conduct a site visit under paragraph 2, it shall notify the host Party, no later than 20 days before the visit, regarding:

(a) the proposed dates;

(b) the number of exporters and producers to be visited in appropriate detail to facilitate the provision of any assistance, but does not need to specify the names of the exporters or producers to be visited;

(c) whether assistance by the host Party will be requested and what type;

(d) if relevant, the customs offences being verified under paragraph 2(b), including relevant factual information available at the time of the notification related to the specific offences, which may include historical information; and

[3] For the purposes of this Article, the information collected in accordance with this Article shall be used for the purpose of ensuring the effective implementation of this Chapter. A Party shall not use these procedures to collect information for other purposes.

(e) whether the importer claimed preferential tariff treatment.

5. On receipt of information on a proposed visit under paragraph 2, the host Party may request information from the importing Party to facilitate planning of the visit, such as logistical arrangements or provision of requested assistance.

6. If an importing Party seeks to conduct a site visit under paragraph 2, it shall provide the host Party, as soon as practicable and prior to the date of the first visit to an exporter or producer under this Article, with a list of the names and addresses of the exporters or producers it proposes to visit.

7. If an importing Party seeks to conduct a site visit under paragraph 2:

(a) officials of the host Party may accompany the officials of the importing Party during the site visit;

(b) officials of the host Party may, in accordance with its laws and regulations, on request of the importing Party or on its own initiative, assist the officials of the importing Party during the site visit and provide, to the extent available, information relevant to conduct the site visit;

(c) the importing and host Parties shall limit communication regarding the site visit to relevant government officials and shall not inform the exporter or producer outside the government of the host Party in advance of a visit or provide any other verification or enforcement information not publicly available whose disclosure could undermine the effectiveness of the action;

(d) the importing Party shall request permission from the exporter or producer[4] for access to the relevant records or facilities, no later than the time of the visit. Unless advance notice would undermine the effectiveness of the site visit, the importing Party shall request permission with appropriate advance notice; and

(e) if the exporter or producer of textile or apparel goods denies such permission or access, the visit will not occur. The importing Party shall give consideration to any reasonable alternative dates proposed, taking into account the availability of relevant employees or facilities of the person visited.

8. On completion of a site visit under paragraph 2, the importing Party shall:

[4] The importing Party shall request permission from a person who has the capacity to consent to the visit at the facilities to be visited.

(a) on request of the host Party, inform the host Party of its preliminary findings;

(b) on receiving a written request from the host Party, provide the host Party with a written report of the results of the visit, including any findings, no later than 90 days after the date of the request. If the report is not in English, the importing Party shall provide a translation of it in English on request of the host Party; and

(c) on receiving a written request of the exporter or producer, provide that person with a written report of the results of the visit as it pertains to that exporter or producer, including any findings, no later than 90 days after the date of the request. This may be a report prepared under subparagraph (b), with appropriate changes. The importing Party shall inform the exporter or producer of the entitlement to request this report. If the report is not in English, the importing Party shall provide a translation of it in English on request of that exporter or producer.

9. If an importing Party conducts a site visit under paragraph 2 and, as a result, intends to deny preferential tariff treatment to a textile or apparel good, it shall, before it may deny preferential tariff treatment, provide to the importer and any exporter or producer that provided information directly to the importing Party 30 days to submit additional information to support the claim for preferential tariff treatment. If advance notice was not given under paragraph 7(d), that importer, exporter or producer may request an additional 30 days.

10. The importing Party shall not reject a claim for preferential tariff treatment on the sole grounds that the host Party does not provide the requested assistance or information under this Article.

11. While a verification is being conducted under this Article, the importing Party may take appropriate measures under procedures established in its laws and regulations, including suspending or denying the application of preferential tariff treatment to textile or apparel goods of the exporter or producer subject to a verification.

12. If verifications of identical textile or apparel goods by an importing Party indicate a pattern of conduct by an exporter or producer of false or unsupported representations that a textile or apparel good imported into its territory qualifies for preferential tariff treatment, the importing Party may withhold preferential tariff treatment for identical textile or apparel goods imported, exported or produced by that person until it is demonstrated to the importing Party that those identical textile or apparel goods qualify for preferential tariff treatment. For the purposes of this paragraph, "identical textile or apparel goods" means textile or apparel goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

Article 4.7: Determinations

The importing Party may deny a claim for preferential tariff treatment for a textile or apparel good:

(a) for a reason listed in Article 3.28.2 (Determination on Claims for Preferential Tariff Treatment);

(b) if, pursuant to a verification under this Chapter, it has not received sufficient information to determine that the textile or apparel good qualifies as originating; or

(c) if, pursuant to a verification under this Chapter, access or permission for the visit is denied, the importing Party is prevented from completing the visit on the proposed date, and the exporter or producer does not provide an alternative date acceptable to the importing Party, or the exporter or producer does not provide access to the relevant records or facilities during a visit.

Article 4.8: Committee on Textile and Apparel Trade Matters

1. The Parties hereby establish a Committee on Textile and Apparel Trade Matters, (Committee), composed of government representatives of each Party.

2. The Committee shall meet at least once within one year of the date of entry into force of this Agreement, and thereafter at such times as the Parties decide and on request of the Commission. The Committee shall meet at such venues and times as the Parties decide.

3. The Committee may consider any matter arising under this Chapter, and its functions shall include review of the implementation of this Chapter, consultation on technical or interpretive difficulties that may arise under this Chapter, and discussion of ways to improve the effectiveness of cooperation under this Chapter.

4. In addition to discussions under the Committee, a Party may request in writing discussions with any other Party or Parties regarding matters under this Chapter concerning those Parties, with a view to resolution of the issue, if it believes difficulties are occurring with respect to implementation of this Chapter.

5. Unless the Parties amongst whom a discussion is requested agree otherwise, they shall hold the discussions pursuant to paragraph 4 within 30 days of receipt of a written request by a Party and endeavour to conclude within 90 days of receipt of the written request.

6. Discussions under this Article shall be confidential and without prejudice to the rights of any Party in any other proceeding.

7. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

Article 4.9: Confidentiality

1. Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

2. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

3. A Party may decline to provide information requested by another Party if that Party has failed to act in conformity with paragraph 1 or 2.

4. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs or other laws related to this Chapter, or collected in accordance with this Chapter, including information the disclosure of which could prejudice the competitive position of the person providing the information.

CHAPTER 5

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

Article 5.1: Customs Procedures and Facilitation of Trade

Each Party shall ensure that its customs procedures are applied in a manner that is predictable, consistent and transparent.

Article 5.2: Customs Cooperation

1. With a view to facilitating the effective operation of this Agreement, each Party shall:

(a) encourage cooperation with other Parties regarding significant customs issues that affect goods traded between the Parties; and

(b) endeavour to provide each Party with advance notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that governs importations or exportations, that is likely to substantially affect the operation of this Agreement.

2. Each Party shall, in accordance with its law, cooperate with the other Parties through information sharing and other activities as appropriate, to achieve compliance with their respective laws and regulations that pertain to:

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

(b) the implementation, application and operation of the Customs Valuation Agreement;

(c) restrictions or prohibitions on imports or exports;

(d) investigation and prevention of customs offences, including duty evasion and smuggling; and

(e) other customs matters as the Parties may decide.

3. If a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, it may request that another Party provide

specific confidential information that is normally collected in connection with the importation of goods.

4. If a Party makes a request under paragraph 3, it shall:

(a) be in writing;

(b) specify the purpose for which the information is sought; and

(c) identify the requested information with sufficient specificity for the other Party to locate and provide the information.

5. The Party from which the information is requested under paragraph 3 shall, subject to its law and any relevant international agreements to which it is a party, provide a written response containing the requested information.

6. For the purposes of paragraph 3, "a reasonable suspicion of unlawful activity" means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(a) historical evidence of non-compliance with laws or regulations that govern importations by an importer or exporter;

(b) historical evidence of non-compliance with laws or regulations that govern importations by a manufacturer, producer or other person involved in the movement of goods from the territory of one Party to the territory of another Party;

(c) historical evidence of non-compliance with laws or regulations that govern importations by some or all of the persons involved in the movement of goods within a specific product sector from the territory of one Party to the territory of another Party; or

(d) other information that the requesting Party and the Party from which the information is requested agree is sufficient in the context of a particular request.

7. Each Party shall endeavour to provide another Party with any other information that would assist that Party to determine whether imports from, or exports to, that Party are in compliance with the receiving Party's laws or regulations that govern importations, in particular those related to unlawful activities, including smuggling and similar infractions.

8. In order to facilitate trade between the Parties, a Party receiving a request shall endeavour to provide the Party that made the request with technical advice and assistance for the purpose of:

(a) developing and implementing improved best practices and risk management techniques;

(b) facilitating the implementation of international supply chain standards;

(c) simplifying and enhancing procedures for clearing goods through customs in a timely and efficient manner;

(d) developing the technical skill of customs personnel; and

(e) enhancing the use of technologies that can lead to improved compliance with the requesting Party's laws or regulations that govern importations.

9. The Parties shall endeavour to establish or maintain channels of communication for customs cooperation, including by establishing contact points in order to facilitate the rapid and secure exchange of information and improve coordination on importation issues.

Article 5.3: Advance Rulings

1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party,[1] with regard to:[2]

(a) tariff classification;

(b) the application of customs valuation criteria for a particular case in accordance with the Customs Valuation Agreement;

(c) whether a good is originating in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and

(d) such other matters as the Parties may decide.

2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than 150 days after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the

[1] For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorised representative.

[2] For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.

requester is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling.

3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect for at least three years, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged.

4. After issuing an advance ruling, the Party may modify or revoke the advance ruling if there is a change in the law, facts or circumstances on which the ruling was based, if the ruling was based on inaccurate or false information, or if the ruling was in error.

5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides notice of the modification or revocation and the reasons for it.

6. No Party shall apply a revocation or modification retroactively to the detriment of the requester unless the ruling was based on inaccurate or false information provided by the requester.

7. Each Party shall ensure that requesters have access to administrative review of advance rulings.

8. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its advance rulings publicly available, including online.

Article 5.4: Response to Requests for Advice or Information

On request from an importer in its territory, or an exporter or producer in the territory of another Party, a Party shall expeditiously provide advice or information relevant to the facts contained in the request on:

(a) the requirements for qualifying for quotas, such as tariff rate quotas;

(b) the application of duty drawback, deferral or other types of relief that reduce, refund or waive customs duties;

(c) the eligibility requirements for goods under Article 2.6 (Goods Re-entered after Repair and Alteration);

(d) country of origin marking, if it is a prerequisite for importation; and

(e) other matters as the Parties may decide.

Article 5.5: Review and Appeal

1. Each Party shall ensure that any person to whom it issues a determination[3] on a customs matter has access to:

(a) administrative review of the determination, independent[4] of the employee or office that issued the determination; and

(b) judicial review of the determination.[5]

2. Each Party shall ensure that an authority that conducts a review under paragraph 1 notifies the parties to the matter in writing of its decision and the reasons for the decision. A Party may require a request as a condition for providing the reasons for a decision in the review.

Article 5.6: Automation

1. Each Party shall:

(a) endeavour to use international standards with respect to procedures for the release of goods;

(b) make electronic systems accessible to customs users;

(c) employ electronic or automated systems for risk analysis and targeting;

(d) endeavour to implement common standards and elements for

[3] For the purposes of this Article, a determination, if made by Peru, means an administrative act.

[4] The level of administrative review may include any authority supervising the customs administration.

[5] Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

import and export data in accordance with the World Customs Organization (WCO) Data Model;

(e) take into account, as appropriate, WCO standards, recommendations, models and methods developed through the WCO or APEC; and

(f) work toward developing a set of common data elements that are drawn from the WCO Data Model and related WCO recommendations as well as guidelines to facilitate government to government electronic sharing of data for purposes of analysing trade flows.

2. Each Party shall endeavour to provide a facility that allows importers and exporters to electronically complete standardised import and export requirements at a single entry point.

Article 5.7: Express Shipments

1. Each Party shall adopt or maintain expedited customs procedures for express shipments 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;[6]

(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 within six hours after submission of the necessary customs documents, provided the shipment has arrived;

(e) apply to shipments of any weight or value recognising 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

[6] For greater certainty, additional documents may be required as a condition for release.

amount set under the Party's law.[7] Each Party shall review the amount periodically taking into account factors that it may consider relevant, such as rates of inflation, effect on trade facilitation, impact on risk management, administrative cost of collecting duties compared to the amount of duties, cost of cross-border trade transactions, impact on SMEs or other factors related to the collection of customs duties.

2. If a Party does not provide the treatment in paragraph 1(a) through (f) to all shipments, that Party shall provide a separate[8] and expedited customs procedure that provides that treatment for express shipments.

Article 5.8: Penalties

1. Each Party shall adopt or maintain measures that allow for the imposition of a penalty by a Party's customs administration for a breach of its customs laws, regulations or procedural requirements, including those governing tariff classification, customs valuation, country of origin and claims for preferential treatment under this Agreement.

2. Each Party shall ensure that a penalty imposed by its customs administration for a breach of a customs law, regulation or procedural requirement is imposed only on the person legally responsible for the breach.

3. Each Party shall ensure that the penalty imposed by its customs administration is dependent on the facts and circumstances[9] 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 administration for a breach of a customs law, regulation or procedural requirement, an explanation in writing is provided to the person upon whom the penalty is imposed specifying the nature of the breach and the law, regulation or procedure used for determining the penalty amount.

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[7] 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.

[8] For greater certainty, "separate" does not mean a specific facility or lane.

[9] Facts and circumstances shall be established objectively according to each Party's law.

6. If a person voluntarily discloses to a Party's customs administration the circumstances of a breach of a customs law, regulation or procedural requirement prior to the discovery of the breach by the customs administration, the Party's customs administration shall, if appropriate, consider this fact as a potential mitigating factor when a penalty is established for that person.

7. Each Party shall provide in its laws, regulations or procedures, or otherwise give effect to, a fixed and finite period within which its customs administration may initiate proceedings[10] to impose a penalty relating to a breach of a customs law, regulation or procedural requirement.

8. Notwithstanding paragraph 7, a customs administration may impose, outside of the fixed and finite period, a penalty where this is in lieu of judicial or administrative tribunal proceedings.

Article 5.9: Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk goods and that simplifies the clearance and movement of low-risk goods.

2. In order to facilitate trade, each Party shall periodically review and update, as appropriate, the risk management system specified in paragraph 1.

Article 5.10: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties. This paragraph shall not require a Party to release a good if its requirements for release have not been met.

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

(a) provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the arrival of the goods;

(b) provide for the electronic submission and processing of customs information in advance of the arrival of the goods in order to expedite the release of goods from customs control upon arrival;

[10] For greater certainty, "proceedings" means administrative measures by the customs administration and does not include judicial proceedings.

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

(d) allow an importer to obtain the release of goods prior to the final determination of customs duties, taxes and fees by the importing Party's customs administration when these are not determined prior to or promptly upon arrival, provided that the good is otherwise eligible for release and any security required by the importing Party has been provided or payment under protest, if required by a Party, has been made. Payment under protest refers to payment of duties, taxes and fees if the amount is in dispute and procedures are available to resolve the dispute.

3. If a Party allows for the release of goods conditioned on a security, it shall adopt or maintain procedures that:

(a) ensure that the amount of the security is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled;

(b) ensure that the security shall be discharged as soon as possible after its customs administration is satisfied that the obligations arising from the importation of the goods have been fulfilled; and

(c) allow importers to provide security using non-cash financial instruments, including, in appropriate cases where an importer frequently enters goods, instruments covering multiple entries.

Article 5.11: Publication

1. Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language.

2. Each Party shall designate or maintain one or more enquiry points to address enquiries from interested persons concerning customs matters and shall make information concerning the procedures for making such enquiries publicly available online.

3. To the extent possible, each Party shall publish in advance regulations of general application governing customs matters that it proposes to adopt and shall provide interested persons the opportunity to comment before the Party adopts the regulation.

Article 5.12: Confidentiality

1. If a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall keep the information confidential. The Party that provides the information may require the other Party to furnish written assurance that the information will be held in confidence, used only for the purposes specified in the other Party's request for information, and not disclosed without the specific permission of the Party that provided the information or the person that provided the information to that Party.

2. A Party may decline to provide information requested by another Party if that Party has failed to act in accordance with paragraph 1.

3. Each Party shall adopt or maintain procedures for protecting from unauthorised disclosure confidential information submitted in accordance with the administration of the Party's customs laws, including information the disclosure of which could prejudice the competitive position of the person providing the information.

CHAPTER 6

TRADE REMEDIES

Section A: Safeguard Measures

Article 6.1: Definitions

For the purposes of this Section:

domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive good operating within the territory of a Party, or those producers whose collective production of the like or directly competitive good constitutes a major proportion of the total domestic production of that good;

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

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

transition period means, in relation to a particular good, the three-year period beginning on the date of entry into force of this Agreement, except where the tariff elimination for the good occurs over a longer period of time, in which case the transition period shall be the period of the staged tariff elimination for that good; and

transitional safeguard measure means a measure described in Article 6.3.2 (Imposition of a Transitional Safeguard Measure).

Article 6.2: Global Safeguards

1. Nothing in this Agreement affects the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement.

2. Except as provided in paragraph 3, nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to actions taken pursuant to Article XIX of GATT 1994 and the Safeguards Agreement.

3. A Party that initiates a safeguard investigatory process shall provide to the other Parties an electronic copy of the notification given to the WTO Committee on Safeguards under Article 12.1(a) of the Safeguards Agreement.

4. No Party shall apply or maintain a safeguard measure under this Chapter, to any product imported under a tariff rate quota (TRQ) established by the Party under this Agreement. A Party taking a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement may exclude from the safeguard measure imports of originating goods under a TRQ established by the Party under this Agreement and set out in Appendix A to the Party's Schedule to Annex 2-D (Tariff Commitments), if such imports are not a cause of serious injury or threat thereof.

5. No Party shall apply or maintain two or more of the following measures, with respect to the same good, at the same time:

(a) a transitional safeguard measure under this Chapter;

(b) a safeguard measure under Article XIX of GATT 1994 and the Safeguards Agreement;

(c) a safeguard measure set out in Appendix B to its Schedule to Annex 2-D (Tariff Commitments); or

(d) an emergency action under Chapter 4 (Textiles and Apparel Goods).

Article 6.3: Imposition of a Transitional Safeguard Measure

1. A Party may apply a transitional safeguard measure described in paragraph 2, during the transition period only, if as a result of the reduction or elimination of a customs duty pursuant to this Agreement:

(a) an originating good of another Party, individually, is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good; or

(b) an originating good of two or more Parties, collectively, is being imported into the Party's territory in such increased quantities, in absolute terms or relative to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces a like or directly competitive good, provided that the Party applying the transitional safeguard measure demonstrates, with respect to the imports from each such Party against which the transitional safeguard measure is applied, that imports of the originating good from each of those Parties have increased, in absolute terms or relative to domestic production,

since the date of entry into force of this Agreement for those Parties.

2. If the conditions in paragraph 1 are met, the Party may, to the extent necessary to prevent or remedy serious injury and to facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; 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 applied rate of customs duty in effect at the time the measure is applied; and

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

The Parties understand that neither tariff rate quotas nor quantitative restrictions would be a permissible form of transitional safeguard measure.

Article 6.4: Standards for a Transitional Safeguard Measure

1. A Party shall maintain a transitional safeguard measure only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

2. That period shall not exceed two years, except that the period may be extended by up to one year if the competent authority of the Party that applies the measure determines, in conformity with the procedures set out in Article 6.5 (Investigation Procedures and Transparency Requirements), that the transitional safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment.

3. No Party shall maintain a transitional safeguard measure beyond the expiration of the transition period.

4. In order to facilitate adjustment in a situation where the expected duration of a transitional safeguard measure is over one year, the Party that applies the measure shall progressively liberalise it at regular intervals during the period of application.

5. On the termination of a transitional safeguard measure, the Party that applied the measure shall apply the rate of customs duty set out in the Party's

Schedule to Annex 2-D (Tariff Commitments) as if that Party had never applied the transitional safeguard measure.

6. No Party shall apply a transitional safeguard measure more than once on the same good.

Article 6.5: Investigation Procedures and Transparency Requirements

1. A Party shall apply a transitional safeguard measure only following an investigation by the Party's competent authorities in accordance with Article 3 and Article 4.2(c) of the Safeguards Agreement; to this end, Article 3 and Article 4.2(c) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. In the investigation described in paragraph 1, the Party shall comply with the requirements of Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement; to this end, Article 4.2(a) and Article 4.2(b) of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 6.6: Notification and Consultation

1. A Party shall promptly notify the other Parties, in writing, if it:

(a) initiates a transitional safeguard investigation under this Chapter;

(b) makes a finding of serious injury, or threat of serious injury, caused by increased imports, as set out in Article 6.3 (Imposition of a Transitional Safeguard Measure);

(c) takes a decision to apply or extend a transitional safeguard measure; and

(d) takes a decision to modify a transitional safeguard measure previously undertaken.

2. A Party shall provide to the other Parties a copy of the public version of the report of its competent authorities that is required under Article 6.5.1 (Investigation Procedures and Transparency Requirements).

3. When a Party makes a notification pursuant to paragraph 1(c) that it is applying or extending a transitional safeguard measure, that Party shall include in that notification:

(a) evidence of serious injury, or threat of serious injury, caused by increased imports of an originating good of another Party or Parties

as a result of the reduction or elimination of a customs duty pursuant to this Agreement;

(b) a precise description of the originating good subject to the transitional safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 2-D (Tariff Commitments) are based;

(c) a precise description of the transitional safeguard measure;

(d) the date of the transitional safeguard measure's introduction, its expected duration and, if applicable, a timetable for progressive liberalisation of the measure; and

(e) in the case of an extension of the transitional safeguard measure, evidence that the domestic industry concerned is adjusting.

4. On request of a Party whose good is subject to a transitional safeguard proceeding under this Chapter, the Party that conducts that proceeding shall enter into consultations with the requesting Party to review a notification under paragraph 1 or any public notice or report that the competent investigating authority issued in connection with the proceeding.

Article 6.7: Compensation

1. A Party applying a transitional safeguard measure shall, after consultations with each Party against whose good the transitional safeguard measure is applied, provide mutually agreed trade liberalising compensation in the form of concessions that have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the transitional safeguard measure. The Party shall provide an opportunity for those consultations no later than 30 days after the application of the transitional safeguard measure.

2. If the consultations under paragraph 1 do not result in an agreement on trade liberalising compensation within 30 days, any Party against whose good the transitional safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the transitional safeguard measure.

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

4. The obligation to provide compensation under paragraph 1 and the right to suspend concessions under paragraph 2 terminates on the termination of the transitional safeguard measure.

Section B: Antidumping and Countervailing Duties

Article 6.8: Antidumping and Countervailing Duties

1. Each Party retains its rights and obligations under Article VI of GATT 1994, the AD Agreement and the SCM Agreement.

2. Nothing in this Agreement shall confer any rights or impose any obligations on the Parties with regard to proceedings or measures taken pursuant to Article VI of GATT 1994, the AD Agreement or the SCM Agreement.

3. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Section or Annex 6-A (Practices Relating to Antidumping and Countervailing Duty Proceedings).

Annex 6-A

Practices Relating to Antidumping and Countervailing Duty Proceedings

The Parties recognise, in Article 6.8 (Antidumping and Countervailing Duties), the right of the Parties to apply trade remedy measures consistent with Article VI of GATT 1994, the AD Agreement and the SCM Agreement, and further recognise the following practices[1] as promoting the goals of transparency and due process in trade remedy proceedings:

(a) Upon receipt by a Party's investigating authorities of a properly documented antidumping or countervailing duty application with respect to imports from another Party, and no later than seven days before initiating an investigation, the Party provides written notification of its receipt of the application to the other Party.

(b) In any proceeding in which the investigating authorities determine to conduct an in-person verification of information that is provided by a respondent,[2] and that is pertinent to the calculation of antidumping duty margins or the level of a countervailable subsidy, the investigating authorities promptly notify each respondent of their intent, and:

(i) provide to each respondent at least 10 working days advance notice of the dates on which the authorities intend to conduct an in-person verification of the information;

(ii) at least five working days prior to an in-person verification, provide to the respondent a document that sets out the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation to be made available for review; and

[1] The practices included in this Annex do not constitute a comprehensive list of practices relating to antidumping and countervailing duty proceedings. No inference shall be drawn from the inclusion or exclusion of a particular aspect of such proceedings in this list.

[2] For the purposes of this paragraph, "respondent" means a producer, manufacturer, exporter, importer, and, where appropriate, a government or government entity, that is required by a Party's investigating authorities to respond to an antidumping or countervailing duty questionnaire.

(iii) after an in-person verification is completed, and subject to the protection of confidential information[3], issue a written report that describes the methods and procedures followed in carrying out the verification and the extent to which the information provided by the respondent was supported by the documents reviewed during the verification. The report is made available to all interested parties in sufficient time for the parties to defend their interests.

(c) A Party's investigating authorities maintain a public file for each investigation and review that contains:

(i) all non-confidential documents that are part of the record of the investigation or review; and

(ii) to the extent feasible without revealing confidential information, non-confidential summaries of confidential information that is contained in the record of each investigation or review. To the extent that individual information is not susceptible of summarisation, it may be aggregated by the investigating authority.

The public file and a list of all documents that are contained in the record of the investigation or review are physically available for inspection and copying during the investigating authorities' normal business hours or electronically available for download.[4]

(d) If, in an antidumping or countervailing duty action that involves imports from another Party, a Party's investigating authorities determine that a timely response to a request for information does not comply with the request, the investigating authorities inform the interested party that submitted the response of the nature of the deficiency and, to the extent practicable in light of time limits established to complete the antidumping or countervailing duty action, provide that interested party with an opportunity to remedy or explain the deficiency. If that interested party submits further information in response to that deficiency and the investigating authorities find that the response is not satisfactory, or that the response is not submitted within the applicable time limits, and if the investigating authorities disregard all or part of the original and

[3] For the purposes of this Annex, "confidential information" includes information which is provided on a confidential basis and which is by its nature confidential, for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

[4] Charges for the copies, if any, are limited in amount to the approximate cost of the services rendered.

subsequent responses, the investigating authorities explain in the determination or other written document the reasons for disregarding the information.

(e) Before a final determination is made, the investigating authorities inform all interested parties of the essential facts that form the basis of the decision whether to apply definitive measures. Subject to the protection of confidential information, the investigating authorities may use any reasonable means to disclose the essential facts, which includes a report summarising the data in the record, a draft or preliminary determination or some combination of those reports or determinations, to provide interested parties an opportunity to respond to the disclosure of essential facts.

CHAPTER 7

SANITARY AND PHYTOSANITARY MEASURES

Article 7.1: Definitions

1. The definitions in Annex A of the SPS Agreement are incorporated into this Chapter and shall form 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;

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

import check means an inspection, examination, sampling, review of documentation, test or procedure, including laboratory, organoleptic or identity, conducted at the border by an importing Party or its representative to determine if a consignment complies[1] with the sanitary and phytosanitary requirements of the importing Party;

import programme means mandatory sanitary or phytosanitary policies, procedures or requirements of an importing Party that govern the importation of goods;

primary representative means the government body of a Party that is responsible for the implementation of this Chapter and the coordination of that Party's participation in Committee activities under Article 7.5 (Committee on Sanitary and Phytosanitary Measures);

risk analysis means the process that consists of three components: risk assessment; risk management; and risk communication;

risk communication means the exchange of information and opinions concerning risk and risk-related factors between risk assessors, risk managers, consumers and other interested parties; and

[1] For greater certainty, the Parties recognise that import checks are one of many tools available to assess compliance with an importing Party's sanitary and phytosanitary measures.

risk management means the weighing of policy alternatives in light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures.

Article 7.2: Objectives

The objectives of this Chapter are to:

(a) protect human, animal or plant life or health in the territories of the Parties while facilitating and expanding trade by utilising a variety of means to address and seek to resolve sanitary and phytosanitary issues;

(b) reinforce and build on the SPS Agreement;

(c) strengthen communication, consultation and cooperation between the Parties, and particularly between the Parties' competent authorities and primary representatives;

(d) ensure that sanitary or phytosanitary measures implemented by a Party do not create unjustified obstacles to trade;

(e) enhance transparency in and understanding of the application of each Party's sanitary and phytosanitary measures; and

(f) encourage the development and adoption of international standards, guidelines and recommendations, and promote their implementation by the Parties.

Article 7.3: Scope

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

2. Nothing in this Chapter prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

Article 7.4: General Provisions

1. The Parties affirm their rights and obligations under the SPS Agreement.

2. Nothing in this Agreement shall limit the rights and obligations that each Party has under the SPS Agreement.

Article 7.5: Committee on Sanitary and Phytosanitary Measures

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (Committee), composed of government representatives of each Party responsible for sanitary and phytosanitary matters.

2. The objectives of the Committee are to:

(a) enhance each Party's implementation of this Chapter;

(b) consider sanitary and phytosanitary matters of mutual interest; and

(c) enhance communication and cooperation on sanitary and phytosanitary matters.

3. The Committee:

(a) shall provide a forum to improve the Parties' understanding of sanitary and phytosanitary issues that relate to the implementation of the SPS Agreement and this Chapter;

(b) shall provide a forum to enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(c) shall exchange information on the implementation of this Chapter;

(d) shall determine the appropriate means, which may include *ad hoc* working groups, to undertake specific tasks related to the functions of the Committee;

(e) may identify and develop technical assistance and cooperation projects between the Parties on sanitary and phytosanitary measures;

(f) may serve as a forum for a Party to share information on a sanitary or phytosanitary issue that has arisen between it and another Party or Parties, provided that the Parties between which the issue has arisen have first attempted to address the issue through discussions between themselves; and

(g) may consult on matters and positions for the meetings of the Committee on Sanitary and Phytosanitary Measures established under Article 12 of the SPS Agreement (WTO SPS Committee), and meetings held under the auspices of the Codex Alimentarius

Commission, the World Organisation for Animal Health and the International Plant Protection Convention.

4. The Committee shall establish its terms of reference at its first meeting and may revise those terms as needed.

5. The Committee shall meet within one year of the date of entry into force of this Agreement and once a year thereafter unless Parties agree otherwise.

Article 7.6: Competent Authorities and Contact Points

Each Party shall provide the other Parties with a written description of the sanitary and phytosanitary responsibilities of its competent authorities and contact points within each of these authorities and identify its primary representative within 60 days of the date of entry into force of this Agreement for that Party. Each Party shall keep this information up to date.

Article 7.7: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise that adaptation to regional conditions, including regionalisation, zoning and compartmentalisation, is an important means to facilitate trade.

2. The Parties shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

3. The Parties may cooperate on the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence with the objective of acquiring confidence in the procedures followed by each Party for the recognition of pest- or disease-free areas, and areas of low pest or disease prevalence.

4. When an importing Party receives a request for a determination of regional conditions from an exporting Party and determines that the information provided by the exporting Party is sufficient, it shall initiate an assessment within a reasonable period of time.

5. When an importing Party commences an assessment of a request for a determination of regional conditions under paragraph 4, that Party shall promptly, on request of the exporting Party, explain its process for making the determination of regional conditions.

6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment of the exporting Party's request for a determination of regional conditions.

7. When an importing Party adopts a measure that recognises specific regional conditions of an exporting Party, the importing Party shall communicate that measure to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The importing and exporting Parties involved in a particular determination may also decide in advance the risk management measures that will apply to trade between them in the event of a change in the status.

9. The Parties involved in a determination recognising regional conditions are encouraged, if mutually agreed, to report the outcome to the Committee.

10. If the evaluation of the evidence provided by the exporting Party does not result in a determination to recognise pest- or disease-free areas, or areas of low pest and disease prevalence, the importing Party shall provide the exporting Party with the rationale for its determination.

11. If there is an incident that results in the importing Party modifying or revoking the determination recognising regional conditions, on request of the exporting Party, the Parties involved shall cooperate to assess whether the determination can be reinstated.

Article 7.8: Equivalence

1. The Parties acknowledge that recognition of the equivalence of sanitary and phytosanitary measures is an important means to facilitate trade. Further to Article 4 of the SPS Agreement, the Parties shall apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or on a systems-wide basis, each Party shall take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

2. On request of the exporting Party, the importing Party shall explain the objective and rationale of its sanitary or phytosanitary measure and clearly identify the risk the sanitary or phytosanitary measure is intended to address.

3. When an importing Party receives a request for an equivalence assessment and determines that the information provided by the exporting Party is sufficient, it shall initiate the equivalence assessment within a reasonable period of time.

4. When an importing Party commences an equivalence assessment, that Party shall promptly, on request of the exporting Party, explain its equivalence process and plan for making the equivalence determination and, if the determination results in recognition, for enabling trade.

5. In determining the equivalence of a sanitary or phytosanitary measure, an importing Party shall take into account available knowledge, information and relevant experience, as well as the regulatory competence of the exporting Party.

6. The importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if the exporting Party objectively demonstrates to the importing Party that the exporting Party's measure:

(a) achieves the same level of protection as the importing Party's measure; or

(b) has the same effect in achieving the objective as the importing Party's measure.[2]

7. When an importing Party adopts a measure that recognises the equivalence of an exporting Party's specific sanitary or phytosanitary measure, group of measures or measures on a systems-wide basis, the importing Party shall communicate the measure it has adopted to the exporting Party in writing and implement the measure within a reasonable period of time.

8. The Parties involved in an equivalence determination that results in recognition are encouraged, if mutually agreed, to report the outcome to the Committee.

9. If an equivalence determination does not result in recognition by the importing Party, the importing Party shall provide the exporting Party with the rationale for its decision.

Article 7.9: Science and Risk Analysis

1. The Parties recognise the importance of ensuring that their respective sanitary and phytosanitary measures are based on scientific principles.

2. Each Party shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, that they are based on documented and objective scientific evidence that is rationally related to the measures, while recognising the Parties' obligations regarding assessment of risk under Article 5 of the SPS Agreement.[3]

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[2] No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for this subparagraph.

[3] No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for this paragraph.

3. Recognising the Parties' rights and obligations under the relevant provisions of the SPS Agreement, nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing the level of protection it determines to be appropriate;

(b) establishing or maintaining an approval procedure that requires a risk analysis to be conducted before the Party grants a product access to its market; or

(c) adopting or maintaining a sanitary or phytosanitary measure on a provisional basis.

4. Each Party shall:

(a) ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties; and

(b) conduct its risk analysis in a manner that is documented and that provides interested persons and other Parties an opportunity to comment, in a manner to be determined by that Party.[4]

5. Each Party shall ensure that each risk assessment it conducts is appropriate to the circumstances of the risk at issue and takes into account reasonably available and relevant scientific data, including qualitative and quantitative information.

6. When conducting its risk analysis, each Party shall:

(a) take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations;

(b) consider risk management options that are not more trade restrictive[5] than required, including the facilitation of trade by not taking any measure, to achieve the level of protection that the Party has determined to be appropriate; and

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[4] For greater certainty, this subparagraph applies only to a risk analysis for a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

[5] For the purposes of subparagraphs (b) and (c), a risk management option is not more trade-restrictive than required unless there is another option reasonably available, taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

(c) select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

7. If an importing Party requires a risk analysis to evaluate a request from an exporting Party to authorise importation of a good of that exporting Party, the importing Party shall provide, on request of the exporting Party, an explanation of the information required for the risk assessment. On receipt of the required information from the exporting Party, the importing Party shall endeavour to facilitate the evaluation of the request for authorisation by scheduling work on this request in accordance with the procedures, policies, resources, and laws and regulations of the importing Party.

8. On request of the exporting Party, the importing Party shall inform the exporting Party of the progress of a specific risk analysis request, and of any delay that may occur during the process.

9. If the importing Party, as a result of a risk analysis, adopts a sanitary or phytosanitary measure that allows trade to commence or resume, the importing Party shall implement the measure within a reasonable period of time.

10. Without prejudice to Article 7.14 (Emergency Measures), no Party shall stop the importation of a good of another Party solely for the reason that the importing Party is undertaking a review of its sanitary or phytosanitary measure, if the importing Party permitted the importation of that good of the other Party when the review was initiated.

Article 7.10: Audits[6]

1. To determine an exporting Party's ability to provide required assurances and meet the sanitary and phytosanitary measures of the importing Party, each importing Party shall have the right, subject to this Article, to audit the exporting Party's competent authorities and associated or designated inspection systems. That audit may include an assessment of the competent authorities' control programmes, including: if appropriate, reviews of the inspection and audit programmes; and on-site inspections of facilities.

2. An audit shall be systems-based and designed to check the effectiveness of the regulatory controls of the competent authorities of the exporting Party.

[6] For greater certainty, nothing in this Article prevents an importing Party from performing an inspection of a facility for the purposes of determining if the facility conforms with the importing Party's sanitary or phytosanitary requirements or conforms with sanitary or phytosanitary requirements that the importing Party has determined to be equivalent to its sanitary or phytosanitary requirements.

3. In undertaking an audit, a Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. Prior to the commencement of an audit, the importing Party and exporting Party involved shall discuss the rationale and decide: the objectives and scope of the audit; the criteria or requirements against which the exporting Party will be assessed; and the itinerary and procedures for conducting the audit.

5. The auditing Party shall provide the audited Party the opportunity to comment on the findings of the audit and take any such comments into account before the auditing Party makes its conclusions and takes any action. The auditing Party shall provide a report setting out its conclusions in writing to the audited Party within a reasonable period of time.

6. A decision or action taken by the auditing Party as a result of the audit shall be supported by objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party. This objective evidence and data shall be provided to the audited Party on request.

7. The costs incurred by the auditing Party shall be borne by the auditing Party, unless both Parties decide otherwise.

8. The auditing Party and audited Party shall each ensure that procedures are in place to prevent the disclosure of confidential information that is acquired during the audit process.

Article 7.11: Import Checks

1. Each Party shall ensure that its import programmes are based on the risks associated with importations, and the import checks are carried out without undue delay.[7]

2. A Party shall make available to another Party, on request, information on its import procedures and its basis for determining the nature and frequency of import checks, including the factors it considers to determine the risks associated with importations.

3. A Party may amend the frequency of its import checks as a result of experience gained through import checks or as a result of actions or discussions provided for in this Chapter.

[7] For greater certainty, nothing in this Article prohibits a Party from performing import checks to obtain information to assess risk or to determine the need for, develop or periodically review a risk-based import programme.

4. An importing Party shall provide to another Party, on request, information regarding the analytical methods, quality controls, sampling procedures and facilities that the importing Party uses to test a good. The importing Party shall ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards. The importing Party shall maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample.

5. An importing Party shall ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure, is limited to what is reasonable and necessary, and is rationally related to the available science.

6. If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, the importing Party shall provide a notification about the adverse result to at least one of the following: the importer or its agent; the exporter; the manufacturer; or the exporting Party.

7. When the importing Party provides a notification pursuant to paragraph 6, it shall:

(a) include:

(i) the reason for the prohibition or restriction;

(ii) the legal basis or authorisation for the action; and

(iii) information on the status of the affected goods and, if appropriate, on their disposition;

(b) do so in a manner consistent with its laws, regulations and requirements as soon as possible and no later than seven days[8] after the date of the decision to prohibit or restrict, unless the good is seized by a customs administration; and

(c) if the notification has not already been provided through another channel, transmit the notification by electronic means, if practicable.

8. An importing Party that prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check shall provide an opportunity for a review of the decision and consider any relevant information

[8] For the purposes of this paragraph, the term "days" does not include national holidays of the importing Party.

submitted to assist in the review. The review request and information should be submitted to the importing Party within a reasonable period of time.[9]

9. If an importing Party determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure, the importing Party shall notify the exporting Party of the non-conformity.

10. On request, an importing Party shall provide to the exporting Party available information on goods from the exporting Party that were found not to conform to a sanitary or phytosanitary measure of the importing Party.

Article 7.12: Certification

1. The Parties recognise that assurances with respect to sanitary or phytosanitary requirements may be provided through means other than certificates and that different systems may be capable of meeting the same sanitary or phytosanitary objective.

2. If an importing Party requires certification for trade in a good, the Party shall ensure that the certification requirement is applied, in meeting the Party's sanitary or phytosanitary objectives, only to the extent necessary to protect human, animal or plant life or health.

3. In applying certification requirements, an importing Party shall take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

4. An importing Party shall limit attestations and information it requires on the certificates to essential information that is related to the sanitary or phytosanitary objectives of the importing Party.

5. An importing Party should provide to another Party, on request, the rationale for any attestations or information that the importing Party requires to be included on a certificate.

6. The Parties may agree to work cooperatively to develop model certificates to accompany specific goods traded between the Parties, taking into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

7. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

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[9] For greater certainty, nothing in this Article prevents an importing Party from disposing of goods which are found to have an infectious pathogen or pest that, if urgent action is not taken, can spread and cause damage to human, animal or plant life or health in the Party's territory.

Article 7.13: Transparency[10]

1. The Parties recognise the value of sharing information about their sanitary and phytosanitary measures on an ongoing basis, and of providing interested persons and other Parties with the opportunity to comment on their proposed sanitary and phytosanitary measures.

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

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

4. Unless urgent problems of human, animal or plant life or health protection arise or threaten to arise, or the measure is of a trade-facilitating nature, a Party shall normally allow at least 60 days for interested persons and other Parties to provide written comments on the proposed measure after it makes the notification under paragraph 3. If feasible and appropriate, the Party should allow more than 60 days. The Party shall consider any reasonable request from an interested person or another Party to extend the comment period. On request of another Party, the Party shall respond to the written comments of the other Party in an appropriate manner.

5. The Party shall make available to the public, by electronic means in an official journal or on a website, the proposed sanitary or phytosanitary measure notified under paragraph 3, the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received from the public on the measure.

6. If a Party proposes a sanitary or phytosanitary measure which does not conform to an international standard, guideline or recommendation, the Party shall provide to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, the relevant documentation that the Party considered in developing the proposed measure, including documented and objective scientific evidence that is rationally related to the measure, such as risk assessments, relevant studies and expert opinions.

7. A Party that proposes to adopt a sanitary or phytosanitary measure shall discuss with another Party, on request and if appropriate and feasible, any scientific or trade concerns that the other Party may raise regarding the proposed

[10] For greater certainty, this Article applies only to a sanitary or phytosanitary measure that constitutes a sanitary or phytosanitary regulation for the purposes of Annex B of the SPS Agreement.

measure and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

8. Each Party shall publish, preferably by electronic means, notices of final sanitary or phytosanitary measures in an official journal or website.

9. Each Party shall notify the other Parties of final sanitary or phytosanitary measures through the WTO SPS notification submission system. 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. A Party shall also make available to another Party, on request, and to the extent permitted by the confidentiality and privacy requirements of the Party's law, significant written comments and relevant documentation considered to support the measure that were received during the comment period.

10. If a final sanitary or phytosanitary measure is substantively altered from the proposed measure, a Party shall also include in the notice of the final sanitary or phytosanitary measure that it publishes, an explanation of:

(a) the objective and rationale of the measure and how the measure advances that objective and rationale; and

(b) any substantive revisions that it made to the proposed measure.

11. An exporting Party shall notify the importing Party through the contact points referred to in Article 7.6 (Competent Authorities and Contact Points) in a timely and appropriate manner:

(a) if it has knowledge of a significant sanitary or phytosanitary risk related to the export of a good from its territory;

(b) of urgent situations where a change in animal or plant health status in the territory of the exporting Party may affect current trade;

(c) of significant changes in the status of a regionalised pest or disease;

(d) of new scientific findings of importance which affect the regulatory response with respect to food safety, pests or diseases; and

(e) of significant changes in food safety, pest or disease management, control or eradication policies or practices that may affect current trade.

12. If feasible and appropriate, a Party should provide an interval of more than six months between the date it publishes a final sanitary or phytosanitary measure and the date on which the measure takes effect, unless the measure is intended to

address an urgent problem of human, animal or plant life or health protection or the measure is of a trade-facilitating nature.

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

Article 7.14: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health, the Party shall promptly notify the other Parties of that measure through the primary representative and the relevant contact point referred to in Article 7.6 (Competent Authorities and Contact Points). The Party that adopts the emergency measure shall take into consideration any information provided by other Parties in response to the notification.

2. 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 any Party on request. If the emergency measure is maintained after the review, because the reason for its adoption remains, the Party should review the measure periodically.

Article 7.15: Cooperation

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

2. The Parties shall cooperate and may jointly identify work on sanitary and phytosanitary matters with the goal of eliminating unnecessary obstacles to trade between the Parties.

Article 7.16: Information Exchange

A Party may request information from another Party on a matter arising under this Chapter. A Party that receives a request for information shall endeavour to provide available information to the requesting Party within a reasonable period of time, and if possible, by electronic means.

Article 7.17: Cooperative Technical Consultations

1. If a Party has concerns regarding any matter arising under this Chapter with another Party, it shall endeavour to resolve the matter by using the administrative procedures that the other Party's competent authority has available. If the relevant Parties have bilateral or other mechanisms available to address the matter, the Party raising the matter shall endeavour to resolve the matter through those mechanisms, if it considers that it is appropriate to do so. A Party may have recourse to the Cooperative Technical Consultations (CTC) set out in paragraph 2 at any time it considers that the continued use of the administrative procedures or bilateral or other mechanisms would not resolve the matter.

2. One or more Parties (requesting Party) may initiate CTC with another Party (responding Party) to discuss any matter arising under this Chapter that the requesting Party considers may adversely affect its trade by delivering a request to the primary representative of the responding Party. The request shall be in writing and identify the reason for the request, including a description of the requesting Party's concerns about the matter, and set out the provisions of this Chapter that relate to the matter.

3. Unless the requesting Party and the responding Party (the consulting Parties) agree otherwise, the responding Party shall acknowledge the request in writing within seven days of the date of its receipt.

4. Unless the consulting Parties agree otherwise, the consulting Parties shall meet within 30 days of the responding Party's acknowledgement of the request to discuss the matter identified in the request, with the aim of resolving the matter within 180 days of the request if possible. The meeting shall be in person or by electronic means.

5. The consulting Parties shall ensure the appropriate involvement of relevant trade and regulatory agencies in meetings held pursuant to this Article.

6. All communications between the consulting Parties in the course of CTC, as well as all documents generated for CTC, shall be kept confidential unless the consulting Parties agree otherwise and without prejudice to the rights and obligations of any Party under this Agreement, the WTO Agreement or any other international agreement to which it is a party.

7. The requesting Party may cease CTC proceedings under this Article and have recourse to dispute settlement under Chapter 28 (Dispute Settlement) if:

(a) the meeting referred to in paragraph 4 does not take place within 37 days of the date of the request, or such other timeframe as the consulting Parties may agree under paragraphs 3 and 4; or

(b) the meeting referred to in paragraph 4 has been held.

8. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter through CTC in accordance with this Article.

Article 7.18: Dispute Settlement

1. Unless otherwise provided in this Chapter, Chapter 28 (Dispute Settlement) shall apply to this Chapter, subject to the following:

(a) with respect to Article 7.8 (Equivalence), Article 7.10 (Audits) and Article 7.11 (Import Checks), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of one year after the date of entry into force of this Agreement for that Party; and

(b) with respect to Article 7.9 (Science and Risk Analysis), Chapter 28 (Dispute Settlement) shall apply with respect to a responding Party as of two years after the date of entry into force of this Agreement for that Party.

2. In a dispute under this Chapter that involves scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the Parties involved in the dispute. To this end, the panel may, if it deems appropriate, establish an advisory technical experts group, or consult the relevant international standard setting organisations, at the request of either Party to the dispute or on its own initiative.

CHAPTER 8

TECHNICAL BARRIERS TO TRADE

Article 8.1: Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 of the TBT Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

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

consular transactions means requirements that products of a Party intended for export to the territory of another Party must first be submitted to the supervision of the consul of the importing Party in the territory of the exporting Party for the purpose of obtaining consular invoices or consular visas for conformity assessment documentation;

marketing authorisation means the process or processes by which a Party approves or registers a product in order to authorise its marketing, distribution or sale in the Party's territory. The process or processes may be described in a Party's laws or regulations in various ways, including "marketing authorisation", "authorisation", "approval", "registration", "sanitary authorisation", "sanitary registration" and "sanitary approval" for a product. Marketing authorisation does not include notification procedures;

mutual recognition agreement means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government agreements to implement the APEC *Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* of May 8, 1998 and the *Electrical and Electronic Equipment Mutual Recognition Arrangement* of July 7, 1999 and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

mutual recognition arrangement means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment;

post-market surveillance means procedures taken by a Party after a product has been placed on its market to enable the Party to monitor or address compliance with the Party's domestic requirements for products;

TBT Agreement means the WTO *Agreement on Technical Barriers to Trade*, as may be amended; and

verify means to take action to confirm the veracity of individual conformity assessment results, such as requesting information from the conformity assessment body or the body that accredited, approved, licensed or otherwise recognised the conformity assessment body, but does not include requirements that subject a product to conformity assessment in the territory of the importing Party that duplicate the conformity assessment procedures already conducted with respect to the product in the territory of the exporting Party or a third party, except on a random or infrequent basis for the purpose of surveillance, or in response to information indicating non-compliance.

Article 8.2: Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

Article 8.3: Scope

1. This Chapter shall apply to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures of central level of government bodies (and, where explicitly provided for, technical regulations, standards and conformity assessment procedures of government bodies at the level directly below that of the central level of government) that may affect trade in goods between the Parties, except as provided in paragraphs 4 and 5.

2. Each Party shall take reasonable measures that are within its authority to encourage observance by regional or local government bodies, as the case may be, on the level directly below that of the central level of government within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, of Article 8.5 (International Standards, Guides and Recommendations), Article 8.6 (Conformity Assessment), Article 8.8 (Compliance Period for Technical Regulations and Conformity Assessment Procedures) and each of the Annexes to this Chapter.

3. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments

to them and any addition to the rules or the product coverage of those technical regulations, standards and procedures, except amendments and additions of an insignificant nature.

4. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements. These specifications are covered by Chapter 15 (Government Procurement).

5. This Chapter shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

6. For greater certainty, nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement and any other relevant international agreement.

Article 8.4: Incorporation of Certain Provisions of the TBT Agreement

1. The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:

(a) Articles 2.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 2.12;

(b) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, 5.9; and

(c) paragraphs D, E and F of Annex 3.

2. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a dispute that exclusively alleges a violation of the provisions of the TBT Agreement incorporated under paragraph 1.

Article 8.5: International Standards, Guides and Recommendations

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to 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, each Party shall apply the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.12), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 8.6: Conformity Assessment

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of another Party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria or other conditions as set out in paragraph 1 and requires test results, certifications or inspections as positive assurance that a product conforms to a technical regulation or standard, the Party:

(a) shall not require the conformity assessment body that tests or certifies the product, or the conformity assessment body conducting an inspection, to be located within its territory;

(b) shall not impose requirements on conformity assessment bodies located outside its territory that would effectively require those conformity assessment bodies to operate an office in that Party's territory; and

(c) shall permit conformity assessment bodies in other Parties' territories to apply to the Party for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection.

3. Paragraphs 1 and 2 shall not preclude a Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in another Party's territory, in a manner consistent with its obligations under the TBT Agreement.

4. If a Party undertakes conformity assessment under paragraph 3, and further to Articles 5.2 and 5.4 of the TBT Agreement concerning limitation on information requirements, the protection of legitimate commercial interests and the adequacy of review procedures, the Party shall, on the request of another Party, explain:

(a) how the information required is necessary to assess conformity and determine fees;

(b) how the Party ensures that the confidentiality of the information required is respected in a manner that ensures legitimate commercial interests are protected; and

(c) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

5. Paragraphs 1 and 2(c) shall not preclude a Party from using mutual recognition agreements to accredit, approve, license or otherwise recognise conformity assessment bodies located outside its territory.

6. Nothing in paragraphs 1, 2 and 5 precludes a Party from verifying the results of conformity assessment procedures undertaken by conformity assessment bodies located outside its territory.

7. Further to paragraph 6, in order to enhance confidence in the continued reliability of conformity assessment results from the Parties' respective territories, a Party may request information on matters pertaining to conformity assessment bodies located outside its territory.

8. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement.[1] The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

9. Further to Article 9.2 of the TBT Agreement no Party shall refuse to accept conformity assessment results from a conformity assessment body or take actions that have the effect of, directly or indirectly, requiring or encouraging another Party or person to refuse to accept conformity assessment results from a conformity assessment body because the accreditation body that accredited the conformity assessment body:

(a) operates in the territory of a Party where there is more than one accreditation body;

(b) is a non-governmental body;

[1] The Committee shall be responsible for developing and maintaining a list of such arrangements.

(c) is domiciled in the territory of a Party that does not maintain a procedure for recognising accreditation bodies, provided that the accreditation body is recognised internationally, consistent with the provisions in paragraph 8;

(d) does not operate an office in the Party's territory; or

(e) is a for-profit entity.

10. Nothing in paragraph 9 prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body on grounds other than those set out in paragraph 9 if that Party can substantiate those grounds for the refusal, and that refusal is not inconsistent with the TBT Agreement and this Chapter.

11. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

12. If a Party:

(a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of another Party; or

(b) declines to use a mutual recognition arrangement,

it shall, on request of the other Party, explain the reasons for its decision.

13. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of another Party, it shall, on the request of the other Party, explain the reasons for its decision.

14. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of another Party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of that other Party, explain the reasons for its decision.

15. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

16. No Party shall require consular transactions, including related fees and charges, in connection with conformity assessment.[2]

Article 8.7: Transparency

1. Each Party shall allow persons of another Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies[3] on terms no less favourable than those that it accords to its own persons.

2. Each Party is encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.

3. If appropriate, each Party shall encourage non-governmental bodies in its territory to observe the obligations in paragraphs 1 and 2.

4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.

5. A Party may determine the form of proposals for technical regulations and conformity assessment procedures, which may take the form of: policy proposals; discussion documents; summaries of proposed technical regulations and conformity assessment procedures; or the draft text of proposed technical regulations and conformity assessment procedures. Each Party shall ensure that its proposals contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures to adequately inform interested persons and other Parties about whether and how their trade interests might be affected.

6. Each Party shall publish preferably by electronic means, in a single official journal or website all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to

[2] For greater certainty, this paragraph shall not apply to a Party verifying conformity assessment documents during a marketing authorisation or reauthorisation process.

[3] A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade.[4]

7. Each Party shall take such reasonable measures as may be available to it to ensure that all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of regional or local governments, as the case may be, on the level directly below that of the central level of government, are published.

8. Each Party shall ensure that all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, and to the extent practicable, all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, of regional or local governments on the level directly below that of the central level of government are accessible through official websites or journals, preferably consolidated into a single website.

9. Each Party shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

10. Notwithstanding paragraph 9, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

11. Each Party shall endeavour to notify proposals for new technical regulations and conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central level of government that are in accordance with the technical content of relevant international standards, guides and recommendations, if any, and that may have a significant effect on trade according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

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[4] For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO's official website.

12. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant *Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev. 12), as may be revised.

13. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

(a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and

(b) transmit the notification and the proposal electronically to the other Parties through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

14. Each Party shall normally allow 60 days from the date it transmits a proposal under paragraph 13 for another Party or an interested person of another Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from another Party or an interested person of another Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

15. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

16. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

17. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this Chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Parties through the enquiry points referred to in paragraph 13(b).

18. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, each Party shall, preferably electronically:

(a) make publicly available an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

(b) provide as soon as possible, but no later than 60 days after receiving a request from another Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected;[5]

(c) make publicly available the Party's responses to significant or substantive issues presented in comments received on the proposal for the technical regulation or conformity assessment procedure; and

(d) provide as soon as possible, but no later than 60 days after receiving a request from another Party, a description of significant revisions, if any, that the Party made to the proposal for the technical regulation or conformity assessment procedure, including those made in response to comments.

19. Further to paragraph J of Annex 3 of the TBT Agreement, each Party shall ensure that its central government standardising body's work programme, containing the standards it is currently preparing and the standards it has adopted, is available through the central government standardising body's website or the website referred to in paragraph 6.

Article 8.8: Compliance Period for Technical Regulations and Conformity Assessment Procedures

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement the term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.

2. If feasible and appropriate, each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.

3. In addition to paragraphs 1 and 2, in setting a "reasonable interval" for a specific technical regulation or conformity assessment procedure, each Party shall ensure that it provides suppliers with a reasonable period of time, under the

[5] For greater certainty, no Party shall be required to provide a description of alternative approaches or significant revisions under subparagraph (b) or (d) prior to the date of publication of the final technical regulation or conformity assessment procedure.

circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavour to take into account the resources available to suppliers.

Article 8.9: Cooperation and Trade Facilitation

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:

(a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and another Party's territory with respect to specific technical regulations;

(b) recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;

(c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

(d) designate conformity assessment bodies or recognise another Party's designation of conformity assessment bodies;

(e) unilaterally recognise the results of conformity assessment procedures performed in another Party's territory; and

(f) accept a supplier's declaration of conformity.

2. The Parties recognise that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

(a) regulatory dialogue and cooperation to, among other things:

(i) exchange information on regulatory approaches and practices;

(ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;

(iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or

(iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;

(b) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;

(c) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and

(d) promotion of the acceptance of technical regulations of another Party as equivalent.

3. With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region.

5. A Party shall, on request of another Party, give due consideration to any sector-specific proposal for cooperation under this Chapter.

6. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of another Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

7. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, with a view to addressing issues covered by this Chapter.

Article 8.10: Information Exchange and Technical Discussions

1. A Party may request another Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. A Party may request technical discussions with another Party with the aim of resolving any matter that arises under this Chapter.

3. For greater certainty, with respect to technical regulations or conformity assessment procedures of regional or local governments, as the case may be, on the level directly below that of the central government that may have a significant effect on trade, a Party may request technical discussions with another Party regarding those matters.

4. The relevant Parties shall discuss the matter raised within 60 days of the date of the request. If a requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. The responding Party shall give positive consideration to that request.

5. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

6. Unless the Parties that participate in the technical discussions agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the participating Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

7. Requests for information or technical discussions and communications shall be conveyed through the respective contact points designated pursuant to Article 27.5 (Contact Points).

Article 8.11: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (Committee), composed of government representatives of each Party.

2. Through the Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards and conformity assessment procedures with a view to facilitating trade between the Parties.

3. The Committee's functions may include:

(a) monitoring the implementation and operation of this Chapter, including any other commitments agreed under this Chapter, and identifying any potential amendments to or interpretations of those commitments pursuant to Chapter 27 (Administrative and Institutional Provisions);

(b) monitoring any technical discussions on matters that arise under this Chapter requested pursuant to paragraph 2 of Article 8.10 (Information Exchange and Technical Discussions);

(c) deciding on priority areas of mutual interest for future work under this Chapter and considering proposals for new sector-specific initiatives or other initiatives;

(d) encouraging cooperation between the Parties in matters that pertains to this Chapter, including the development, review or modification of technical regulations, standards and conformity assessment procedures;

(e) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertains to this Chapter;

(f) facilitating the identification of technical capacity needs;

(g) encouraging the exchange of information between the Parties and their relevant non-governmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non-governmental, regional, plurilateral and multilateral bodies or systems that develop standards, guides, recommendations, policies or other procedures relevant to this Chapter;

(h) encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach;

(i) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement;

(j) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and

(k) reporting to the Commission on the implementation and operation of this Chapter.

4. The Committee may establish working groups to carry out its functions.

5. To determine what activities the Committee will undertake, the Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the Committee do not unnecessarily duplicate that work.

6. The Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as decided by the Parties.

Article 8.12: Contact Points

1. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 27.5 (Contact Points).

2. A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.

3. The responsibilities of each contact point shall include:

(a) communicating with the other Parties' contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

(d) carrying out any additional responsibilities specified by the Committee.

Article 8.13: Annexes

1. The scope of the Annexes on Pharmaceuticals, Cosmetics, Medical Devices and Proprietary Formulas for Prepackaged Foods and Food Additives is set out in each respective Annex. The other Annexes to this Chapter have the same scope as that set out in Article 8.3 (Scope).

2. The rights and obligations set out in each Annex to this Chapter shall apply only with respect to the sector specified in that Annex, and shall not affect any Party's rights or obligations under any other Annex.

3. Unless the Parties agree otherwise, no later than five years after the date of entry into force of this Agreement and thereafter at least once every five years, the Committee shall:

(a) review the implementation of the Annexes, with a view to strengthening or improving them and if appropriate, make recommendations to enhance alignment of the Parties' respective technical regulations, standards and conformity assessment procedures in the sectors covered by the Annexes; and

(b) consider whether the development of Annexes concerning other sectors would further the objectives of this Chapter or the Agreement and decide whether to recommend to the Commission that the Parties initiate negotiations to conclude Annexes covering those sectors.

ANNEX 8-A

WINE AND DISTILLED SPIRITS

1. This Annex shall apply to wine and distilled spirits.

2. For the purposes of this Annex:

container means any bottle, barrel, cask or other closed receptacle, irrespective of size or of the material from which it is made, used for the retail sale of wine or distilled spirits;

distilled spirits means a potable alcoholic distillate, including spirits of wine, whiskey, rum, brandy, gin, tequila, mezcal and all dilutions or mixtures of those spirits for consumption;

label means any brand, mark, pictorial or other descriptive matter that is written, printed, stencilled, marked, embossed or impressed on, or firmly affixed to the primary container of wine or distilled spirits;

oenological practices means winemaking materials, processes, treatments and techniques, but does not include labelling, bottling or packaging for final sale;

single field of vision means any part of the surface of a primary container, excluding its base and cap, that can be seen without having to turn the container;

supplier means a producer, importer, exporter, bottler or wholesaler; and

wine means a beverage that is produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes in accordance with oenological practices that the country in which the wine is produced authorises under its laws and regulations.[6]

3. Each Party shall make information about its laws and regulations concerning wine and distilled spirits publicly available.

4. A Party may require a supplier to ensure that any statement required by that Party to be placed on a wine or distilled spirits label is:

(a) clear, specific, truthful, accurate and not misleading to the consumer; and

[6] For the United States, the alcohol content of wine must be not less than seven per cent and not more than 24 per cent.

(b) legible to the consumer; and

that such labels be firmly affixed.

5. If a Party requires a supplier to indicate information on a distilled spirits label, the Party shall permit the supplier to indicate that information on a supplementary label that is affixed to the distilled spirits container. Each Party shall permit a supplier to affix the supplementary label on the container of the imported distilled spirits after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4.

6. Each Party shall permit the alcoholic content by volume indicated on a wine or distilled spirits label to be expressed by alcohol by volume (alc/vol), for example 12% alc/vol or alc12%vol, and to be indicated in percentage terms to a maximum of one decimal point, for example 12.1%.

7. Each Party shall permit suppliers to use the term "wine" as a product name. A Party may require a supplier to indicate additional information on a wine label concerning the type, category, class or classification of the wine.

8. With respect to wine labels, each Party shall permit the information set out in subparagraphs 10(a) through (d) to be presented in a single field of vision for a container of wine. If this information is presented in a single field of vision, then the Party's requirements with respect to placement of this information are satisfied. A Party shall accept any of the information that appears outside a single field of vision if that information satisfies that Party's laws, regulations and requirements.

9. Notwithstanding paragraph 8, a Party may require net contents to be displayed on the principal display panel for a subset of less commonly used container sizes if specifically required by that Party's laws or regulations.

10. If a Party requires a wine label to indicate information other than:

(a) product name;

(b) country of origin;

(c) net contents; or

(d) alcohol content,

it shall permit the supplier to indicate the information on a supplementary label affixed to the wine container. A Party shall permit the supplier to affix the

supplementary label on the container of the imported wine after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may require that information on a supplementary label meet the requirements set out in paragraph 4.

11. For the purposes of paragraphs 4, 5 and 10, if there is more than one label on a container of imported wine or distilled spirits, a Party may require that each label be visible and not obscure mandatory information on another label.

12. If a Party has more than one official language, it may require that information on a wine or distilled spirits label appear in equal prominence in each official language.

13. Each Party shall permit a supplier to place a lot identification code on a wine or distilled spirits container, if the code is clear, specific, truthful, accurate and not misleading, and shall permit the supplier to determine:

(a) where to place the lot identification code on the container, provided that the code does not cover up essential information printed on the label; and

(b) the specific font size, readable phrasing and formatting for the code provided that the lot identification code is legible by physical or electronic means.

14. A Party may impose penalties for the removal or deliberate defacement of any lot identification code provided by the supplier and placed on the container.

15. No Party shall require a supplier to indicate any of the following information on a wine or distilled spirits container, labels or packaging:

(a) date of production or manufacture;

(b) date of expiration;

(c) date of minimum durability; or

(d) sell by date,

except that a Party may require a supplier to indicate a date of minimum durability or expiration on products[7] that could have a shorter date of minimum durability or expiration than would normally be expected by the consumer because of: their packaging or container, for example bag-in-box wines or individual serving size wines; or the addition of perishable ingredients.

[7] For Peru, all distilled spirits with less than 10 % alc/vol must have a date of minimum durability.

16. No Party shall require a supplier to place a translation of a trademark or trade name on a wine or distilled spirits container, label or packaging.

17. No Party shall prevent imports of wine from other Parties solely on the basis that the wine label includes the following descriptors or adjectives describing the wine or relating to wine-making: chateau, classic, clos, cream, crusted/crusting, fine, late bottled vintage, noble, reserve, ruby, special reserve, solera, superior, sur lie, tawny, vintage or vintage character. This paragraph shall not apply to a Party that has entered into an agreement with another country or group of countries no later than February 2003 that requires the Party to restrict the use of such terms on labels of wine sold in its territory.[8]

18. No Party shall require a supplier to disclose an oenological practice on a wine label or container except to meet a legitimate human health or safety objective with respect to that oenological practice.

19. Each Party shall permit wine to be labelled as Icewine, ice wine, ice-wine or a similar variation of those terms, only if the wine is made exclusively from grapes naturally frozen on the vine.[9]

20. Each Party shall endeavour to base its quality and identity requirements for any specific type, category, class or classification of distilled spirits solely on minimum ethyl alcohol content and the raw materials, added ingredients and production procedures used to produce that specific type, category, class or classification of distilled spirits.

21. No Party shall require imported wine or distilled spirits to be certified by an official certification body of the Party in whose territory the wine or distilled spirits were produced or by a certification body recognised by the Party in whose territory the wine or distilled spirits were produced regarding:

(a) vintage, varietal and regional claims for wine; or

(b) raw materials and production processes for distilled spirits,

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[8] Nothing in this paragraph shall be construed to require Canada to apply this paragraph in a manner inconsistent with its obligations under Article A(3) of Annex V of the EU-Canada Wine Agreement, as amended. Nothing in this paragraph shall be construed to require Malaysia to apply this paragraph in a manner inconsistent with its Regulation 18(1A) of the Food Regulations 1985 under the *Food Act 1983*.

[9] For Japan, this obligation is met through implementation of "the standard on labelling of domestic wine" by its domestic producers, dated 23 December 1986, as amended. For New Zealand, the obligation in this paragraph will become effective three years after the date on which this Agreement enters into force for New Zealand. Once effective, New Zealand shall implement the obligation by ensuring that wine exported from New Zealand is labelled as icewine, ice wine, ice-wine, or a similar variation of these terms, only if such wine is made exclusively from grapes naturally frozen on the vine.

except that the Party may require that wine or distilled spirits be certified regarding (a) or (b) if the Party in whose territory the wine or distilled spirits were produced requires that certification, that wine be certified regarding (a) if the Party has a reasonable and legitimate concern about a vintage, varietal or regional claim for wine, or that distilled spirits be certified regarding (b) if certification is necessary to verify claims such as age, origin or standards of identity.

22. If a Party deems that certification of wine is necessary to protect human health or safety or to achieve other legitimate objectives, that Party shall consider the *Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* (CAC/GL 38-2001), in particular the use of the generic model official certificate, as amended from time-to-time, concerning official and officially recognised certificates.

23. A Party shall normally permit a wine or distilled spirits supplier to submit any required certification, test result or sample only with the initial shipment of a particular brand, producer and lot. If a Party requires a supplier to submit a sample of the product for the Party's procedure to assess conformity with its technical regulation or standard, it shall not require a sample quantity larger than the minimum quantity necessary to complete the relevant conformity assessment procedure. Nothing in this provision precludes a Party from undertaking verification of test results or certification, for example, where the Party has information that a particular product may be non-compliant.

24. Unless problems of human health or safety arise or threaten to arise for a Party, a Party shall not normally apply any final technical regulation, standard or conformity assessment procedure to wine or distilled spirits that have been placed on the market in the Party's territory before the date on which the technical regulation, standard or conformity assessment procedure enters into force, provided that the products are sold within a period of time after the date the technical regulation, standard or conformity assessment procedure enters into force, stipulated by the authority responsible for that technical regulation, standard or conformity assessment procedure.

25. Each Party shall endeavour to assess other Parties' laws, regulations and requirements in respect of oenological practices, with the aim of reaching agreements that provide for the Parties' acceptance of each other's mechanisms for regulating oenological practices, if appropriate.

ANNEX 8-B

INFORMATION AND COMMUNICATIONS TECHNOLOGY PRODUCTS

Section A: Information and Communication Technology (ICT) Products that Use Cryptography

1. This section shall apply to information and communication technology (ICT) products that use cryptography.[10]

2. For the purposes of this section:

cryptography means the principles, means or methods for the transformation of data in order to hide its information content, prevent its undetected modification or prevent its unauthorised use; and is limited to the transformation of information using one or more secret parameters, for example, crypto variables, or associated key management;

encryption means the conversion of data (plaintext) into a form that cannot be easily understood without subsequent re-conversion (ciphertext) through the use of a cryptographic algorithm;

cryptographic algorithm or **cipher** means a mathematical procedure or formula for combining a key with plaintext to create a ciphertext; and

key means a parameter used in conjunction with a cryptographic algorithm that determines its operation in such a way that an entity with knowledge of the key can reproduce or reverse the operation, while an entity without knowledge of the key cannot.

3. With respect to a product that uses cryptography and is designed for commercial applications, no Party shall impose or maintain a technical regulation or conformity assessment procedure that requires a manufacturer or supplier of the product, as a condition of the manufacture, sale, distribution, import or use of the product, to:

(a) transfer or provide access to a particular technology, production process or other information, for example, a private key or other secret parameter, algorithm specification or other design detail, that is proprietary to the manufacturer or supplier and relates to the cryptography in the product, to the Party or a person in the Party's

[10] For greater certainty, for the purposes of this section, a "product" is a good and does not include a financial instrument.

territory;

(b) partner with a person in its territory; or

(c) use or integrate a particular cryptographic algorithm or cipher,

other than where the manufacture, sale, distribution, import or use of the product is by or for the government of the Party.

4. Paragraph 3 shall not apply to: (a) requirements that a Party adopts or maintains relating to access to networks that are owned or controlled by the government of that Party, including those of central banks; or (b) measures taken by a Party pursuant to supervisory, investigatory or examination authority relating to financial institutions or markets.

5. For greater certainty, this Section shall not be construed to prevent a Party's law enforcement authorities from requiring service suppliers using encryption they control to provide, pursuant to that Party's legal procedures, unencrypted communications.

Section B: Electromagnetic Compatibility of Information Technology Equipment (ITE) Products

1. This section shall apply to the electromagnetic compatibility of information technology equipment (ITE) products.

2. For the purposes of this section:

ITE product means any device or system or component thereof that has a primary function of entry, storage, display, retrieval, transmission, processing, switching or control (or combinations thereof) of data or telecommunication messages by means other than radio transmission or reception and, for greater certainty, excludes any product or component thereof that has a primary function of radio transmission or reception;

electromagnetic compatibility means the ability of an equipment or system to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances with respect to any other device or system in that environment; and

supplier's declaration of conformity means an attestation by a supplier that a product meets a specified standard or technical regulation based on an evaluation of the results of conformity assessment procedures.

3. If a Party requires positive assurance that an ITE product meets a standard or technical regulation for electromagnetic compatibility, it shall accept a

supplier's declaration of conformity.[11]

4. The Parties recognise that a Party may require testing, for example, by an independent accredited laboratory, in support of a supplier's declaration of conformity, registration of the supplier's declaration of conformity, or submission of evidence necessary to support the supplier's declaration of conformity.

5. Nothing in paragraph 3 shall prevent a Party from verifying a supplier's declaration of conformity.

6. Paragraph 3 shall not apply with respect to a product:

(a) that a Party regulates as a medical device, a medical device system or a component of a medical device or medical device system; or

(b) for which the Party demonstrates that there is a high risk that the product will cause harmful electromagnetic interference with a safety or radio transmission or reception device or system.

Section C: Regional Cooperation Activities on Telecommunications Equipment

1. This section shall apply to telecommunications equipment.

2. The Parties are encouraged to implement the APEC *Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* of May 8, 1998 (MRA-TEL) and the APEC *Mutual Recognition Arrangement for Equivalence of Technical Requirements* of October 31, 2010 (MRA-ETR) with respect to each other or other arrangements to facilitate trade in telecommunications equipment.

[11] Nothing in this paragraph shall be construed to require Mexico to apply this paragraph in a manner inconsistent with its *Ley Federal Sobre Metrología y Normalización*.

ANNEX 8-C

PHARMACEUTICALS

1. This Annex shall apply to the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorisation[12] and notification procedures of central government bodies that may affect trade in pharmaceutical products between the Parties. This Annex shall not apply to a technical specification prepared by a governmental entity for its production or consumption requirements or a sanitary or phytosanitary measure.

2. A Party's obligations under this Annex shall apply to any product that the Party defines as a pharmaceutical product pursuant to paragraph 3. For the purposes of this Annex, preparation of a technical regulation, standard, conformity assessment procedure or marketing authorisation includes, as appropriate, the evaluation of the risks involved, the need to adopt a measure to address those risks, the review of relevant scientific or technical information, and the consideration of the characteristics or design of alternative approaches.

3. Each Party shall define the scope of the products subject to its laws and regulations for pharmaceutical products in its territory and make that information publicly available.

4. Recognising that each Party is required to define the scope of products covered by this Annex pursuant to paragraph 3, for the purposes of this Annex, a pharmaceutical product may include a human drug or biologic that is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease or condition in humans, or intended to affect the structure or any function of the body of a human.

5. Each Party shall identify the agency or agencies that are authorised to regulate pharmaceutical products in its territory and make that information publicly available.

6. If more than one agency is authorised to regulate pharmaceutical products within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and take reasonable measures to eliminate unnecessary duplication of any regulatory requirements resulting for pharmaceutical products.

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[12] The application of this Annex to marketing authorisations is without prejudice to whether a marketing authorisation meets the definition of a technical regulation, standard or conformity assessment procedure.

7. The Parties shall seek to collaborate through relevant international initiatives, such as those aimed at harmonisation, as well as regional initiatives that support those international initiatives, as appropriate, to improve the alignment of their respective regulations and regulatory activities for pharmaceutical products.

8. When developing or implementing regulations for marketing authorisation of pharmaceutical products, each Party shall consider relevant scientific or technical guidance documents developed through international collaborative efforts. Each Party is encouraged to consider regionally-developed scientific or technical guidance documents that are aligned with international efforts.

9. Each Party shall observe the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to a marketing authorisation, notification procedure or elements of either that the Party prepares, adopts or applies for pharmaceutical products and that do not fall within the definition of a technical regulation or conformity assessment procedure.

10. Each Party recognises that the applicant is responsible for providing sufficient information to a Party for it to make a regulatory determination on a pharmaceutical product.

11. Each Party shall make its determination whether to grant marketing authorisation for a specific pharmaceutical product on the basis of:

(a) information, including, if appropriate, pre-clinical and clinical data, on safety and efficacy;

(b) information on the manufacturing quality of the product;

(c) labelling information related to the safety, efficacy and use of the product; and

(d) other matters that may directly affect the health or safety of the user of the product.

To this end, no Party shall require sale data or related financial data concerning the marketing of the product as part of the determination. Further, each Party shall endeavour to not require pricing data as part of the determination.

12. Each Party shall administer any marketing authorisation process that it maintains for pharmaceutical products in a timely, reasonable, objective, transparent and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks.

(a) Each Party shall provide an applicant that requests marketing authorisation for a pharmaceutical product with its determination

within a reasonable period of time. The Parties recognise that the reasonable period of time required to make a marketing authorisation determination may be affected by factors such as the novelty of a product or regulatory implications that may arise.

(b) If a Party determines that a marketing authorisation application for a pharmaceutical product under review in its jurisdiction has deficiencies that have led or will lead to a decision not to authorise its marketing, that Party shall inform the applicant that requests marketing authorisation and provide reasons why the application is deficient.

(c) If a Party requires a marketing authorisation for a pharmaceutical product, the Party shall ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant. For greater certainty, the Party may maintain an appeal or review process that is either internal to the regulatory body responsible for the marketing authorisation determination, such as a dispute resolution or review process, or external to the regulatory body.

(d) If a Party requires periodic re-authorisation for a pharmaceutical product that has previously received marketing authorisation from the Party, the Party shall allow the pharmaceutical product to remain on its market under the conditions of the previous marketing authorisation pending a decision on the periodic reauthorisation, unless the Party identifies a significant health or safety concern.[13, 14]

13. When developing regulatory requirements for pharmaceutical products, a Party shall consider its available resources and technical capacity in order to minimise the implementation of requirements that could:

(a) inhibit the effectiveness of procedures for ensuring the safety, efficacy or manufacturing quality of pharmaceutical products; or

[13] For greater certainty, the Parties recognise that an application for reauthorisation that is not filed in a timely manner; that contains insufficient information; or that is otherwise inconsistent with a Party's requirements, is deficient for the purposes of the reauthorisation decision.

[14] Viet Nam may comply with its obligations under this paragraph by allowing for applications for reauthorisation to be filed within the 12-month period, prior to the expiry date of the marketing authorisation, or within a period prior to the expiry date of the marketing authorisation that is six months longer than the period provided for in Viet Nam's Ministry of Health Circular on Registration of Drugs, or subsequent relevant instrument, for the Ministry to grant a re-authorisation or re-registration application for a previously registered pharmaceutical products, whichever is longer.

(b) lead to substantial delays in marketing authorisation regarding pharmaceutical products for sale on that Party's market.

14. No Party shall require that a pharmaceutical product receive marketing authorisation from a regulatory authority in the country of manufacture as a condition for the product to receive marketing authorisation from that Party.

15. For greater certainty, a Party may accept a prior marketing authorisation that is issued by another regulatory authority as evidence that a product may meet its own requirements. If there are regulatory resource limitations, a Party may require a marketing authorisation from one of a number of reference countries to be established and made public by that Party as a condition for the product's marketing authorisation from that Party.

16. For a marketing authorisation application for a pharmaceutical product, each Party shall review the safety, efficacy and manufacturing quality information submitted by the applicant requesting marketing authorisation in a format that is consistent with the principles found in the *International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use* Common Technical Document (CTD), as may be amended, recognising that the CTD may not address all aspects relevant to a Party's determination to approve marketing authorisation for a particular product.[15]

17. The Parties shall seek to improve their collaboration on pharmaceutical inspection, and to this end, each Party shall, with respect to the inspection of a pharmaceutical product within the territory of another Party:

(a) notify the other Party prior to conducting an inspection, unless there are reasonable grounds to believe that doing so could prejudice the effectiveness of the inspection;

(b) if practicable, permit representatives of the other Party's competent authority to observe that inspection; and

(c) notify the other Party of its findings as soon as possible following the inspection and, if the findings will be publicly released, no later than a reasonable time before release. The inspecting Party is not required to notify the other Party of its findings if it considers that those findings are confidential and should not be disclosed.

18. The Parties shall seek to apply relevant scientific guidance documents that are developed through international collaborative efforts with respect to inspection of pharmaceuticals.

[15] For Viet Nam, this obligation shall not apply until January 1, 2019.

ANNEX 8-D

COSMETICS

1. This Annex shall apply to the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorisation[16] and notification procedures of central government bodies that may affect trade in cosmetic products between the Parties. This Annex shall not apply to a technical specification prepared by a governmental entity for its production or consumption requirements or a sanitary or phytosanitary measure.

2. A Party's obligations under this Annex shall apply to any product that the Party defines as a cosmetic product pursuant to paragraph 3. For the purposes of this Annex, preparation of a technical regulation, standard, conformity assessment procedure or marketing authorisation includes, as appropriate, the evaluation of the risks involved, the need to adopt a measure to address those risks, the review of relevant scientific or technical information, and the consideration of the characteristics or design of alternative approaches.

3. Each Party shall define the scope of the products subject to its laws and regulations for cosmetic products in its territory and make that information publicly available.

4. Recognising that each Party is required to define the scope of products covered by this Annex pursuant to paragraph 3, for the purposes of this Annex, a cosmetic product may include a product that is intended to be rubbed, poured, sprinkled, sprayed on or otherwise applied to the human body including the mucous membrane of the oral cavity and teeth, to cleanse, beautify, protect, promote attractiveness or alter the appearance.

5. Each Party shall identify the agency or agencies that are authorised to regulate cosmetic products in its territory and make that information publicly available.

6. If more than one agency is authorised to regulate cosmetic products within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and eliminate unnecessary duplication of any regulatory requirements resulting for cosmetic products.

7. The Parties shall seek to collaborate through relevant international initiatives, such as those aimed at harmonisation, as well as regional initiatives

[16] The application of this Annex to marketing authorisations is without prejudice to whether a marketing authorisation meets the definition of a technical regulation, standard or conformity assessment procedure.

that support of those international initiatives, as appropriate, to improve the alignment of their respective regulations and regulatory activities for cosmetic products.

8. When developing or implementing regulations for cosmetic products, each Party shall consider relevant scientific or technical guidance documents developed through international collaborative efforts. Each Party is encouraged to consider regionally-developed scientific or technical guidance documents that are aligned with international efforts.

9. Each Party shall observe the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to a marketing authorisation, notification procedure or elements of either that the Party prepares, adopts or applies for cosmetic products and that do not fall within the definition of a technical regulation or conformity assessment procedure.

10. Each Party shall ensure that it applies a risk-based approach to the regulation of cosmetic products.

11. In applying a risk-based approach in regulating cosmetic products, each Party shall take into account that cosmetic products are generally expected to pose less potential risk to human health or safety than medical devices or pharmaceutical products.

12. No Party shall conduct separate marketing authorisation processes or sub-processes for cosmetic products that differ only with respect to shade extensions or fragrance variants, unless a Party identifies a significant human health or safety concern.

13. Each Party shall administer any marketing authorisation process that it maintains for cosmetics products in a timely, reasonable, objective, transparent and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks.

(a) If a Party requires marketing authorisation for a cosmetic product, that Party shall provide an applicant with its determination within a reasonable period of time.

(b) If a Party requires marketing authorisation for a cosmetic product and it determines that a marketing authorisation application for a cosmetic product under review in its jurisdiction has deficiencies that have led or will lead to a decision not to authorise its marketing, that Party shall inform the applicant that requests marketing authorisation and provide reasons why the application is deficient.

(c) If a Party requires a marketing authorisation for a cosmetic product, the Party shall ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant. For greater certainty, the Party may maintain an appeal or review process that is either internal to the regulatory body responsible for the marketing authorisation determination, such as a dispute resolution or review process, or external to the regulatory body.

(d) If a Party has granted marketing authorisation for a cosmetic product in its territory, the Party shall not subject the product to periodic re-assessment procedures as a condition of retaining its marketing authorisation.

14. If a Party maintains a marketing authorisation process for cosmetic products, that Party shall consider replacing this process with other mechanisms such as voluntary or mandatory notification and post-market surveillance.

15. When developing regulatory requirements for cosmetic products, a Party shall consider its available resources and technical capacity in order to minimise the implementation of requirements that could:

(a) inhibit the effectiveness of procedures for ensuring the safety or manufacturing quality of cosmetic products; or

(b) lead to substantial delays in marketing authorisation regarding cosmetic products for sale on that Party's market.

16. No Party shall require the submission of marketing information, including with respect to prices or cost, as a condition for the product receiving marketing authorisation.

17. No Party shall require a cosmetic product to be labelled with a marketing authorisation or notification number.[17]

18. No Party shall require that a cosmetic product receive marketing authorisation from a regulatory authority in the country of manufacture, as a condition for the product receiving marketing authorisation from the Party. For greater certainty, this provision does not prohibit a Party from accepting a prior marketing authorisation issued by another regulatory authority as evidence that a product may meet its own requirements.

[17] This paragraph does not apply to Chile and Peru. Within a period of no more than five years from the date of the entry into force of this Agreement, Chile and Peru shall each review their respective labelling requirements in order to examine whether other regulatory mechanisms can be implemented, in a manner consistent with their obligations under this Chapter and the TBT Agreement. Chile and Peru shall separately report to the Committee about their review upon request of another Party.

19. No Party shall require that a cosmetic product be accompanied by a certificate of free sale as a condition of marketing, distribution or sale in the Party's territory.

20. If a Party requires a manufacturer or supplier of a cosmetic product to indicate information on the product's label, the Party shall permit the manufacturer or supplier to indicate the required information by relabelling the product or by using supplementary labelling of the product in accordance with the Party's domestic requirements after importation but prior to offering the product for sale or supply in the Party's territory.

21. No Party shall require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety. A Party may, however, consider the results of animal testing to determine the safety of a cosmetic product.

22. If a Party prepares or adopts good manufacturing practice guidelines for cosmetic products, it shall use relevant international standards for cosmetic products, or the relevant parts of them, as a basis for its guidelines unless those international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

23. Each Party shall endeavour to share, subject to its laws and regulations, information from post-market surveillance of cosmetic products.

24. Each Party shall endeavour to share information on its findings or the findings of its relevant institutions regarding cosmetic ingredients.

25. Each Party shall endeavour to avoid re-testing or re-evaluating cosmetic products that differ only with respect to shade extensions or fragrance variants, unless conducted for human health or safety purposes.

ANNEX 8-E

MEDICAL DEVICES

1. This Annex shall apply to the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorisation[18] and notification procedures of central government bodies that may affect trade in medical devices between the Parties. This Annex shall not apply to a technical specification prepared by a governmental entity for its production or consumption requirements or a sanitary or phytosanitary measure.

2. A Party's obligations under this Annex shall apply to any product that the Party defines as a medical device pursuant to paragraph 3. For the purposes of this Annex, preparation of a technical regulation, standard, conformity assessment procedure or marketing authorisation includes, as appropriate the evaluation of the risks involved, the need to adopt a measure to address those risks, the review of relevant scientific or technical information, and the consideration of the characteristics or design of alternative approaches.

3. Each Party shall define the scope of the products subject to its laws and regulations for medical devices in its territory and make that information publicly available.

4. Recognising that each Party is required to define the scope of products covered by this Annex pursuant to paragraph 3, each Party should define the scope of products subject to its laws and regulations for medical devices in a manner that is consistent with the meaning assigned to the term "medical device" in the *Definition of the Terms 'Medical Device' and 'In Vitro Diagnostic (IVD) Medical Device'* endorsed by the Global Harmonization Task Force on May 16, 2012, as may be amended.

5. Each Party shall identify the agency or agencies that are authorised to regulate medical devices in its territory and make that information publicly available.

6. If more than one agency is authorised to regulate medical devices within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and to take reasonable measures to eliminate unnecessary duplication of any regulatory requirements resulting for medical devices.

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[18] The application of this Annex to marketing authorisations is without prejudice to whether a marketing authorisation meets the definition of a technical regulation, standard, or conformity assessment procedure.

7. The Parties shall seek to collaborate through relevant international initiatives, such as those aimed at harmonisation, as well as regional initiatives that support of those international initiatives, as appropriate, to improve the alignment of their respective regulations and regulatory activities for medical devices.

8. When developing or implementing regulations for marketing authorisation of medical devices, each Party shall consider relevant scientific or technical guidance documents developed through international collaborative efforts. Each Party is encouraged to consider regionally-developed scientific or technical guidance documents that are aligned with international efforts.

9. Each Party shall observe the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to a marketing authorisation, notification procedure or elements of either that the Party prepares, adopts or applies for medical devices and that do not fall within the definition of a technical regulation or conformity assessment procedure.

10. Recognising that different medical devices pose different levels of risk, each Party shall classify medical devices based on risk, taking into account scientifically relevant factors. Each Party shall ensure that, when it regulates a medical device, it regulates the device consistent with the classification the Party has assigned to that device.

11. Each Party recognises that the applicant is responsible for providing sufficient information to a Party for it to make a regulatory determination on a medical device.

12. Each Party shall make a determination whether to grant marketing authorisation for a specific medical device on the basis of:

(a) information, including, if appropriate, clinical data, on safety and efficacy;

(b) information on performance, design and manufacturing quality of the device;

(c) labelling information related to safety, efficacy and use of the device; and

(d) other matters that may directly affect the health or safety of the user of the device.

To this end, no Party shall require sale data, pricing or related financial data concerning the marketing of the medical device.

13. Each Party shall administer any marketing authorisation process that it maintains for medical devices in a timely, reasonable, objective, transparent and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks.

(a) Each Party shall provide an applicant that requests marketing authorisation for a medical device with its determination within a reasonable period of time. The Parties recognise that the reasonable period of time required to make a marketing authorisation determination may be affected by factors such as the novelty of a device or regulatory implications that may arise.

(b) If a Party determines that a marketing authorisation application for a medical device under review in its jurisdiction has deficiencies that have led or will lead to a decision not to authorise its marketing, that Party shall inform the applicant that requests marketing authorisation and provide reasons why the application is deficient.

(c) If a Party requires marketing authorisation for a medical device, the Party shall ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant. For greater certainty, the Party may maintain an appeal or review process that is either internal to the regulatory body responsible for the marketing authorisation determination, such as a dispute resolution or review process, or external to the regulatory body.

(d) If a Party requires periodic re-authorisation for a medical device that has previously received marketing authorisation from the Party, the Party shall allow the medical device to remain on its market under the conditions of the previous marketing authorisation pending a decision on the periodic re-authorisation, unless a Party identifies a significant health or safety concern.

14. When developing regulatory requirements for medical devices, a Party shall consider its available resources and technical capacity in order to minimise the implementation of requirements that could:

(a) inhibit the effectiveness of procedures for ensuring the safety, efficacy or manufacturing quality of medical devices; or

(b) lead to substantial delays in marketing authorisation regarding medical devices for sale on that Party's market.

15. No Party shall require that a medical device receive a marketing authorisation from a regulatory authority in the country of manufacture as a

condition for the medical device to receive marketing authorisation from that Party.

16. For greater certainty, a Party may accept a prior marketing authorisation that is issued by another regulatory authority as evidence that a medical device may meet its own requirements. If there are regulatory resource limitations, a Party may require a marketing authorisation from one of a number of reference countries established and made public by that Party as a condition for the medical device's marketing authorisation from that Party.

17. If a Party requires a manufacturer or supplier of a medical device to indicate information on the product's label, the Party shall permit the manufacturer or supplier to indicate the required information by relabelling the product or by using supplementary labelling of the device in accordance with the Party's domestic requirements after importation but prior to offering the device for sale or supply in the Party's territory.

ANNEX 8-F

PROPRIETARY FORMULAS FOR PREPACKAGED FOODS AND FOOD ADDITIVES

1. This Annex shall apply to the preparation, adoption and application of technical regulations and standards of central government bodies that are related to prepackaged foods and food additives. This Annex shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements or sanitary and phytosanitary measures.

2. For the purposes of this Annex, the terms "food," "food additive" and "prepackaged" have the same meanings as set out in the *Codex General Standard for the Labelling of Pre-Packaged Food* (CODEX STAN 1-1985) and the *Codex General Standard for the Labelling of Food Additives When Sold as Such* (CODEX STAN 107-1981), as may be amended.

3. When gathering information relating to proprietary formulas in the preparation, adoption and application of technical regulations and standards, each Party shall:

(a) ensure that its information requirements are limited to what is necessary to achieve its legitimate objective; and

(b) ensure that the confidentiality of information about products originating in the territory of another Party arising from, or supplied in connection with, the preparation, adoption, and application of technical regulations and standards, is respected in the same way as for domestic products and in a manner that protects legitimate commercial interests.

If a Party gathers confidential information relating to proprietary formulas, it may use that information in the course of administrative and judicial proceedings in accordance with its law, provided that the Party has procedures to maintain the confidentiality of the information in the course of those proceedings.

4. Nothing in paragraph 3 shall prevent a Party from requiring ingredients to be listed on labels consistent with CODEX STAN 1-1985 and CODEX STAN 107-1981, as may be amended, except when those standards would be an ineffective or inappropriate means for the fulfilment of a legitimate objective.

ANNEX 8-G

ORGANIC PRODUCTS

1. This Annex shall apply to a Party if that Party is developing or maintains technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic for sale or distribution within its territory.

2. Each Party is encouraged to take steps to:

(a) exchange information on matters that relate to organic production, certification of organic products, and related control systems; and

(b) cooperate with other Parties to develop, improve and strengthen international guidelines, standards and recommendations that relate to trade in organic products.

3. If a Party maintains a requirement that relates to the production, processing or labelling of products as organic, it shall enforce that requirement.

4. A Party is encouraged to consider, as expeditiously as possible, a request from another Party for recognition or equivalence of a technical regulations, standards or conformity assessment procedures that relates to the production, processing, or labelling of products of another Party as organic. Each Party is encouraged to accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products of that other Party as organic, if the Party is satisfied that the technical regulations, standards or conformity assessment procedures of that other Party adequately fulfils the objectives of the Party's technical regulations, standards or conformity assessment procedures. If a Party does not accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing, or labelling of products of that other Party as organic, it shall, on request of that other Party, explain its reasons.

5. Each Party is encouraged to participate in technical exchanges to support improvement and greater alignment of technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic.

CHAPTER 9

INVESTMENT

Section A

Article 9.1: Definitions

For the purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with another Party. If that investor is a natural person, who is a permanent resident of a Party and a national of another Party, that natural person may not submit a claim to arbitration against that latter Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;[1]

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement*;

ICC Arbitration Rules means the arbitration rules of the International Chamber of Commerce;

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[1] For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington, March 18, 1965;

Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stock and other forms of equity participation in an enterprise;

(c) bonds, debentures, other debt instruments and loans;[2, 3]

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law;[4] and

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[2] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[3] A loan issued by one Party to another Party is not an investment.

[4] Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

investment agreement means a written agreement[5] that is concluded and takes effect after the date of entry into force of this Agreement[6] between an authority at the central level of government[7] of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 9.25.2 (Governing Law), on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, and that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as oil, natural gas, rare earth minerals, timber, gold, iron ore and other similar resources,[8] including for their exploration, extraction, refining, transportation, distribution or sale;

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[5] "Written agreement" refers to an agreement in writing, negotiated and executed by both parties, whether in a single instrument or in multiple instruments. For greater certainty:

(a) a unilateral act of an administrative or judicial authority, such as a permit, licence, authorisation, certificate, approval, or similar instrument issued by a Party in its regulatory capacity, or a subsidy or grant, or a decree, order or judgment, standing alone; and

(b) an administrative or judicial consent decree or order,

shall not be considered a written agreement.

[6] For greater certainty, a written agreement that is concluded and takes effect after the entry into force of this Agreement does not include the renewal or extension of an agreement in accordance with the provisions of the original agreement, and on the same or substantially the same terms and conditions as the original agreement, which has been concluded and entered in force prior to the entry into force of this Agreement.

[7] For the purposes of this definition, "authority at the central level of government" means, for unitary states, an authority at the ministerial level of government. Ministerial level of government means government departments, ministries or other similar authorities at the central level of government, but does not include: (a) a governmental agency or organ established by a Party's constitution or a particular legislation that has a separate legal personality from government departments, ministries or other similar authorities under a Party's law, unless the day to day operations of that agency or organ are directed or controlled by government departments, ministries or other similar authorities; or (b) a governmental agency or organ that acts exclusively with respect to a particular region or province.

[8] For the avoidance of doubt, this subparagraph does not include an investment agreement with respect to land, water or radio spectrum.

(b) to supply services on behalf of the Party for consumption by the general public for: power generation or distribution, water treatment or distribution, telecommunications, or other similar services supplied on behalf of the Party for consumption by the general public;[9] or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams or pipelines or other similar projects; provided, however, that the infrastructure is not for the exclusive or predominant use and benefit of the government;

investment authorisation[10] means an authorisation that the foreign investment authority of a Party[11] grants to a covered investment or an investor of another Party;

investor of a non-Party means, with respect to a Party, an investor that attempts to make,[12] is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party;

LCIA Arbitration Rules means the arbitration rules of the London Court of International Arbitration;

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[9] For the avoidance of doubt, this subparagraph does not cover correctional services, healthcare services, education services, childcare services, welfare services or other similar social services.

[10] For greater certainty, the following are not encompassed within this definition: (i) actions taken by a Party to enforce laws of general application, such as competition, environmental, health or other regulatory laws; (ii) non-discriminatory licensing regimes; and (iii) a Party's decision to grant to a covered investment or an investor of another Party a particular investment incentive or other benefit, that is not provided by a foreign investment authority in an investment authorisation.

[11] For the purposes of this definition, "foreign investment authority" means, as of the date of entry into force of this Agreement: (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia's foreign investment policy including the *Foreign Acquisitions and Takeovers Act 1975*; (b) for Canada, the Minister of Industry, but only when issuing a notice under Section 21 or 22 of the *Investment Canada Act*; (c) for Mexico, the National Commission of Foreign Investments (*Comisión Nacional de Inversiones Extranjeras*); and (d) for New Zealand, the Minister of Finance, the Minister of Fisheries or the Minister for Land Information, to the extent that they make a decision to grant consent under the *Overseas Investment Act 2005*.

[12] For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (a) a modification or amendment of that debt instrument, as provided for under its terms, or (b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process;

New York Convention means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;

non-disputing Party means a Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Article 9.2: Scope

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

(a) investors of another Party;

(b) covered investments; and

(c) with respect to Article 9.10 (Performance Requirements) and Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives), all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

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

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.[13]

3. For greater certainty, this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

Article 9.3: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

Article 9.4: National Treatment[14]

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

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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[13] For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

[14] For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 9.5: Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B (Investor-State Dispute Settlement).

Article 9.6: Minimum Standard of Treatment[15]

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

[15] Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9-A (Customary International Law).

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 9.7: Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 9.12.6(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.4 (National Treatment) but for Article 9.12.6(b) (Non-Conforming Measures).

Article 9.8: Expropriation and Compensation[16]

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose;[17, 18]

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

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

(d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

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[16] Article 9.8 (Expropriation and Compensation) shall be interpreted in accordance with Annex 9-B (Expropriation) and is subject to Annex 9-C (Expropriation Relating to Land).

[17] For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use".

[18] For the avoidance of doubt: (i) if Brunei Darussalam is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Code* (Cap. 40) and the *Land Acquisition Act* (Cap. 41), as of the date of entry into force of the Agreement for it; and (ii) if Malaysia is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Acquisitions Act 1960*, *Land Acquisition Ordinance 1950* of the State of Sabah and the *Land Code 1958* of the State of Sarawak, as of the date of entry into force of the Agreement for it.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with Chapter 18 (Intellectual Property) and the TRIPS Agreement.[19]

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

Article 9.9: Transfers[20]

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;[21]

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

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[19] For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

[20] For greater certainty, this Article is subject to Annex 9-E (Transfers).

[21] For greater certainty, contributions to capital include the initial contribution.

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

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

(e) payments made pursuant to Article 9.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 9.8 (Expropriation and Compensation); and

(f) payments arising out of a dispute.

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

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws[22] relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) criminal or penal offences;

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

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

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

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[22] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

Article 9.10: Performance Requirements

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:[23]

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment;

(e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

(h) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party;[24] or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or

(i) to adopt:

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[23] For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

[24] For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

(i) a given rate or amount of royalty under a licence contract; or

(ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract[25] freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the licence contract is concluded between the investor and a Party.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment; or

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraphs 1(f), 1(h) and 1(i) shall not apply:

[25] A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(i) if a Party authorises use of an intellectual property right in accordance with Article 31[26] of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.[27, 28]

(c) Paragraph 1(i) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.

(d) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a) and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(e) Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(f) Paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1(i), 2(a) and 2(b) shall not apply to government procurement.

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[26] The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN (01)/DEC/2).

[27] The Parties recognise that a patent does not necessarily confer market power.

[28] In the case of Brunei Darussalam, for a period of 10 years after the entry into force of this Agreement for it or until it establishes a competition authority or authorities, whichever occurs earlier, the reference to the Party's competition laws includes competition regulations.

(g) Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

(h) Paragraphs (1)(h) and (1)(i) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.

4. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

5. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.

Article 9.11: Senior Management and Boards of Directors

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 9.12: Non-Conforming Measures

1. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors).[29]

2. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in paragraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.[30]

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[29] With respect to Viet Nam, Annex 9-I (Non-Conforming Measures Ratchet Mechanism) applies.

[30] For greater certainty, any Party may request consultations with another Party regarding a non-conforming measure applied by a central level of government, as referred to in paragraph 1(a)(i).

4. No Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. (a) Article 9.4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

(b) Article 9.5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 4 of the TRIPS Agreement.

6. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II, pursuant to this Article, shall be made in accordance with Article 30.2 (Amendments).

Article 9.13: Subrogation

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the

covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 9.14: Special Formalities and Information Requirements

1. Nothing in Article 9.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 9.4 (National Treatment) and Article 9.5 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 9.15: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of any Party other than the denying Party.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 9.16: Investment and Environmental, Health and other Regulatory Objectives

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

Article 9.17: Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

Section B: Investor-State Dispute Settlement

Article 9.18: Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.

2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.

3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 9.19: Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation):

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached:

(A) an obligation under Section A;

(B) an investment authorisation;[31] or

(C) an investment agreement; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached:

(A) an obligation under Section A;

(B) an investment authorisation; or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. When the claimant submits a claim pursuant to paragraph 1(a)(i)(B), 1(a)(i)(C), 1(b)(i)(B) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.[32]

3. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its

[31] Without prejudice to a claimant's right to submit to arbitration other claims under this Article, a claimant shall not submit to arbitration a claim under subparagraph (a)(i)(B) or subparagraph (b)(i)(B) that a Party covered by Annex 9-H has breached an investment authorisation by enforcing conditions or requirements under which the investment authorisation was granted.

[32] In the case of investment authorisations, this paragraph shall apply only to the extent that the investment authorisation, including instruments executed after the date the authorisation was granted, creates rights and obligations for the disputing parties.

intention to submit a claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement, investment authorisation or investment agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

(a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration (notice of arbitration):

(a) referred to in the ICSID Convention is received by the Secretary-General;

(b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

(d) referred to under any arbitral institution or arbitration rules selected under paragraph 4(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 4 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

7. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 9.20: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an "agreement in writing"; and

(c) Article I of the Inter-American Convention for an "agreement".

Article 9.21: Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.19.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.19.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

Article 9.22: Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 9.19.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 9.19.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. In the appointment of arbitrators to a tribunal for claims submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(b)(i)(B), Article 9.19.1(a)(i)(C) or Article 9.19.1(b)(i)(C), each disputing party shall take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2 (Governing Law). If the parties fail to agree on the appointment of the presiding arbitrator, the Secretary-General shall also take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2.

6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.

Article 9.23: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 9.19.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided

that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards) or that a claim is manifestly without legal merit.

(a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment

thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to

Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.29 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.24 (Transparency of Arbitral Proceedings).

Article 9.24: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation);

(d) minutes or transcripts of hearings of the tribunal, if available; and

(e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such

information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information).[33]

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the

[33] For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

Article 9.25: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.[34]

2. Subject to paragraph 3 and the other provisions of this Section, when a claim is submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(a)(i)(C), Article 9.19.1(b)(i)(B) or Article 9.19.1(b)(i)(C), the tribunal shall apply:

(a) the rules of law applicable to the pertinent investment authorisation or specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may agree otherwise; or

(b) if, in the pertinent investment agreement the rules of law have not been specified or otherwise agreed:

(i) the law of the respondent, including its rules on the conflict of laws;[35] and

(ii) such rules of international law as may be applicable.

3. A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

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[34] For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

[35] The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case. For greater certainty, the law of the respondent includes the relevant law governing the investment agreement, including law on damages, mitigation, interest and estoppel.

Article 9.26: Interpretation of Annexes

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f) (Functions of the Commission) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 9.27: Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

Article 9.28: Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 9.22 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether a prior hearing shall be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 9.22 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 9.22 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 9.29: Awards

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine

how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected

pursuant to Article 9.19.4(d) (Submission of a Claim to Arbitration):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 28.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) in accordance with Article 28.17 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 9.30: Service of Documents

Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 9-D (Service of Documents on a Party Under Section B). A Party shall promptly make publicly available and notify the other Parties of any change to the place referred to in that Annex.

ANNEX 9-A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 9-B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 9.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 9.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[36] and

(iii) the character of the government action.

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as

[36] For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

public health,[37] safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

[37] For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

ANNEX 9-C

EXPROPRIATION RELATING TO LAND

1. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Singapore is the expropriating Party, any measure of direct expropriation relating to land shall be for a purpose and upon payment of compensation at market value, in accordance with the applicable domestic legislation[38] and any subsequent amendments thereto relating to the amount of compensation where such amendments provide for the method of determination of the compensation which is no less favourable to the investor for its expropriated investment than such method of determination in the applicable domestic legislation as at the time of entry into force of this Agreement for Singapore.

2. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be: (i) for a purpose in accordance with the applicable domestic legislation;[39] and (ii) upon payment of compensation equivalent to the market value, while recognising the applicable domestic legislation.

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[38] The applicable domestic legislation is the *Land Acquisition Act* (Cap. 152) as at the date of entry into force of this Agreement for Singapore.

[39] The applicable domestic legislation is Viet Nam's *Land Law*, Law No. 45/2013/QH13 and *Decree 44/2014/ND-CP Regulating Land Prices*, as at the date of entry into force of this Agreement for Viet Nam.

ANNEX 9-D

SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B (INVESTOR-STATE DISPUTE SETTLEMENT)

Australia

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221
Australia

Brunei Darussalam

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Brunei Darussalam by delivery to:

The Permanent Secretary (Trade)
Ministry of Foreign Affairs and Trade
Jalan Subok
Bandar Seri Begawan, BD 2710
Brunei Darussalam

Canada

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Canada by delivery to:

Office of the Deputy Attorney General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

Chile

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Chile by delivery to:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile
Teatinos 180
Santiago
Chile

Japan

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Japan by delivery to:

Economic Affairs Bureau
Ministry of Foreign Affairs
2-2-1 Kasumigaseki, Chiyoda-ku
Tokyo
Japan

Malaysia

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Malaysia by delivery to:

Attorney General's Chambers
Level 16, No. 45 Persiaran Perdana
Precint 4
Federal Government Administrative Centre
62100 Putrajaya
Malaysia

Mexico

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Mexico by delivery to:

Dirección General de Consultoría Jurídica de Comercio Internacional
Secretaría de Economía
Alfonso Reyes #30, piso 17
Col. Hipódromo Condesa
Del. Cuauhtémoc
México D.F.
C.P. 06140

New Zealand

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on New Zealand by delivery to:

The Secretary
Ministry of Foreign Affairs and Trade
195 Lambton Quay
Wellington 6011
New Zealand

Peru

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Peru by delivery to:

Dirección General de Asuntos de Economía Internacional,
Competencia y Productividad
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú

Singapore

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to:

Permanent Secretary
Ministry of Trade & Industry
100 High Street #09-01
Singapore 179434
Singapore

United States

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C.20520
United States of America

Viet Nam

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Viet Nam by delivery to:

General Director
Department of International Law
Ministry of Justice
60 Tran Phu Street
Ba Dinh District
Ha Noi
Viet Nam

ANNEX 9-E[40]

TRANSFERS

Chile

1. Notwithstanding Article 9.9 (Transfers), Chile reserves the right of the Central Bank of Chile (*Banco Central de Chile*) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (*Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile*), and *Decreto con Fuerza de Ley N°3 de 1997*, *Ley General de Bancos* (General Banking Act) and *Ley 18.045*, *Ley de Mercado de Valores* (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (*encaje*).

2. Notwithstanding paragraph 1, the reserve requirements that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

[40] For greater certainty, this Annex shall apply to transfers covered by Article 9.9 (Transfers) and payments and transfers covered by Article 10.12 (Payments and Transfers).

ANNEX 9-F

DL 600

Chile

1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (*Decreto Ley 600, Estatuto de la Inversión Extranjera*) (hereinafter referred to in this Annex as "DL 600"), or its successors, and to Law 18.657, Foreign Capital Investment Fund Law (*Ley 18.657, Ley de Fondos de Inversión de Capital Extranjero*), with respect to:

(a) The right of the Foreign Investment Committee of Chile (*Comité de Inversiones Extranjeras*) or its successor to accept or reject applications to invest through an investment contract under DL 600[41] and the right to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657.

(b) The right to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of a Party or from the partial or complete liquidation of the investment which may not take place until a period not to exceed:

(i) in the case of an investment made pursuant to DL 600, one year from the date of transfer to Chile; or

(ii) in the case of an investment made pursuant to Law 18.657,[42] five years from the date of transfer to Chile.

(c) The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programmes in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of another Party or from the partial or complete liquidation

[41] The authorisation and execution of an investment contract under DL 600 by an investor of a Party or a covered investment does not create any right on the part of the investor or the covered investment to engage in particular activities in Chile.

[42] Law 18.657 was derogated on May 1, 2014 by law 20.712. The transfer requirement established under subparagraph (b)(ii) will only be applicable to investments made pursuant to Law 18.657 prior to May 1, 2014 and not to investments made pursuant to Law 20.712.

of the investment for a period not to exceed five years from the date of transfer to Chile.

2. For greater certainty, except to the extent that paragraph 1(b) or (c) provides an exception to Article 9.9 (Transfers), the investment entered through an investment contract under DL 600, through Law 18.657 or through any future special voluntary investment programme, will be subject to the obligations and commitments of this Chapter, to the extent that the investment is a covered investment under Chapter 9 (Investment).

ANNEX 9-G

PUBLIC DEBT

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation pursuant to Article 9.8 (Expropriation and Compensation).

2. No claim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B (Investor-State Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment).

3. Notwithstanding Article 9.19.4 (Submission of a Claim to Arbitration), and subject to paragraph 2, an investor of another Party shall not submit a claim under Section B (Investor-State Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment), unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation).[43]

[43] Paragraphs 2 and 3 of this Annex do not apply to any claim under Section B (Investor-State Dispute Settlement) against Singapore or the United States.

ANNEX 9-H

1. A decision under Australia's foreign investment policy, which consists of the *Foreign Acquisitions and Takeovers Act 1975*, *Foreign Acquisitions and Takeovers Regulations 1989*, *Financial Sector (Shareholdings) Act 1998* and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

2. A decision by Canada following a review under the *Investment Canada Act* (R.S.C. 1985, c.28 (1st Supp.)), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

3. A decision by the National Commission on Foreign Investment (*Comisión Nacional de Inversiones Extranjeras*) following a review pursuant to the entry at Annex I – Mexico – 6 with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

4. A decision under New Zealand's *Overseas Investment Act 2005* to grant consent, or to decline to grant consent, to an overseas investment transaction that requires prior consent under that Act shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

ANNEX 9-I

NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 9.12.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors);

(b) Viet Nam shall not withdraw a right or benefit from an investor or covered investment of another Party, in reliance on which the investor or covered investment has taken any concrete action,[44] through an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to a non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

[44] Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

ANNEX 9-J

SUBMISSION OF A CLAIM TO ARBITRATION

1. An investor of a Party may not submit to arbitration under Section B (Investor-State Dispute Settlement) a claim that Chile, Mexico, Peru or Viet Nam has breached an obligation under Section A either:

(a) on its own behalf under Article 9.19.1(a) (Submission of a Claim to Arbitration); or

(b) on behalf of an enterprise of Chile, Mexico, Peru, or Viet Nam, that is a juridical person that the investor owns or controls directly or indirectly under 9.19.1(b) (Submission of a Claim to Arbitration),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B (Investor-State Dispute Settlement).

ANNEX 9-K

SUBMISSION OF CERTAIN CLAIMS FOR THREE YEARS AFTER ENTRY INTO FORCE

Malaysia

Without prejudice to a claimant's right to submit other claims to arbitration pursuant to Article 9.19 (Submission of a Claim to Arbitration), Malaysia does not consent to the submission of a claim that Malaysia has breached a government procurement contract with a covered investment, below the specified contract value, for a period of three years after the date of entry into force of this Agreement for Malaysia. The specified contract values are: (a) for goods, SDR 1,500,000; (b) for services, SDR 2,000,000; and (c) for construction, SDR 63,000,000.

ANNEX 9-L

INVESTMENT AGREEMENTS

A. Agreements with selected international arbitration clauses

1. An investor of a Party may not submit to arbitration a claim for breach of an investment agreement under Article 9.19.1(a)(i)(C) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(C) if the investment agreement provides the respondent's consent for the investor to arbitrate the alleged breach of the investment agreement and further provides that:

(a) a claim may be submitted for breach of the investment agreement under at least one of the following alternatives:

(i) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the investor are parties to the ICSID Convention;

(ii) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the investor is a party to the ICSID Convention;

(iii) the UNCITRAL Arbitration Rules;

(iv) the ICC Arbitration Rules; or

(v) the LCIA Arbitration Rules; and

(b) in the case of arbitration not under the ICSID Convention, the legal place of the arbitration shall be:

(i) in the territory of a State that is party to the New York Convention; and

(ii) outside the territory of the respondent.

2. Notwithstanding Article 9.21.2(b) (Conditions and Limitations on Consent of Each Party), if a claimant submits to arbitration a claim that the respondent has breached:

(a) an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A); or

(b) an investment authorisation pursuant to Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(B),

the claimant's submission of a written waiver shall not preclude its right to initiate or continue an arbitration under an investment agreement, if that investment agreement meets the criteria in paragraph 1, with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).

3. If a claimant:

(a) submits to arbitration a claim that the respondent has breached an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) or an investment authorisation pursuant to Article 9.19.1(a)(i)(B) or Article 9.19.1(b)(i)(B); and

(b) submits a claim to arbitration under an investment agreement that meets the criteria in paragraph 1, and the claims have a question of law or fact in common and arise out of the same events or circumstances,

any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10 of Article 9.28 (Consolidation).

B. Certain agreements between Peru and covered investments or investors[45]

1. Pursuant to Legislative Decrees 662 and 757, Peru may enter into agreements known as "stability agreements" with covered investments or investors of another Party.

2. As part of a stability agreement referred to in paragraph 1, Peru accords certain benefits to the covered investment or the investor that is a party to the agreement. These benefits typically include a commitment to maintain the

[45] The fact that this Annex addresses only agreements entered into by Peru shall not prejudice the determination by a tribunal established under Section B (Investor-State Dispute Settlement) regarding whether an agreement entered into by the government of another Party meets the definition of "investment agreement" in Article 9.1 (Definitions).

existing income tax regime applicable to such covered investment or investor during a specified period of time.

3. A stability agreement referred to in paragraph 1 may constitute one of multiple written instruments that make up an "investment agreement", as defined in Article 9.1 (Definitions).[46] If that is the case, a breach of such a stability agreement by Peru may constitute a breach of the investment agreement of which it is a part.

4. If a stability agreement does not constitute one of multiple instruments that make up an "investment agreement", as defined in Article 9.1 (Definitions), a breach of such a stability agreement by Peru shall not constitute a breach of an investment agreement.

C. Limitation of Mexico's consent to arbitration

1. Without prejudice to a claimant's right to submit other claims pursuant to Article 9.19 (Submission of a Claim to Arbitration), Mexico does not consent to the submission of any claim to arbitration under Article 9.19.1(a)(i)(C) or 9.19.1(b)(i)(C) if the submission to arbitration of that claim would be inconsistent with the following laws with respect to the relevant acts of authority[47]:

(a) *Hydrocarbons Law*, Articles 20 and 21;

(b) *Law on Public Works and Related Services*, Article 98, paragraph 2;

(c) *Public Private Partnerships Law*, Article 139, paragraph 3;

(d) *Law on Roads, Bridges, and Federal Motor Carriers*, Article 80;

(e) *Ports Law*, Article 3, paragraph 2;

(f) *Airports Law*, Article 3, paragraph 2;

(g) *Regulatory Law of the Railway Service*, Article 4, paragraph 2;

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[46] For greater certainty, for multiple written instruments to make up an "investment agreement", as defined in Article 9.1 (Definitions), one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b) or (c) of that definition. A stability agreement may constitute one of multiple written instruments that make up an "investment agreement" even if the stability agreement is not itself the instrument in which such rights are granted.

[47] For greater certainty, the term "act of authority" includes omissions.

(h) *Commercial and Navigation Maritimes Law*, Article 264, paragraph 2;

(i) *Civil Aviation Law*, Article 3, paragraph 2; and

(j) *Political Constitution of the United Mexican States*, Article 28, paragraph 20, subparagraph VII, and *Federal Telecommunications and Broadcasting Law*, Article 312,

provided, however, that the application of the provisions referred to in subparagraphs (a) through (i) shall not be used as a disguised means to repudiate or breach the investment agreement.

2. If any law referred to in paragraph 1 is amended to permit the submission to arbitration of such a claim after the entry into force of this Agreement for Mexico, the limitation of Mexico's consent specified in paragraph 1 shall not apply with respect to that law.[48]

D. Specific Canadian entities under subpart (c) of definition

For Canada, authority at the central level of government includes entities listed under Schedule III of the *Financial Administration Act* (R.S.C. 1985, c. F-11), and port or bridge authorities, that have concluded an investment agreement under subpart (c) of the definition of "investment agreement" only if the government directs or controls the day to day operations or activities of the entity or authority in carrying out its obligations under the investment agreement.

[48] For greater certainty, when any law referred to in paragraph 1 is amended consistent with paragraph 2, any subsequent amendment of that law may not re-establish the applicability of paragraph 1.

CHAPTER 10

CROSS-BORDER TRADE IN SERVICES

Article 10.1: Definitions

For the purposes of this Chapter:

airport operation 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;

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

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the laws of a Party, or a branch located in the territory of a Party and carrying out business activities there;

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling 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;

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

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

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

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 10.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

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

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence in the Party's territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1:

(a) Article 10.5 (Market Access), Article 10.8 (Domestic Regulation) and Article 10.11 (Transparency) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment[1]; and

(b) Annex 10-B (Express Delivery Services) shall also apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment.

3. This Chapter shall not apply to:

(a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party's territory;

(b) government procurement;

(c) services supplied in the exercise of governmental authority; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Chapter does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

[1] For greater certainty, nothing in this Chapter, including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-Conforming Measures Ratchet Mechanism), is subject to investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment).

(b) selling and marketing of air transport services;

(c) computer reservation system services;

(d) specialty air services;

(e) airport operation services; and

(f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.

7. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the *Annex on Air Transport Services* of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

Article 10.3: National Treatment[2]

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 10.4: Most-Favoured-Nation Treatment

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

[2] For greater certainty, whether treatment is accorded in "like circumstances" under Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

Article 10.5: Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of service operations or 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;[3] or

(iv) 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; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 10.6: Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 10.7: Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to:

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

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence).[4]

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3 If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.[5]

Article 10.8: Domestic Regulation

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

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[4] With respect to Viet Nam, Annex 10-C (Non-Conforming Measures Ratchet Mechanism) applies.

[5] For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

2. 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, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

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

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

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.[6]

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

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

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

[6] "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.[7]

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of another Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

Article 10.9: Recognition

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

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to

[7] For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to another Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between Parties 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.

5. As set out in Annex 10-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 10.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of any Party other than the denying Party.

Article 10.11: Transparency

1. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.[8]

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 26.2.2 (Publication) with respect to regulations that relate to

[8] The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

Article 10.12: Payments and Transfers[9]

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws[10] that relate to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

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

(d) criminal or penal offences; or

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

Article 10.13: Other Matters

The Parties recognise the importance of air services in facilitating the expansion of trade and enhancing economic growth. Each Party may consider working with other Parties in appropriate fora toward liberalising air services, such as through agreements allowing air carriers to have flexibility to decide on their routing and frequencies.

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[9] For greater certainty, this Article is subject to Annex 9-E (Transfers).

[10] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

ANNEX 10-A

PROFESSIONAL SERVICES

General Provisions

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.

2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures.

3. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

4. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Engineering and Architectural Services

5. Further to paragraph 3, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

6. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

7. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers.

Temporary Licensing or Registration of Engineers

8. Further to paragraph 4, in taking steps to implement a temporary or project-specific licensing or registration regime for engineers, a Party shall consult with its relevant professional bodies with respect to any recommendations for:

(a) the development of procedures for the temporary licensing or registration of engineers of another Party to permit them to practise their engineering specialties in its territory;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing or registration of those engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing or registration procedures; and

(d) other matters relating to the temporary licensing or registration of engineers identified in the consultations.

Legal Services

9. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

10. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

(a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;

(b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;

(c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;

(d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional

indemnity insurance or alternatively disclose to clients that they lack that insurance;

(e) the following modes of providing transnational legal services are accommodated:

(i) on a temporary fly-in, fly-out basis;

(ii) through the use of web-based or telecommunications technology;

(iii) by establishing a commercial presence; and

(iv) through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);

(f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and

(g) a foreign law firm may use the firm name of its choice.

Professional Services Working Group

11. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party, to facilitate the activities listed in paragraphs 1 through 4.

12. The Working Group shall liaise, as appropriate, to support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 4. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in the Parties' territories.

13. The Working Group shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in paragraphs 1 through 4. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Group.

14. The Working Group shall report to the Commission on its progress and on the future direction of its work, within two years of the date of entry into force of this Agreement.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

(a) otherwise agreed by all Parties; or

(b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

ANNEX 10-B

EXPRESS DELIVERY SERVICES

1. For the purposes of this Annex, **express delivery services** means the collection, transport and delivery of documents, printed matter, parcels, goods or other items, on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include air transport services, services supplied in the exercise of governmental authority, or maritime transport services.[11]

2. For the purposes of this Annex, **postal monopoly** means a measure maintained by a Party making a postal operator within the Party's territory the exclusive supplier of specified collection, transport and delivery services.

3. Each Party that maintains a postal monopoly shall define the scope of the monopoly on the basis of objective criteria, including quantitative criteria such as price or weight thresholds.[12]

4. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that each provides on the date of its signature of this Agreement. If a Party considers that another Party is not

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[11] For greater certainty, express delivery services does not include: (a) for Australia, services reserved for exclusive supply by Australia Post as set out in the *Australian Postal Corporation Act 1989* and its subordinate legislation and regulations; (b) for Brunei Darussalam, reserved exclusive rights for collection and delivery of letters by the Postal Services Department as set out in the *Post Office Act* (Chapter 52 of the Laws of Brunei), the Guidelines to Application of License for the Provision of Local Express Letter Service (2000) and the Guidelines to Application of License for the Provision of International Express Letter Service (2000); (c) for Canada, services reserved for exclusive supply by Canada Post Corporation as set out in the *Canada Post Corporation Act* and its regulations; (d) for Japan, correspondence delivery services within the meaning of the *Law Concerning Correspondence Delivery Provided by Private Operators* (Law No. 99, 2002) other than special correspondence delivery services as set out in Article 2, paragraph 7 of the law; (e) for Malaysia, reserved exclusive rights for collection and delivery of letters by Pos Malaysia as provided for under the *Postal Services Act 2012*; (f) for Mexico, mail services reserved for exclusive supply by the Mexican Postal Service as set out in the Mexican Postal laws and regulations, as well as motor carrier freight transportation services, as set forth in Title III of the *Roads, Bridges, and Federal Motor Carrier Transportation Law* and its regulations; (g) for New Zealand, the fastpost service and equivalent priority domestic mail services; (h) for Singapore, postal services as set out in the *Postal Services Act* (Cap 237A, 2000 Rev Ed) and certain express letter services which are administered under the Postal Services (Class License) Regulations 2005; (i) for the United States, delivery of letters over post routes subject to 18 U.S.C. 1693–1699 and 39 U.S.C. 601–606, but does include delivery of letters subject to the exceptions therein; and (j) for Viet Nam, reserved services as set out in Viet Nam Postal Law and relevant legal documents.

[12] For greater certainty, the Parties understand that the scope of Chile's postal monopoly is defined on the basis of objective criteria by Decree 5037 (1960) and the ability of suppliers to supply delivery services in Chile is not limited by this Decree.

maintaining that level of market openness, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, provide information in response to inquiries regarding the level of market openness and any related matter.

5. No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidise its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services.[13]

6. Each Party shall ensure that any supplier of services covered by a postal monopoly does not abuse its monopoly position to act in the Party's territory in a manner inconsistent with the Party's commitments under Article 9.4 (National Treatment), Article 10.3 (National Treatment) or Article 10.5 (Market Access) with respect to the supply of express delivery services.[14]

7. No Party shall:

(a) require an express delivery service supplier of another Party, as a condition of authorisation or licensing, to supply a basic universal postal service; or

(b) assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.[15]

8. Each Party shall ensure that any authority responsible for regulating express delivery services is not accountable to any supplier of express delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory and transparent with respect to all express delivery service suppliers in its territory.

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[13] In the case of Viet Nam, this obligation shall not apply until three years after the date of entry into force of this Agreement for it. During this period, if a Party considers that Viet Nam is allowing such cross-subsidisation, it may request consultations. Viet Nam shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the cross-subsidisation.

[14] For greater certainty, a supplier of services covered by a postal monopoly that exercises a right or privilege incidental to or associated with its monopoly position in a manner that is consistent with the Party's commitments listed in this paragraph with respect to express delivery services is not acting in a manner inconsistent with this paragraph.

[15] This paragraph shall not be construed to prevent a Party from imposing non-discriminatory fees on delivery service suppliers on the basis of objective and reasonable criteria, or from assessing fees or other charges on the express delivery services of its own supplier of services covered by a postal monopoly.

ANNEX 10-C

NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 10.7.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence);

(b) Viet Nam shall not withdraw a right or benefit from a service supplier of another Party, in reliance on which the service supplier has taken any concrete action,[16] through an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

[16] Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licenses.

CHAPTER 11

FINANCIAL SERVICES

Article 11.1: Definitions

For the purposes of this Chapter:

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;

cross-border trade in financial services or **cross-border supply of financial services** means the supply of a financial service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

financial institution means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

financial service means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

Insurance and insurance-related services

(a) direct insurance (including co-insurance):

(i) life;

(ii) non-life;

(b) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(g) financial leasing;

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

(i) guarantees and commitments;

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

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

(ii) foreign exchange;

(iii) derivative products, including futures and options;

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

(v) transferable securities; and

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

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

(l) money broking;

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

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

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

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

financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

investment means "investment" as defined in Article 9.1 (Definitions), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 9 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 9.1 (Definitions);

investor of a Party means a Party, or a person of a Party, that attempts to make[1], is making, or has made an investment in the territory of another Party;

[1] For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.

new financial service means a financial service not supplied in the Party's territory that is supplied within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Article 1.3 (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

public entity means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party; and

self-regulatory organisation means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government.

Article 11.2: Scope

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

(a) financial institutions of another Party;

(b) investors of another Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapter 9 (Investment) and Chapter 10 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.

(a) Article 9.6 (Minimum Standard of Treatment), Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements), Article 9.15 (Denial of Benefits), Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives) and Article 10.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

(b) Section B of Chapter 9 (Investment) is hereby incorporated into and made a part of this Chapter[2] solely for claims that a Party has breached Article 9.6 (Minimum Standard of Treatment)[3], Article 9.7 (Treatment in the Case of Armed Conflict or Civil Strife), Article 9.8 (Expropriation and Compensation), Article 9.9 (Transfers), Article 9.14 (Special Formalities and Information Requirements) and Article 9.15 (Denial of Benefits) incorporated into this Chapter under subparagraph (a).[4]

(c) Article 10.12 (Payments and Transfers) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 11.6 (Cross-Border Trade).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to government procurement of financial services.

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[2] For greater certainty, Section B of Chapter 9 (Investment) shall not apply to cross-border trade in financial services.

[3] With respect to Brunei Darussalam, Chile, Mexico and Peru, Annex 11-E applies.

[4] For greater certainty, if an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment): (1) as referenced in Article 9.23.7 (Conduct of the Arbitration), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international investment arbitration; (2) pursuant to Article 9.23.4, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards); and (3) pursuant to Article 9.23.6, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection and, in determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.

5. This Chapter shall not apply to subsidies or grants with respect to the cross-border supply of financial services, including government-supported loans, guarantees and insurance.

Article 11.3: National Treatment[5]

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords to its own investors, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments in financial institutions in its territory.

2. Each Party shall accord to financial institutions of another Party, and to investments of investors of another Party in financial institutions, treatment no less favourable than that it accords to its own financial institutions, and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 11.6.1 (Cross-Border Trade), a Party shall accord to cross-border financial service suppliers of another Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

Article 11.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to:

   (a) investors of another Party, treatment no less favourable than that it accords to investors of any other Party or of a non-Party, in like circumstances;

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[5] For greater certainty, whether treatment is accorded in "like circumstances" under Article 11.3 (National Treatment) or Article 11.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

(b) financial institutions of another Party, treatment no less favourable than that it accords to financial institutions of any other Party or of a non-Party, in like circumstances;

(c) investments of investors of another Party in financial institutions, treatment no less favourable than that it accords to investments of investors of any other Party or of a non-Party in financial institutions, in like circumstances; and

(d) cross-border financial service suppliers of another Party, treatment no less favourable than that it accords to cross-border financial service suppliers of any other Party or of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 11.2.2(b) (Scope).

Article 11.5: Market Access for Financial Institutions

No Party shall adopt or maintain with respect to financial institutions of another Party or investors of another Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

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

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[6] or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial

[6] Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

Article 11.6: Cross-Border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Party to supply the financial services specified in Annex 11-A (Cross-Border Trade).

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of another Party and of financial instruments.

Article 11.7: New Financial Services[7]

Each Party shall permit a financial institution of another Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.[8] Notwithstanding Article 11.5(b) (Market Access for Financial Institutions), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period

[7] The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to another Party to request that it authorise the supply of a financial service that is not supplied in the territory of any Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

[8] For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

Article 11.8: Treatment of Certain Information

Nothing in this Chapter shall require a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

Article 11.9: Senior Management and Boards of Directors

1. No Party shall require financial institutions of another Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. No Party shall require that more than a minority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

Article 11.10: Non-Conforming Measures

1. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex III;

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex III; or

(iii) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:[9]

(i) immediately before the amendment, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) or Article 11.9 (Senior Management and Boards of Directors); or

(ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 11.6 (Cross-Border Trade).

2. Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions), Article 11.6 (Cross-Border Trade) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule to Annex III.

3. A non-conforming measure, set out in a Party's Schedule to Annex I or II as not subject to Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.11 (Senior Management and Boards of Directors), Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment), shall be treated as a non-conforming measure not subject to Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment) or Article 11.9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. (a) Article 11.3 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

[9] With respect to Viet Nam, Annex 11-C (Non-Conforming Measures Ratchet Mechanism) applies.

(b) Article 11.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 4 of the TRIPS Agreement.

Article 11.11: Exceptions

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textiles and Apparel), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Chapter 7 (Sanitary and Phytosanitary Measures) and Chapter 8 (Technical Barriers to Trade), a Party shall not be prevented from adopting or maintaining measures for prudential reasons,[10, 11] including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 13 (Telecommunications) including specifically Article 13.24 (Relation to Other Chapters), or Chapter 14 (Electronic Commerce), shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9.10 (Performance Requirements) with respect to measures covered by Chapter 9 (Investment), under Article 9.9 (Transfers) or Article 10.12 (Payments and Transfers).

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[10] The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or cross-border financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

[11] For greater certainty, if a measure challenged under Section B of Chapter 9 (Investment) is determined to have been adopted or maintained by a Party for prudential reasons in accordance with procedures in Article 11.22 (Investment Disputes in Financial Services), a tribunal shall find that the measure is not inconsistent with the Party's obligations in the Agreement and accordingly shall not award any damages with respect to that measure.

3. Notwithstanding Article 9.9 (Transfers) and Article 10.12 (Payments and Transfers), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

Article 11.12: Recognition

1. A Party may recognise prudential measures of another Party or a non-Party in the application of measures covered by this Chapter.[12] That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with another Party or a non-Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the relevant Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide

[12] For greater certainty, nothing in Article 11.4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of any other Party.

adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

Article 11.13: Transparency and Administration of Certain Measures

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Paragraphs 2, 3 and 4 of Article 26.2 (Publication), shall not apply to regulations of general application relating to the subject matter of this Chapter. Each Party shall, to the extent practicable:

(a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and other Parties with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation.[13]

5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

[13] For greater certainty, a Party may address those comments collectively on an official government website.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of another Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

Article 11.14: Self-Regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of another Party to be a member of, participate in, or have access to, a self-regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment).

Article 11.15: Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 11.16: Expedited Availability of Insurance Services

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed

suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

Article 11.17: Performance of Back-Office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

Article 11.18: Specific Commitments

Annex 11-B (Specific Commitments) sets out certain specific commitments by each Party.

Article 11.19: Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 11-D (Authorities Responsible for Financial Services).

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 11.22 (Investment Disputes in Financial Services).

3. The Committee shall meet annually, or as it decides otherwise, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of any meeting.

Article 11.20: Consultations

1. A Party may request, in writing, consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The consulting Parties shall report the results of their consultations to the Committee.

2. With regard to matters relating to existing non-conforming measures maintained by a Party at a regional level of government as referred to in Article 11.10.1(a)(ii) (Non-Conforming Measures):

(a) A Party may request information on any non-conforming measure at the regional level of government of another Party. Each Party shall establish a contact point to respond to those requests and to facilitate the exchange of information regarding the operation of measures covered by those requests.

(b) If a Party considers that a non-conforming measure applied by a regional level of government of another Party creates a material impediment to trade or investment by a financial institution, an investor, investments in a financial institution or a cross-border financial service supplier, the Party may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

3. Consultations under this Article shall include officials of the authorities specified in Annex 11-D (Authorities Responsible for Financial Services).

4. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

Article 11.21: Dispute Settlement

1. Chapter 28 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 28.9 (Composition of Panels) shall apply, except that:

(a) if the disputing Parties agree, each panellist shall meet the qualifications in paragraph 3; and

(b) in any other case:

(i) each disputing Party shall select panellists that meet the qualifications set out in either paragraph 3 or Article 28.10.1 (Qualifications of Panellists); and

(ii) if the responding Party invokes Article 11.11 (Exceptions), the chair of the panel shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 28.10.1(b) to (d) (Qualifications of Panellists), panellists in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4. A Party may request the establishment of a panel pursuant to Article 11.22.2(c) (Investment Disputes in Financial Services) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to a claim without having to request consultations under Article 28.5 (Consultations). The panel shall endeavour to present its initial report pursuant to Article 28.17 (Initial Report) within 150 days after the last panellist is appointed.

5. If a Party seeks to suspend benefits in the financial services sector, a panel that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 28.20.5 (Non-Implementation – Compensation and Suspension of Benefits), shall seek the views of financial services experts, as necessary.

Article 11.22: Investment Disputes in Financial Services

1. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment) challenging a measure relating to regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any

particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment), and the respondent invokes Article 11.11 (Exceptions) as a defence, the following provisions of this Article shall apply.

(a) The respondent shall, no later than the date the tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Party of the claimant on the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, and the non-disputing Parties a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraph 4.[14]

(b) The authorities of the respondent and the Party of the claimant shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the tribunal. The determination shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that determination.

(c) If the authorities referred to in subparagraphs (a) and (b) have not made a determination within 120 days of the date of receipt of the respondent's written request for a determination under subparagraph (a), the respondent or the Party of the claimant may request the establishment of a panel under Chapter 28 (Dispute Settlement) to consider whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. The panel established under Article 28.7 (Establishment of a Panel) shall be constituted in accordance with Article 11.21 (Dispute Settlement). Further to

[14] For the purposes of this Article, "joint determination" means a determination by the authorities responsible for financial services of the respondent and of the Party of the claimant, as set out in Annex 11-D (Authorities Responsible for Financial Services). If, within 14 days of the date of the receipt of a request for a joint determination, another Party provides a written notice to the respondent and the Party of the claimant indicating its substantial interest in the matter subject to the request, that other Party's authorities responsible for financial services may participate in discussions regarding the matter. The joint determination shall be made by the authorities responsible for financial services of the respondent and the Party of the claimant.

Article 28.18 (Final Report), the panel shall transmit its final report to the disputing Parties and to the tribunal.

3. The final report of a panel referred to in paragraph 2(c) shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with the final report.

4. If no request for the establishment of a panel pursuant to paragraph 2(c) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(c), the tribunal established under Article 9.19 (Submission of a Claim to Arbitration) may proceed with respect to the claim.

(a) The tribunal shall draw no inference regarding the application of Article 11.11 (Exceptions) from the fact that the authorities have not made a determination as described in paragraphs 2(a), (b) and (c).

(b) The Party of the claimant may make oral and written submissions to the tribunal regarding the issue of whether and to what extent Article 11.11 (Exceptions) is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 11.11 that is not inconsistent with that of the respondent.

5. For the purposes of this Article, the definitions of the following terms set out in Article 9.1 (Definitions) are incorporated, *mutatis mutandis*: “claimant”, “disputing parties”, “disputing party”, “non-disputing Party” and “respondent”.

ANNEX 11-A

CROSS-BORDER TRADE

Australia

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

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

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Brunei Darussalam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession; and

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

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to:

(a) provision and transfer of financial information; and

(b) provision and transfer of financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions).

Canada[15]

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime transport and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance, as described in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Cross-Border Trade), with respect to:

(a) provision and transfer of financial information, and financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary financial services, and credit reference and analysis, excluding intermediation, relating to banking and

[15] For greater certainty, Canada requires that a cross-border financial services supplier maintain a local agent and records in Canada.

other financial services, as referred to in subparagraph (p) of the definition of “financial service” in Article 11.1 (Definitions).

Chile

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping and international commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving there from; and

(ii) goods in international transit;

(b) brokerage of insurance of risks relating to subparagraphs (a)(i) and (a)(ii); and

(c) reinsurance and retrocession; reinsurance brokerage; and consultancy, actuarial and risk assessment services.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply with respect to:

(a) provision and transfer of financial information, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions);

(b) financial data processing, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;[16] and

(c) advisory and other auxiliary financial services, excluding intermediation and credit reference and analysis, relating to banking and other financial services, as referred to in subparagraph

[16] The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Chilean law regulating the protection of such data.

(p) of the definition of "financial service" in Article 11.1 (Definitions).

3. It is understood that a Party's commitments on cross-border investment advisory services shall not, in and of themselves, be construed to require the Party to permit the public offering of securities (as defined under its relevant law) in the territory of the Party by cross-border suppliers of the other Party who supply or seek to supply such investment advisory services. A Party may subject the cross-border suppliers of investment advisory services to regulatory and registration requirements.

Japan

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance, retrocession, and services auxiliary to insurance as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks related to services listed in subparagraphs (a) and (b) of this paragraph.[17]

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) securities-related transactions with financial institutions and other entities in Japan as prescribed by the relevant laws and regulations of Japan;

(b) sales of a beneficiary certificate of an investment trust and an investment security, through securities firms in Japan;[18]

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[17] Insurance intermediation services may be supplied only for insurance contracts allowed to be supplied in Japan.

[18] Solicitation must be conducted by securities firms in Japan.

(c) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Malaysia

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; and

(b) reinsurance and retrocession; services auxiliary to insurance comprising consultancy services, actuarial, risk assessment, risk management and maritime loss adjusting; and brokerage services for risks relating to subparagraph (a) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to the provision and transfer of financial information and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions).

3. The commitment made by Malaysia under paragraph 2 does not extend to the supply of electronic payment services for payment card transactions[19].

[19] For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subcategory 71593 of the *United Nations Central Product Classification, Version 2.0*, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

Mexico

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial services and risk assessment in connection with subparagraphs (a) and (b); and

(d) brokerage of insurance of risks relating to subparagraphs (a) and (b).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;[20] and

(b) advisory and other auxiliary financial services,[21] excluding intermediation, and credit reference and analysis, relating to

[20] The Parties understand that if the financial information or financial data processing referred to in subparagraphs (a) and (b) involve personal data, the treatment of such personal data shall be in accordance with Mexican law regulating the protection of such data.

[21] The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of "financial service" in Article 11.1 (Definitions).

banking and other financial services as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

New Zealand

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession, as referred to in subparagraph (b) of the definition of "financial service" in Article 11.1 (Definitions);

(c) services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance risks relating to services listed in subparagraphs (a) and (b) of this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in

subparagraph (p) of the definition of “financial service” in Article 11.1 (Definitions).

Peru[22]

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks related to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) consultancy, actuarial, risk assessment and claim settlement services; and

(d) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions), of insurance of risks relating to services listed in subparagraphs (a) and (b) in this paragraph.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply only with respect to the provision and transfer of financial information, and financial data processing and related software as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions)[23], subject to prior authorisation from the relevant regulator, as required, and advisory and other auxiliary financial

[22] Peru reserves the right to apply this Annex under conditions of reciprocity.

[23] The Parties understand that, if the financial information or financial data processing referred to in paragraph 2 of this Annex involves personal data, the treatment of such personal data shall be in accordance with Peru's law regulating the protection of such data and Section B of Annex 11-B (Specific Commitments).

services[24], excluding intermediation, relating to banking and other financial services as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).[25]

[24] The Parties understand that advisory and other auxiliary financial services do not include those services referred to in subparagraphs (e) through (o) of the definition of "financial service" in Article 11.1 (Definitions).

[25] The Parties understand that a trading platform, whether electronic or physical, does not fall within the range of services specified in this paragraph.

Singapore

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of "MAT" risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(ii) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services;

(d) reinsurance intermediation by brokerages; and

(e) MAT intermediation by brokerages.

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, as described in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

(b) financial data processing and related software, as described in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required.[26]

[26] For greater certainty, if the financial information or financial data processing referred to in subparagraphs (a) and (b) pertain to outsourcing arrangements or involves personal data, the

United States

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; and

(b) reinsurance and retrocession; services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions); and insurance intermediation, such as brokerage and agency, as referred to in subparagraph (c) of the definition of "financial service" in Article 11.1 (Definitions).

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to insurance services.

Banking and other financial services (excluding insurance)

3. Article 11.6.1 shall apply only with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions); and

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outsourcing arrangements and treatment of personal data shall be in accordance with the Monetary Authority of Singapore's regulatory requirements and guidelines on outsourcing and Singapore's law regulating the protection of such data, respectively. These regulatory requirements and guidelines shall not derogate from the commitments undertaken by Singapore in paragraph 2 and Section B of Annex 11-B (Specific Commitments).

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article 11.1 (Definitions).

Viet Nam

Insurance and insurance-related services

1. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) international maritime shipping and international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession; and

(c) brokerage services, and services auxiliary to insurance, as referred to in subparagraph (d) of the definition of "financial service" in Article 11.1 (Definitions).

Banking and other financial services (excluding insurance)

2. Article 11.6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (a) of the definition of "cross-border supply of financial services" in Article 11.1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software, as referred to in subparagraph (o) of the definition of "financial service" in Article 11.1 (Definitions), subject to prior authorisation from the relevant regulator, as required;[27] and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (p) of the definition of "financial service" in Article

[27] The Parties understand that if the financial information or financial data processing referred to in subparagraph (a) involve personal data, the treatment of such personal data shall be in accordance with Vietnamese laws regulating the protection of such data.

11.1 (Definitions), to the extent that such services are permitted in the future by Viet Nam.

ANNEX 11-B

SPECIFIC COMMITMENTS

Section A: Portfolio Management

1. A Party shall allow a financial institution organised in the territory of another Party to provide the following services to a collective investment scheme located in its territory[28]:

(a) investment advice; and

(b) portfolio management services, excluding:

(i) trustee services; and

(ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 11.6.3 (Cross-Border Trade).

3. For the purposes of paragraph 1, **collective investment scheme** means:

(a) For Australia, a "managed investment scheme" as defined under section 9 of the *Corporations Act 2001* (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the *Corporations Act 2001* (Cth), or an entity that:

(i) carries on a business of investment in securities, interests in land, or other investments; and

(ii) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the *Corporations Act 2001* (Cth)) made on terms that the funds subscribed would be invested.

(b) For Brunei Darussalam:

[28] For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.

(i) A "collective investment scheme", defined under Section 203, of the *Securities Market Order, 2013* as any investment arrangements with respect to assets of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(ii) The arrangements must be such that:

(A) the persons who are to participate (participants) do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions;

(B) the arrangements must also have either or both of the following characteristics:

(1) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and

(2) the property is managed as a whole, by or on behalf of the operator of the collective investment scheme; and

(C) the arrangements must satisfy the condition set out in subparagraph (iii).

(iii) The condition referred to in subparagraph (ii)(B) is that the property belongs beneficially to, and is managed by or on behalf of, a company, the trustee of a trust or some other entity or arrangement having as its purpose the investment of its funds with the aim of spreading the investment risk and giving its members the benefit of the results of the management of those funds for or on behalf of that company, trust, entity or arrangement.

(c) For Canada, an "investment fund" as defined under the relevant *Securities Act*.[29]

[29] In Canada, a financial institution organised in the territory of another Party can only provide custodial services to a collective investment scheme located in Canada if the financial institution has shareholders equity equivalent to at least CAD $100 million.

(d) For Chile, a "General Management Fund" (*Administradora General de Fondos*) as defined in *Law 20.712* which is subject to supervision by the Superintendence of Securities and Insurance (*Superintendencia de Valores y Seguros*), excluding the provision of custodial services that are related to managing a collective investment scheme.

(e) For Japan, a "financial instruments business operator" engaged in investment management business under the *Financial Instruments and Exchange Law* (Law No. 25 of 1948).

(f) For Malaysia, any arrangement where:

(i) the investment is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (referred to as "scheme's assets") or sums paid out of such profits or income;

(ii) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme's assets; and

(iii) the scheme's assets are managed by an entity that is responsible for the management of the scheme's assets and is approved, authorised or licensed by a relevant regulator to conduct fund management activities,

and includes, among others, unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.

(g) For Mexico, the "Managing Companies of Investment Funds" established under the Investment Funds Law (*Ley de Fondos de Inversión*). A financial institution organised in the territory of another Party will only be authorised to provide portfolio management services to a collective investment scheme located in Mexico if it provides the same services in the territory of the Party where it is established.

(h) For New Zealand, a "registered scheme" as defined under the *Financial Markets Conduct Act 2013*.[30]

(i) For Peru:

(i) mutual funds for investments and securities, pursuant to Single Ordered Text approved by Supreme Decree Nº 093-2002-EF (*Texto Único Ordenado de la Ley de Mercado de Valores aprobado mediante Decreto Supremo Nº 093-2002-EF*); or

(ii) investment funds, pursuant to Legislative Decree Nº 862 (*Decreto Legislativo Nº 862, Ley de Fondos de Inversión y sus Sociedades Administradoras*).

(j) For Singapore, a "collective investment scheme" as defined under the *Securities and Futures Act* (Cap. 289), and includes the manager of the scheme, provided that the financial institution in paragraph 1 is authorised or regulated as a fund manager in the territory of the Party it is organised in and is not a trust company.

(k) For the United States, an investment company registered with the Securities and Exchange Commission under the *Investment Company Act of 1940*.[31]

(l) For Viet Nam, a fund management company established and operated under the *Securities Law of Viet Nam*, and subject to regulation and supervision by the State Securities Commission of Viet Nam, in case the services in paragraph 1 are provided to manage an investment fund which invests in the assets located outside Viet Nam.

Section B: Transfer of Information

Each Party shall allow a financial institution of another Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution's ordinary course of

[30] Custodial services are included in the scope of the specific commitment made by New Zealand under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

[31] Custodial services are included in the scope of the specific commitment made by the United States under this Annex only with respect to investments for which the primary market is outside the territory of the Party.

business. Nothing in this Section restricts the right of a Party to adopt or maintain measures to:

(a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or

(b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations,[32]

provided that this right is not used as a means of avoiding the Party's commitments or obligations under this Section.

Section C: Supply of Insurance by Postal Insurance Entities

1. This Section sets out additional disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. No Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

(a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or

(b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of those services.

[32] For greater certainty, this requirement is without prejudice to other means of prudential regulation.

The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises that supply like services.

5. If a panel under Chapter 28 (Dispute Settlement) finds that a Party is maintaining a measure that is inconsistent with any of the commitments in paragraphs 2, 3 and 4, the Party shall notify the complaining Party and provide an opportunity for consultations prior to allowing the postal insurance entity to:

(a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or

(b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.

6. This Section shall not apply to a postal insurance entity in the territory of a Party:

(a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantages that modify the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or

(b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of January 1, 2013.

7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date of signature of this Agreement by the Party, the Party shall ensure that the postal insurance entity is:

(a) regulated and subject to enforcement by the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and

(b) subject to the financial reporting requirements that apply to financial institutions supplying insurance services.

8. For the purposes of this Section, **postal insurance entity** means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of the Party.

Section D: Electronic Payment Card Services

1. A Party shall allow the supply of electronic payment services for payment card transactions[33] into its territory from the territory of another Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a services supplier of another Party:

(a) register with or be authorised[34] by relevant authorities;

(b) be a supplier who supplies such services in the territory of the other Party; or

(c) designate an agent office or maintain a representative or sales office in the Party's territory,

provided that such requirements are not used as a means to avoid a Party's obligation under this Section.

2. For the purposes of this Section, electronic payment services for payment card transactions does not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Section shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not used as a means to avoid the Party's obligation under this Section. For greater certainty, such measures may include:

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[33] For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (h) of the definition of "financial service" in Article 11.1 (Definitions), and within subcategory 71593 of the *United Nations Central Product Classification, Version 2.0*, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

[34] Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home country supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross-border supply of electronic payment services into the Party.

(a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border services supplier of another Party, of information concerning cardholder names;

(b) the regulation of fees, such as interchange or switching fees; and

(c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

4. For the purposes of this Section, **payment card** means:

(a) For Australia, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.

(b) For Brunei Darussalam, in accordance with its laws and regulations, a payment instrument, whether in physical or electronic format, that enables a person to obtain money, goods or services, or to otherwise make payment, including credit card, charge card, debit card, cheque, automated teller machine (ATM) card, prepaid card or other instruments widely used for performing a similar function.

(c) For Canada, a "payment card" as defined under the *Payment Card Networks Act* as of January 1, 2015. For greater certainty, both the physical and electronic forms of credit and debit cards are included in the definition. For greater certainty, credit cards include pre-paid cards.

(d) For Chile, a credit card, a debit card and a prepaid card in physical form or electronic format, as defined under Chilean law.

(i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services referred to in this commitment, only the following cross-border financial services may be supplied:

(A) receiving and sending messages among acquirers and issuers or their agents and representatives through electronic or informatic channels for:

authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;

(B) calculation of fees and balances derived from transactions of acquirers and issuers by means of automated or computerised systems, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives, provided that those calculations are subject to approval, recognition or confirmation by the acquiring and issuing parties involved;

(C) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions; and

(D) value-added services related to the main processing activities in subparagraphs (d)(i)(A), (d)(i)(B) and (d)(i)(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.

Such cross-border financial services may only be supplied by a service supplier of another Party into the territory of Chile pursuant to this commitment, provided that such services are supplied to entities that are regulated by Chile in connection with their participation in card payment networks and that are contractually responsible for such services.

(ii) Nothing in this commitment restricts the right of Chile to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross-border supply of such electronic payment services into Chile by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established, authorised and regulated as a payments network participant under Chilean law in the territory of Chile, provided that such right is not used as a means of avoiding Chile's commitments or obligations under this Section.

(e) For Japan:

(i) a credit card and a prepaid card in physical or electronic form as defined under the laws and regulations of Japan; and

(ii) a debit card in physical or electronic form, provided that such a card is allowed within the framework of the laws and regulations of Japan.

(f) For Malaysia, a credit card, a debit card and a prepaid card as defined under Malaysian law.

(g) For Mexico, a credit card and a debit card in physical form or electronic format, as defined under Mexican law.

(i) In respect of such payment cards, in lieu of the scope of the cross-border electronic payment services set forth in paragraph 1, only the following cross-border services may be supplied:

(A) receiving and sending messages for: authorisation requests, authorisation responses (approvals or declines), stand-in authorisations, adjustments, refunds, returns, retrievals, charge backs and related administrative messages;

(B) calculation of fees and balances derived from transactions of acquirers and issuers, and receiving and sending messages related to this process to acquirers and issuers, and their agents and representatives;

(C) the provision of periodic reconciliation, summaries and instructions regarding the net financial position of acquirers and issuers, and their agents and representatives for approved transactions; and

(D) value-added services related to the main processing activities in subparagraphs (g)(i)(A), (g)(i)(B) and (g)(i)(C), such as fraud prevention and mitigation activities, and administration of loyalty programmes.

(ii) Such cross-border services may only be supplied by a service provider of another Party into the territory of Mexico pursuant to this commitment, provided that the services are supplied to entities that are regulated by Mexico in connection with their participation in card

payment networks and that are responsible for such services.

(iii) Nothing in this commitment restricts the right of Mexico to adopt or maintain measures, in addition to all other measures set forth in this Section, that condition the cross-border supply of such electronic payment services into Mexico by a service supplier of another Party on a contractual relationship between that supplier and an affiliate of the supplier established and authorised as a payments network participant under Mexican law in the territory of Mexico, provided that such right is not used as a means of avoiding Mexico's commitments or obligations under this Section.

(h) For New Zealand, a credit or debit card in physical or electronic form.

(i) For Peru:

(i) credit and debit cards as defined under Peruvian laws and regulations; and

(ii) prepaid cards, as defined under Peruvian laws and regulations, that are issued by financial institutions.

(j) For Singapore:

(i) a credit card as defined in the *Banking Act* (Cap. 19), a charge card as defined in the *Banking Act* and a stored value facility as defined in the *Payment Systems (Oversight) Act* (Cap. 222A); and

(ii) a debit card and an automated teller machine (ATM) card.

For greater certainty, both the physical and electronic forms of the cards or facility as listed in subparagraphs (j)(i) and (j)(ii) above would be included as a payment card.

(k) For the United States, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and the unique account number associated with that card, product or service.

(l) For Viet Nam, a credit card, debit card or prepaid card, in physical form or electronic format, as defined under the laws and

regulations of Viet Nam for cards issued inside or outside the territory of Viet Nam using an international Issuer Identification Number or Bank Identification Number (international IIN or BIN).[35]

(i) Viet Nam shall allow the issuance of such cards using international IIN or BIN subject to conditions that are no more restrictive than the conditions applied to the issuance of such cards not using international IIN or BIN.

(ii) For greater certainty, nothing in this commitment restricts the right of Viet Nam to adopt or maintain measures, in addition to the measures set out in this Section, that condition the cross-border supply of such electronic payment services into Viet Nam by a service supplier of another Party on the provision of information and data to the Government of Viet Nam, for public policy purposes, regarding transactions that the supplier processes, provided that such measures are not used as a means of avoiding Viet Nam's obligation under this Section.

Section E: Transparency Considerations

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or other Parties. These comments may include:

(a) submissions to a Party by another Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or

(b) submissions to a Party by interested persons, including other Parties or financial institutions of other Parties, with regard to the potential effects of the proposed regulation.

[35] For the purposes of this subparagraph, "international Issuer Identification Number or Bank Identification Number" and "international IIN or BIN" mean a number that is assigned to a service supplier of another Party pursuant to the relevant standards adopted by the International Organization for Standardization.

ANNEX 11-C

NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 11.10.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the time of entry into force of this Agreement for Viet Nam, with Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.5 (Market Access for Financial Institutions) and Article 11.9 (Senior Management and Boards of Directors);

(b) Viet Nam shall not withdraw a right or benefit from:

(i) a financial institution of another Party;

(ii) investors of another Party, and investments of such investors, in financial institutions in Viet Nam's territory; or

(iii) cross-border financial service suppliers of another Party,

in reliance on which the investor or covered investment has taken any concrete action,[36] through an amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 11.10.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

[36] Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

ANNEX 11-D

AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

(a) for Australia, the Treasury and the Department of Foreign Affairs and Trade;

(b) for Brunei Darussalam, the Monetary Authority of Brunei Darussalam (*Autoriti Monetari Brunei Darussalam*);

(c) for Canada, the Department of Finance of Canada;

(d) for Chile, the Ministry of Finance (*Ministerio de Hacienda*);

(e) for Japan, the Ministry of Foreign Affairs and the Financial Services Agency, or their successors;

(f) for Malaysia, Bank Negara Malaysia and the Securities Commission Malaysia;

(g) for Mexico, the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*);

(h) for New Zealand, the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators;

(i) for Peru, the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*), in coordination with financial regulators;

(j) for Singapore, the Monetary Authority of Singapore;

(k) for United States, the Department of the Treasury for purposes of Article 11.22 (Investment Disputes in Financial Services) and for all matters involving banking, securities, and financial services other than insurance, the Department of the Treasury, in cooperation with the Office of the U.S. Trade Representative, for insurance matters; and

(l) for Viet Nam, the State Bank of Viet Nam and the Ministry of Finance.

ANNEX 11-E

1. Brunei Darussalam, Chile, Mexico and Peru do not consent to the submission of a claim to arbitration under Section B of Chapter 9 (Investment) for a breach of Article 9.6 (Minimum Standard of Treatment), as incorporated into this Chapter, in relation to any act or fact that took place or any situation that ceased to exist before:

(a) the fifth anniversary of the date of entry into force of this Agreement for Brunei Darussalam, Chile and Peru, respectively; and

(b) the seventh anniversary of the date of entry into force of this Agreement for Mexico.

2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 9 (Investment) that Brunei Darussalam, Chile, Mexico or Peru has breached Article 9.6 (Minimum Standard of Treatment), as incorporated into this Chapter, it may not recover for loss or damage that it incurred before:

(a) the fifth anniversary of the date of entry into force of this Agreement for Brunei Darussalam, Chile and Peru, respectively; and

(b) the seventh anniversary of the date of entry into force of this Agreement for Mexico.

CHAPTER 12

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article 12.1: Definitions

For the purposes of this Chapter:

business person means:

(a) a natural person who has the nationality of a Party according to Annex 1-A (Party-Specific Definitions); or

(b) a permanent resident of a Party that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Party accords substantially the same treatment to its permanent residents as it does to its nationals[1],

who is engaged in trade in goods, the supply of services or the conduct of investment activities;

immigration formality means a visa, permit, pass or other document or electronic authority granting temporary entry;

immigration measure means any measure affecting the entry and stay of foreign nationals; and

temporary entry means entry into the territory of a Party by a business person of another Party who does not intend to establish permanent residence.

Article 12.2: Scope

1. This Chapter shall apply to measures that affect the temporary entry of business persons of a Party into the territory of another Party.

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

[1] For the purposes of subparagraph (b), "nationals" has the meaning it bears in Article XXVIII(k)(ii)(2) of GATS.

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

4. The sole fact that a Party requires business persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

Article 12.3: Application Procedures

1. As expeditiously as possible after receipt of a completed application for an immigration formality, each Party shall make a decision on the application and inform the applicant of the decision including, if approved, the period of stay and other conditions.

2. At the request of an applicant, a Party that has received a completed application for an immigration formality shall endeavour to promptly provide information concerning the status of the application.

3. Each Party shall ensure that fees charged by its competent authorities for the processing of an application for an immigration formality are reasonable, in that they do not unduly impair or delay trade in goods or services or conduct of investment activities under this Agreement.

Article 12.4: Grant of Temporary Entry

1. Each Party shall set out in Annex 12-A the commitments it makes with regard to temporary entry of business persons, which shall specify the conditions and limitations for entry and temporary stay, including length of stay, for each category of business persons specified by that Party.

2. A Party shall grant temporary entry or extension of temporary stay to business persons of another Party to the extent provided for in those commitments made pursuant to paragraph 1, provided that those business persons:

(a) follow the granting Party's prescribed application procedures for the relevant immigration formality; and

(b) meet all relevant eligibility requirements for temporary entry or extension of temporary stay.

3. The sole fact that a Party grants temporary entry to a business person of another Party pursuant to this Chapter shall not be construed to exempt that business person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

4. A Party may refuse to issue an immigration formality to a business person of another Party if the temporary entry of that person might affect adversely:

(a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or

(b) the employment of any natural person who is involved in such dispute.

5. When a Party refuses pursuant to paragraph 4 to issue an immigration formality, it shall inform the applicant accordingly.

Article 12.5: Business Travel

The Parties affirm their commitments to each other in the context of APEC to enhance the mobility of business persons, including through exploration and voluntary development of trusted traveller programmes, and their support for efforts to enhance the *APEC Business Travel Card* programme.

Article 12.6: Provision of Information

Further to Article 26.2 (Publication) and Article 26.5 (Provision of Information), each Party shall:

(a) promptly publish online if possible or otherwise make publicly available, information on:

(i) current requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable interested persons of the other Parties to become acquainted with those requirements; and

(ii) the typical timeframe within which an application for an immigration formality is processed; and

(b) establish or maintain appropriate mechanisms to respond to enquiries from interested persons regarding measures relating to temporary entry covered by this Chapter.

Article 12.7: Committee on Temporary Entry for Business Persons

1. The Parties hereby establish a Committee on Temporary Entry for Business Persons (Committee), composed of government representatives of each Party.

2. The Committee shall meet once every three years, unless otherwise agreed by the Parties, to:

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

(b) consider opportunities for the Parties to further facilitate temporary entry of business persons, including through the development of activities undertaken pursuant to Article 12.8 (Cooperation); and

(c) consider any other matter arising under this Chapter.

3. A Party may request discussions with one or more other Parties with a view to advancing the objectives set out in paragraph 2. Those discussions may take place at a time and location agreed by the Parties involved in those discussions.

Article 12.8: Cooperation

Recognising that the Parties can benefit from sharing their diverse experience in developing and applying procedures related to visa processing and border security, the Parties shall consider undertaking mutually agreed cooperation activities, subject to available resources, including by:

(a) providing advice on the development and implementation of electronic processing systems for visas;

(b) sharing experiences with regulations, and the implementation of programmes and technology related to:

(i) border security, including those related to the use of biometric technology, advanced passenger information systems, frequent passenger programmes and security in travel documents; and

(ii) the expediting of certain categories of applicants in order to reduce facility and workload constraints; and

(c) cooperating in multilateral fora to promote processing enhancements, such as those listed in subparagraphs (a) and (b).

Article 12.9: Relation to Other Chapters

1. Except for this Chapter, Chapter 1 (Initial Provisions and General Definitions), Chapter 27 (Administrative and Institutional Provisions), Chapter 28 (Dispute Settlement), Chapter 30 (Final Provisions), Article 26.2 (Publication) and Article 26.5 (Provision of Information), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Article 12.10: Dispute Settlement

1. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) regarding a refusal to grant temporary entry unless:

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

(b) the business persons affected have exhausted all available administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the other Party within a reasonable period of time after the date of the institution of proceedings for the remedy, including any proceedings for review or appeal, and the failure to issue such a determination is not attributable to delays caused by the business persons concerned.

CHAPTER 13

TELECOMMUNICATIONS

Article 13.1: Definitions

For the purposes of this Chapter:

commercial mobile services means public telecommunications services supplied through mobile wireless means;

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

end-user means a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services;

enterprise means an enterprise as defined in Article 1.3 (General Definitions) and a branch of an enterprise;

essential facilities means facilities of a public telecommunications network or service that:

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

(b) cannot feasibly be economically or technically substituted in order to supply a service;

interconnection means linking with suppliers providing public telecommunications services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

international mobile roaming service means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

leased circuit means a telecommunications facility between two or more designated points that is set aside for the dedicated use of, or availability to, a user

and supplied by a supplier of a fixed telecommunications service;

licence means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications service, including concessions, permits or registrations;

major supplier means a supplier of public telecommunications services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for public telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market;

network element means a facility or equipment used in supplying a fixed public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;

non-discriminatory means treatment no less favourable than that accorded to any other user of like public telecommunications services in like circumstances, including with respect to timeliness;

number portability means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

physical co-location means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

public telecommunications network means telecommunications infrastructure used to provide public telecommunications services between defined network termination points;

public telecommunications service means any telecommunications service that a Party requires, explicitly or in effect, to be offered to the public generally. These services may include telephone and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;

reference interconnection offer means an interconnection offer extended by a major supplier and filed with, approved by or determined by a telecommunications regulatory body that sufficiently details the terms, rates and conditions for interconnection so that a supplier of public telecommunications

services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

telecommunications means the transmission and reception of signals by any electromagnetic means, including by photonic means;

telecommunications regulatory body means a body or bodies responsible for the regulation of telecommunications;

user means a service consumer or a service supplier; and

virtual co-location means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

Article 13.2: Scope

1. This Chapter shall apply to:

   (a) any measure relating to access to and use of public telecommunications services;

   (b) any measure relating to obligations regarding suppliers of public telecommunications services; and

   (c) any other measure relating to telecommunications services.

2. This Chapter shall not apply to any measure relating to broadcast or cable distribution of radio or television programming, except that:

   (a) Article 13.4.1 (Access to and Use of Public Telecommunications Services) shall apply with respect to a cable or broadcast service supplier's access to and use of public telecommunications services; and

   (b) Article 13.22 (Transparency) shall apply to any technical measure to the extent that the measure also affects public telecommunications services.

3. Nothing in this Chapter shall be construed to:

   (a) require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or provide a telecommunications network or service not offered to the public

generally;[1]

(b) require a Party to compel any enterprise exclusively engaged in the broadcast or cable distribution of radio or television programming to make available its broadcast or cable facilities as a public telecommunications network; or

(c) prevent a Party from prohibiting a person who operates a private network from using its private network to supply a public telecommunications network or service to third persons.

4. Annex 13-A (Rural Telephone Suppliers – United States) and Annex 13-B (Rural Telephone Suppliers – Peru) include additional provisions relating to the scope of this Chapter.

Article 13.3: Approaches to Regulation

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that economic regulation may not be needed if there is effective competition or if a service is new to a market. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Chapter.

2. In this respect, the Parties recognise that a Party may:

(a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market;

(b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by telecommunications suppliers that do not own network facilities;[2] or

[1] For greater certainty, nothing in this Chapter shall be construed to require a Party to authorise an enterprise of another Party to establish, construct, acquire, lease, operate or supply public telecommunications services, unless otherwise provided for in this Agreement.

[2] Consistent with this subparagraph, the United States, based on its evaluation of the state of competition of the U.S. commercial mobile market, has not applied major supplier-related measures pursuant to Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.9.2 (Resale), Article 13.11 (Interconnection with Major Suppliers), Article 13.13 (Co-Location by Major Suppliers) or Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-Way Owned or Controlled by Major Suppliers) to the commercial mobile market.

(c) use any other appropriate means that benefit the long-term interest of end-users.

3. When a Party engages in direct regulation, it may nonetheless forbear, to the extent provided for in its law, from applying that regulation to a service that the Party classifies as a public telecommunications service, if its telecommunications regulatory body or other competent body determines that:

(a) enforcement of the regulation is not necessary to prevent unreasonable or discriminatory practices;

(b) enforcement of the regulation is not necessary for the protection of consumers; and

(c) forbearance is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications services.

Article 13.4: Access to and Use of Public Telecommunications Services[3]

1. Each Party shall ensure that any enterprise of another Party has access to and use of any public telecommunications service, including leased circuits, offered in its territory or across its borders, on reasonable and non-discriminatory terms and conditions.

2. Each Party shall ensure that any service supplier of another Party is permitted to:

(a) purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network;

(b) provide services to individual or multiple end-users over leased or owned circuits;

(c) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another enterprise;[4]

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[3] For greater certainty, this Article does not prohibit any Party from requiring an enterprise to obtain a licence to supply any public telecommunications service within its territory.

[4] In Viet Nam, networks authorised to establish for the purpose of carrying out, on a non-commercial basis, voice and data telecommunications between members of a closed user group can only directly interconnect with each other where approved in writing by the telecommunications regulatory body. Viet Nam shall ensure that upon request an applicant receives the reasons for the denial of an authorisation. Viet Nam shall review this requirement to obtain written approval within two years of the date of entry into force of this Agreement.

(d) perform switching, signalling, processing and conversion functions; and

(e) use operating protocols of their choice.

3. Each Party shall ensure that an enterprise of any Party may use public telecommunications services for the movement of information in its territory or across its borders, including for intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of any Party.

4. Notwithstanding paragraph 3, a Party may take measures that are necessary to ensure the security and confidentiality of messages and to protect the privacy of personal data of end-users of public telecommunications networks or services, provided that those measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

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

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

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

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

(a) a requirement to use a specified technical interface, including an interface protocol, for connection with those networks or services;

(b) a requirement, when necessary, for the interoperability of those networks and services;

(c) type approval of terminal or other equipment that interfaces with the network and technical requirements relating to the attachment of that equipment to those networks; and

(d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and provides for the processing of applications filed thereunder in accordance with a Party's laws or regulations.

Article 13.5: Obligations Relating to Suppliers of Public Telecommunications Services

Interconnection[5]

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly within the same territory, interconnection with suppliers of public telecommunications services of another Party.

2. Each Party shall provide its telecommunications regulatory body with the authority to require interconnection at reasonable rates.

3. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end-users of public telecommunications services obtained as a result of interconnection arrangements and that those suppliers only use that information for the purpose of providing these services.

Number Portability

4. Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions.[6]

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[5] For greater certainty, the term "interconnection", as used in this Chapter, does not include access to unbundled network elements.

[6] With respect to certain Parties, this paragraph shall apply as follows:

(a) for Brunei Darussalam, this paragraph shall not apply until such time as it determines, pursuant to periodic review, that it is economically feasible to implement number portability in Brunei Darussalam;

(b) for Malaysia, this paragraph shall apply only with respect to commercial mobile services until such time as it determines that it is economically feasible to apply number portability to fixed services; and

(c) for Viet Nam, this paragraph shall apply to fixed services at such time as it determines that it is technically and economically feasible. Within four years of the date of entry into force of this Agreement for Viet Nam, it shall conduct a review for it to determine the economic feasibility of applying number portability to fixed services. With respect to commercial mobile services, this paragraph shall apply to Viet Nam no later than 2020.

Access to Numbers

5. Each Party shall ensure that suppliers of public telecommunications services of another Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.[7]

Article 13.6: International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of another Party can access telecommunications services using the device of their choice.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with other Parties to facilitate the implementation of those measures, including by entering into arrangements with those Parties.

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which:[8]

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[7] For Viet Nam, this paragraph shall not apply with respect to blocks of numbers that have been allocated prior to entry into force of this Agreement.

[8] For greater certainty, no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

(a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of the two Parties;[9] or

(b) in the absence of an arrangement of the type referred to in subparagraph (a), the supplier of public telecommunications services of the second Party, of its own accord:

(i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions;[10] and

(ii) meets any additional requirements[11] that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 10.4 (Most-Favoured-Nation Treatment), Article 13.4.1 (Access to and Use of Public Telecommunications Services), and Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services) with respect to international mobile roaming services.

6. Each Party shall provide to the other Parties information on rates for retail international mobile roaming services for voice, data and text messages offered to consumers of the Party when visiting the territories of the other Parties. A Party shall provide that information no later than one year after the date of entry into force of this Agreement for the Party. Each Party shall update that information

[9] For greater certainty, access under this subparagraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

[10] For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

[11] For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

and provide it to the other Parties on an annual basis or as otherwise agreed. Interested Parties shall endeavour to cooperate on compiling this information into a report to be mutually agreed by the Parties and to be made publicly available.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

Article 13.7: Treatment by Major Suppliers of Public Telecommunications Services

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

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

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

Article 13.8: Competitive Safeguards

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers of public telecommunications services that, alone or together, are a major supplier in its territory from engaging in or continuing anti-competitive practices.

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

(a) engaging in anti-competitive cross-subsidisation;

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

(c) not making available, on a timely basis, to suppliers of public telecommunications services, technical information about essential facilities and commercially relevant information that are necessary for them to provide services.

Article 13.9: Resale

1. No Party shall prohibit the resale of any public telecommunications

service.[12]

2. Each Party shall ensure that a major supplier in its territory:

(a) offers for resale, at reasonable rates[13], to suppliers of public telecommunications services of another Party, public telecommunications services that the major supplier provides at retail to end-users; and

(b) does not impose unreasonable or discriminatory conditions or limitations on the resale of those services.[14]

3. Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by major suppliers pursuant to paragraph 2, based on the need to promote competition or to benefit the long-term interests of end-users.

4. If a Party does not require that a major supplier offer a specific public telecommunications service for resale, it nonetheless shall allow service suppliers to request that the service be offered for resale consistent with paragraph 2, without prejudice to the Party's decision on the request.

Article 13.10: Unbundling of Network Elements by Major Suppliers

Each Party shall provide its telecommunications regulatory body or another appropriate body with the authority to require a major supplier in its territory to offer to public telecommunications service suppliers access to network elements on an unbundled basis on terms and conditions, and at cost-oriented rates, that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services. Each Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.

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[12] Brunei Darussalam may require that licensees who purchase public telecommunications services on a wholesale basis only resell their services to an end-user.

[13] For the purposes of this Article, each Party may determine reasonable rates through any methodology it considers appropriate.

[14] Where provided in its laws or regulations, a Party may prohibit a reseller that obtains, at wholesale rates, a public telecommunications service available at retail to only a limited category of subscribers from offering the service to a different category of subscribers.

Article 13.11: Interconnection with Major Suppliers

General Terms and Conditions

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of another Party:

(a) at any technically feasible point in the major supplier's network;

(b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

(c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;

(d) in a timely manner, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers do not have to pay for network components or facilities that they do not require for the service to be provided; and

(e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

Options for Interconnecting with Major Suppliers

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through the following options:

(a) a reference interconnection offer or another standard interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services; or

(b) the terms and conditions of an interconnection agreement that is in effect.

3. In addition to the options provided in paragraph 2, each Party shall ensure that suppliers of public telecommunications services of another Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

Public Availability of Interconnection Offers and Agreements

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

5. Each Party shall provide means for suppliers of another Party to obtain the rates, terms and conditions necessary for interconnection offered by a major supplier. Those means include, at a minimum, ensuring:

(a) the public availability of interconnection agreements that are in effect between a major supplier in its territory and other suppliers of public telecommunications services in its territory;

(b) the public availability of rates, terms and conditions for interconnection with a major supplier set by the telecommunications regulatory body or other competent body; or

(c) the public availability of a reference interconnection offer.

Services for which those rates, terms and conditions are made publicly available do not have to include all interconnection-related services offered by a major supplier, as determined by a Party under its laws and regulations.

Article 13.12: Provisioning and Pricing of Leased Circuits Services by Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides to service suppliers of another Party leased circuits services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

2. Further to paragraph 1, each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of another Party at capacity-based and cost-oriented prices.

Article 13.13: Co-Location by Major Suppliers

1. Subject to paragraphs 2 and 3, each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of another Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally

available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall ensure that a major supplier in its territory provides an alternative solution, such as facilitating virtual co-location, based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2. When the Party makes this determination, it shall take into account factors such as the state of competition in the market where co-location is required, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

4. If a Party does not require that a major supplier offer co-location at certain premises, it nonetheless shall allow service suppliers to request that those premises be offered for co-location consistent with paragraph 1, without prejudice to the Party's decision on such a request.

Article 13.14: Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers[15]

1. Each Party shall ensure that a major supplier in its territory provides access to poles, ducts, conduits, and rights-of-way or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory on a timely basis, on terms and conditions and at rates, that are reasonable, non-discriminatory and transparent, subject to technical feasibility.

2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, rights-of-way or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

[15] Chile may comply with this obligation by maintaining appropriate measures for the purpose of preventing a major supplier in its territory from denying access to poles, ducts, conduits and rights-of-way, owned or controlled by the major supplier.

Article 13.15: International Submarine Cable Systems[16, 17]

Each Party shall ensure that any major supplier who controls international submarine cable landing stations in the Party's territory provides access to those landing stations, consistent with the provisions of Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers) and Article 13.13 (Co-Location by Major Suppliers), to public telecommunications suppliers of another Party.

Article 13.16: Independent Regulatory Bodies and Government Ownership

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services. With a view to ensuring the independence and impartiality of telecommunications regulatory bodies, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest[18] or maintain an operating or management role[19] in any supplier of public telecommunications services.

2. Each Party shall ensure that the regulatory decisions and procedures of its telecommunications regulatory body or other competent authority related to provisions contained in this Chapter are impartial with respect to all market participants.

3. No Party shall accord more favourable treatment to a supplier of telecommunications services in its territory than that accorded to a like service supplier of another Party on the basis that the supplier receiving more favourable treatment is owned by the national government of the Party.

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[16] For Chile, this provision shall apply when its telecommunications regulatory body obtains the authority to implement this provision. Nonetheless, Chile shall ensure reasonable and non-discriminatory access to international submarine cable systems including landing stations in its territory.

[17] For Viet Nam, co-location for international submarine landing stations owned or controlled by the major supplier in the territory of Viet Nam excludes physical co-location.

[18] This paragraph shall not be construed to prohibit a government entity of a Party other than the telecommunications regulatory body from owning equity in a supplier of public telecommunications services.

[19] Viet Nam's telecommunications regulatory body assumes the role of representing the government as owner of certain telecommunications suppliers. In this context, Viet Nam shall comply with this provision by ensuring that any regulatory actions with respect to those suppliers do not materially disadvantage any competitor.

Article 13.17: Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

Article 13.18: Licensing Process

1. If a Party requires a supplier of public telecommunications services to have a licence, the Party shall ensure the public availability of:

(a) all the licensing criteria and procedures that it applies;

(b) the period that it normally requires to reach a decision concerning an application for a licence; and

(c) the terms and conditions of all licences in effect.

2. Each Party shall ensure that, on request, an applicant receives the reasons for the:

(a) denial of a licence;

(b) imposition of supplier-specific conditions on a licence;

(c) revocation of a licence; or

(d) refusal to renew a licence.

Article 13.19: Allocation and Use of Scarce Resources

1. Each Party shall administer its procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent and non-discriminatory manner.

2. Each Party shall make publicly available the current state of frequency bands allocated and assigned to specific suppliers[20] but retains the right not to provide detailed identification of frequencies that are allocated or assigned for specific government uses.

3. For greater certainty, a Party's measures allocating and assigning spectrum

[20] For Peru, the commitment to make publicly available assigned bands shall apply only to bands used to provide access to end-users.

and managing frequency are not *per se* inconsistent with Article 10.5 (Market Access) either as it applies to cross-border trade in services or through the operation of Article 10.2.2 (Scope) to an investor or covered investment of another Party. Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications services, provided that the Party does so in a manner that is consistent with other provisions of this Agreement. This includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services. To this end, each Party shall have the authority to use mechanisms such as auctions, if appropriate, to assign spectrum for commercial use.

Article 13.20: Enforcement

Each Party shall provide its competent authority with the authority to enforce the Party's measures relating to the obligations set out in Article 13.4 (Access to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems). That authority shall include the ability to impose effective sanctions, which may include financial penalties, injunctive relief (on an interim or final basis), or the modification, suspension or revocation of licences.

Article 13.21: Resolution of Telecommunications Disputes

1. Further to Article 26.3 (Administrative Proceedings) and Article 26.4 (Review and Appeal), each Party shall ensure that:

Recourse

(a) enterprises have recourse to a telecommunications regulatory body or other relevant body of the Party to resolve disputes regarding the Party's measures relating to matters set out in Article 13.4 (Access

to and Use of Public Telecommunications Services), Article 13.5 (Obligations Relating to Suppliers of Public Telecommunications Services), Article 13.6 (International Mobile Roaming), Article 13.7 (Treatment by Major Suppliers of Public Telecommunications Services), Article 13.8 (Competitive Safeguards), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers), Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers), Article 13.14 (Access to Poles, Ducts, Conduits and Rights-of-way Owned or Controlled by Major Suppliers) and Article 13.15 (International Submarine Cable Systems);

(b) if a telecommunications regulatory body declines to initiate any action on a request to resolve a dispute, it shall, upon request, provide a written explanation for its decision within a reasonable period of time;[21]

(c) suppliers of public telecommunications services of another Party that have requested interconnection with a major supplier in the Party's territory may seek review, within a reasonable and publicly specified period of time after the supplier requests interconnection, by its telecommunications regulatory body to resolve disputes regarding the terms, conditions and rates for interconnection with that major supplier; and

Reconsideration[22]

(d) any enterprise whose legally protected interests are adversely affected by a determination or decision of the Party's telecommunications regulatory body may appeal to or petition the body or other relevant body to reconsider that determination or decision. No Party shall permit the making of an application for reconsideration to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the regulatory or other relevant body issues an order that the determination or decision not be enforced while the proceeding is pending. A Party may limit the circumstances under which reconsideration is available, in accordance with its laws and regulations.

[21] For the United States, this subparagraph applies only to the national regulatory body.

[22] With respect to Peru, enterprises may not petition for reconsideration of rulings of general application, as defined in Article 26.1 (Definitions), unless provided for under its laws and regulations. For Australia, paragraph 1(d) does not apply.

Judicial Review

2. No Party shall permit the making of an application for judicial review to constitute grounds for non-compliance with the determination or decision of the telecommunications regulatory body, unless the judicial body issues an order that the determination or decision not be enforced while the proceeding is pending.

Article 13.22: Transparency

1. Further to Article 26.2.2 (Publication), each Party shall ensure that when its telecommunications regulatory body seeks input[23] for a proposal for a regulation, that body shall:

(a) make the proposal public or otherwise available to any interested persons;

(b) include an explanation of the purpose of and reasons for the proposal;

(c) provide interested persons with adequate public notice of the ability to comment and reasonable opportunity for such comment;

(d) to the extent practicable, make publicly available all relevant comments filed with it; and

(e) respond to all significant and relevant issues raised in comments filed, in the course of issuance of the final regulation.[24]

2. Further to Article 26.2.1 (Publication), each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs and other terms and conditions of service;

(b) specifications of technical interfaces;

(c) conditions for attaching terminal or other equipment to the public telecommunications network;

(d) licensing, permit, registration or notification requirements, if any;

(e) general procedures relating to resolution of telecommunications

[23] For greater certainty, seeking input does not include internal governmental deliberations.

[24] For greater certainty, a Party may consolidate its responses to the comments received from interested persons. Viet Nam may comply with this obligation by responding to any questions regarding its decisions upon request.

disputes provided for in Article 13.21 (Resolution of Telecommunications Disputes); and

(f) any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending and adopting standards-related measures affecting access and use.

Article 13.23: Flexibility in the Choice of Technology

1. No Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so consistent with Article 13.22 (Transparency).

2. When a Party finances the development of advanced networks[25], it may make its financing conditional on the use of technologies that meet its specific public policy interests.

Article 13.24: Relation to Other Chapters

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

Article 13.25: Relation to International Organisations

The Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services and undertake to promote those standards through the work of relevant international organisations.

Article 13.26: Committee on Telecommunications

1. The Parties hereby establish a Committee on Telecommunications (Committee) composed of government representatives of each Party.

2. The Committee shall:

(a) review and monitor the implementation and operation of this

[25] For greater certainty, "advanced networks" includes broadband networks.

Chapter, with a view to ensuring the effective implementation of the Chapter by enabling responsiveness to technological and regulatory developments in telecommunications to ensure the continuing relevance of this Chapter to Parties, service suppliers and end users;

(b) discuss any issues related to this Chapter and any other issues relevant to the telecommunications sector as may be decided by the Parties;

(c) report to the Commission on the findings and the outcomes of discussions of the Committee; and

(d) carry out other functions delegated to it by the Commission.

3. The Committee shall meet at such venues and times as the Parties may decide.

4. The Parties may decide to invite representatives of relevant entities other than the Parties, including representatives of private sector entities, having the necessary expertise relevant to the issues to be discussed, to attend meetings of the Committee.

ANNEX 13-A

RURAL TELEPHONE SUPPLIERS – UNITED STATES

The United States may exempt rural local exchange carriers and rural telephone companies, as defined, respectively, in sections 251(f)(2) and 3(37) of the *Communications Act of 1934*, as amended, (47 U.S.C. 251(f)(2) and 153(44)), from the obligations contained in Article 13.5.4 (Obligations Relating to Suppliers of Public Telecommunications Services – Number Portability), Article 13.9 (Resale), Article 13.10 (Unbundling of Network Elements by Major Suppliers), Article 13.11 (Interconnection with Major Suppliers) and Article 13.13 (Co-Location by Major Suppliers).

ANNEX 13-B

RURAL TELEPHONE SUPPLIERS – PERU

1. With respect to Peru:

   (a) a rural operator shall not be considered a major supplier;

   (b) Article 13.5.4 (Obligations Relating to Suppliers of Public Telecommunications Services – Number Portability) shall not apply to rural operators; and

   (c) Article 13.12 (Provisioning and Pricing of Leased Circuits Services by Major Suppliers), Article 13.13 (Co-Location by Major Suppliers) and Article 13.14 (Access to Poles, Ducts, Conduits, and Rights-of-way Owned or Controlled by Major Suppliers) shall not apply to the facilities deployed by major suppliers in rural areas.

2. For the purposes of this Annex, for Peru:

   (a) rural area means a population centre:

      (i) that is not included within urban areas, with a population of less than 3,000 inhabitants, a low population density and a lack of basic services; or

      (ii) with a teledensity rate of less than two fixed lines per 100 inhabitants; and

   (b) rural operator means a rural telephone company that has at least 80 per cent of its total fixed subscriber lines in operation in rural areas.

CHAPTER 14

ELECTRONIC COMMERCE

Article 14.1: Definitions

For the purposes of this Chapter:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person[1] means:

(a) a covered investment as defined in Article 9.1 (Definitions);

(b) an investor of a Party as defined in Article 9.1 (Definitions), but does not include an investor in a financial institution; or

(c) a service supplier of a Party as defined in Article 10.1 (Definitions),

but does not include a "financial institution" or a "cross-border financial service supplier of a Party" as defined in Article 11.1 (Definitions);

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;[2, 3]

electronic 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;

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

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

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[1] For Australia, a covered person does not include a credit reporting body.

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

[3] 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.

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 to an electronic address, 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 14.2: Scope and General Provisions

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

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

3. This Chapter shall not apply to:

(a) government procurement; or

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

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means), Article 14.13 (Location of Computing Facilities) and Article 14.17 (Source Code) are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services); and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 9.12 (Non-Conforming Measures), Article 10.7 (Non-Conforming Measures) or Article 11.10 (Non-Conforming Measures).

Article 14.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

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

Article 14.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.[4]

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in Chapter 18 (Intellectual Property).

3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

4. This Article shall not apply to broadcasting.

Article 14.5: 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,

[4] For greater certainty, to the extent that a digital product of a non-Party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph.

November 23, 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.

Article 14.6: Electronic 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 electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods 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.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication 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 electronic authentication.

Article 14.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in Article 16.6.2 (Consumer Protection) when they engage in electronic commerce.

2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought under Article 16.6.5 and Article 16.6.6 (Consumer Protection) includes cooperation with respect to online commercial activities.

Article 14.8: Personal Information Protection[5]

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.[6]

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

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[5] Brunei Darussalam and Viet Nam are not required to apply this Article before the date on which that Party implements its legal framework that provides for the protection of personal data of the users of electronic commerce.

[6] 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 14.9: Paperless Trading

Each Party shall endeavour to:

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

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 14.10: Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management;[7]

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumer's Internet access service supplier.

Article 14.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction

[7] The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

Article 14.12: Internet Interconnection Charge Sharing

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of another Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

Article 14.13: Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

Article 14.14: Unsolicited Commercial Electronic Messages[8]

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

[8] Brunei Darussalam is not required to apply this Article before the date on which it implements its legal framework regarding unsolicited commercial electronic messages.

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

(b) require the consent, as specified according to 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 provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraph 1.

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

Article 14.15: Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist SMEs to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) exchange information and share views on consumer access to products and services offered online among the Parties;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

Article 14.16: Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

(a) building the capabilities of their national entities responsible for computer security incident response; and

(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.

Article 14.17: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

Article 14.18: Dispute Settlement

1. With respect to existing measures, Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products) and Article 14.11 (Cross-Border Transfer of Information by Electronic Means) for a period of two years after the date of entry into force of this Agreement for Malaysia.

2. With respect to existing measures, Viet Nam shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) regarding its obligations under Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means) and Article 14.13 (Location of Computing Facilities) for a period of two years after the date of entry into force of this Agreement for Viet Nam.

CHAPTER 15

GOVERNMENT PROCUREMENT

Article 15.1: Definitions

For the purposes of this Chapter:

build-operate-transfer contract and public works concession contract means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual arrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

commercial goods or services means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

in writing or written means any worded or numbered expression that can be read, reproduced and may be later communicated. It 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;

multi-use list means a list of suppliers that a procuring entity has determined satisfy the conditions for participation 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;

offset means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to improve a Party's balance of payments accounts;

open tendering means a procurement method whereby all interested suppliers may submit a tender;

procuring entity means an entity listed in Annex 15-A;

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;

selective tendering means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

services includes construction services, unless otherwise specified;

supplier means a person or 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, including any applicable administrative provisions; or

(b) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

Article 15.2: Scope

Application of Chapter

1. This Chapter applies 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 as specified in each Party's Schedule to Annex 15-A;

(b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;

(c) for which the value, as estimated in accordance with paragraphs 8 and 9, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 15-A, at the time of publication of a notice of intended procurement;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

Activities Not Covered

3. Unless otherwise provided in a Party's Schedule to Annex 15-A, this Chapter does 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;

(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 15.4.1 (General Principles); or

(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; and

(f) procurement of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party.

Schedules

4. Each Party shall specify the following information in its Schedule to Annex 15-A:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes;

(h) in Section H, the applicable Threshold Adjustment Formula;

(i) in Section I, the publication information required under Article 15.6.2 (Publication of Procurement Information); and

(j) in Section J, any transitional measures in accordance with Article 15.5 (Transitional Measures).

Compliance

5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

6. 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, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

7. 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.

Valuation

8. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

9. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

Article 15.3: 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 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 the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.

2. The Parties understand that subparagraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

Article 15.4: General Principles

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to:

(a) domestic goods, services and suppliers; and

(b) goods, services and suppliers of any other Party.

For greater certainty, this obligation refers only to the treatment accorded by a Party to any good, service or supplier of any other Party under this Agreement.

2. With respect to any measure regarding covered procurement, no Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; 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 any other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraphs 1 and 2 of this Article.

Procurement Methods

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 15.9 (Qualification of Suppliers) or Article 15.10 (Limited Tendering) applies.

Rules of Origin

5. Each Party shall apply to covered procurement of a good the rules of origin that it applies in the normal course of trade to that good.

Offsets

6. With regard to covered procurement, no Party, including its procuring entities, shall seek, take account of, impose or enforce any offset, at any stage of a procurement.

Measures Not Specific to Procurement

7. 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 covered procurement.

Use of Electronic Means

8. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders.

9. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available 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 15.5: Transitional Measures

1. A Party that is a developing country (developing country Party) may, with the agreement of the other Parties, adopt or maintain one or more of the following transitional measures, during a transition period set out in, and in accordance with, Section J of the Party's Schedule to Annex 15-A:

(a) a price preference programme, provided that the programme:

(i) provides a preference only for the part of the tender incorporating goods or services originating in that developing country Party; and

(ii) is transparent, and that the preference and its application in the procurement are clearly described in the notice of intended procurement;

(b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of

intended procurement;

(c) the phased-in addition of specific entities or sectors; and

(d) a threshold that is higher than its permanent threshold.

A transitional measure shall be applied in a manner that does not discriminate between the other Parties.

2. The Parties may agree to the delayed application of any obligation in this Chapter, other than Article 15.4.1(b) (General Principles), by the developing country Party while that Party implements the obligation. The implementation period shall be only the period necessary to implement the obligation.

3. Any developing country Party that has negotiated an implementation period for an obligation under paragraph 2 shall list in its Schedule to Annex 15-A the agreed implementation period, the specific obligation subject to the implementation period and any interim obligation with which it has agreed to comply during the implementation period.

4. After this Agreement has entered into force for a developing country Party, the other Parties, on request of that developing country Party, may:

(a) extend the transition period for a measure adopted or maintained under paragraph 1 or any implementation period negotiated under paragraph 2; or

(b) approve the adoption of a new transitional measure under paragraph 1, in special circumstances that were unforeseen.

5. A developing country Party that has negotiated a transitional measure under paragraphs 1 or 4, an implementation period under paragraph 2, or any extension under paragraph 4, shall take those steps during the transition period or implementation period that may be necessary to ensure that it is in compliance with this Chapter at the end of any such period. The developing country Party shall promptly notify the other Parties of each step in accordance with Article 27.7 (Reporting in relation to Party-specific Transition Periods).

6. Each Party shall give consideration to any request by a developing country Party for technical cooperation and capacity building in relation to that Party's implementation of this Chapter.

Article 15.6: **Publication of Procurement Information**

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.

2. Each Party shall list in Section I of its Schedule to Annex 15-A the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 15.7 (Notices of Intended Procurement), Article 15.9.3 (Qualification of Suppliers) and Article 15.16.3 (Post-Award Information).

3. Each Party shall, on request, respond to an inquiry relating to the information referred to in paragraph 1.

Article 15.7: Notices of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 15.10 (Limited Tendering), a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 15-A. 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 that are covered under Annex 15-A, through a single point of access; and

(b) for sub-central government entities and other entities covered under Annex 15-A, through links in 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 an official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide;

(h) if, pursuant to Article 15.9 (Qualification of Suppliers), 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, unless that indication is publicly available through information published pursuant to Article 15.6.2 (Publication of Procurement Information).

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

5. For the purposes of this Chapter, each Party shall endeavour to use English as the language for publishing the notice of intended procurement.

Notice of Planned Procurement

6. 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 15.8: Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered 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 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 and 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; 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 material, 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; or

(d) failure to pay taxes.

5. For greater certainty, this Article is not intended to preclude a procuring entity from promoting compliance with laws in the territory in which the good is produced or the service is performed relating to labour rights as recognised by the Parties and set forth in Article 19.3 (Labour Rights), provided that such measures are applied in a manner consistent with Chapter 26 (Transparency and Anti-Corruption), and are not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on

trade between the Parties.[1]

Article 15.9: 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.

2. No Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of other Parties on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

Selective Tendering

3. If a Party's measures authorise the use of selective tendering, and if a procuring entity intends to use selective tendering, the procuring entity shall:

(a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and

(b) include in the notice of intended procurement the information specified in Article 15.7.3(a), (b), (d), (g), (h) and (i) (Notices of Intended Procurement).

4. 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 15.7.3 (c), (e) and (f) (Notices of Intended Procurement) to the qualified suppliers that it notifies as specified in Article 15.14.3(b) (Time Periods); and

[1] The adoption and maintenance of these measures by a Party should not be construed as evidence that another Party has breached the obligations under Chapter 19 (Labour) with respect to labour.

(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.

5. 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 4(c).

Multi-Use Lists

6. 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 on 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 on the list and the methods that the procuring entity or other government agency 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 on 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 15.6.2 (Publication of Procurement Information).

7. A Party, including its procuring entities, that establishes or maintains a multi-use list, shall include on 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 6.

8. If a supplier that is not included on 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 15.14.2 (Time Periods), 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

9. 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 on a multi-use list of the decision with respect to the request or application.

10. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on 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 15.10: Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers or in a manner that discriminates against suppliers of any other Party, 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 15.7 (Notices of Intended Procurement), Article 15.8 (Conditions for Participation), Article 15.9 (Qualification of Suppliers), Article 15.11 (Negotiations), Article 15.12 (Technical Specifications), Article 15.13 (Tender Documentation), Article 15.14 (Time Periods) or Article 15.15 (Treatment of Tenders and Awarding of Contracts). A procuring entity may use limited tendering only under 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 construction 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 construction services may not exceed 50 per cent of the value of the initial contract;

(g) 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;

(h) 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

(i) 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 15.11: Negotiations

1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 15.7 (Notices of Intended Procurement); or

(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.

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) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

Article 15.12: Technical Specifications

1. A procuring entity shall 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 15.13: 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. 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) any other terms or conditions relevant to the evaluation of tenders; and

(f) any date for delivery of a good or supply of a service.

2. 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.

3. 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

4. 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 15.14: 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 that the final date for the submission of a request for participation shall not, in principle, be less than 25 days 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 reduced to no less than 10 days.

3. Except as provided in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days 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 by five days for each one 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.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 15.7 (Notices of Intended Procurement) 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 final dates 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 as is available;

(b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. 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 15.15: 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 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

3. 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.

4. 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.

5. A procuring entity shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

Article 15.16: 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 paragraph 3, 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 15.17 (Disclosure of Information), 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.

Publication of Award Information

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

(a) a description of the good or service procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the contract award;

(e) the date of award or, if the procuring entity has already informed suppliers of the date of the award under paragraph 1, the contract date; and

(f) the procurement method used and, if a procedure was used pursuant to Article 15.10 (Limited Tendering), a brief description of the circumstances justifying the use of that procedure.

Maintenance of Records

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 15.10.3 (Limited Tendering), for at least three years after the award of a contract.

Article 15.17: Disclosure of Information

Provision of Information to Parties

1. On request of any other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing

confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

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 that 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 15.18: 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 15.19: 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 (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 covered procurement, in which the supplier has, or had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of 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, the 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, which in no case shall be less than 10 days 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 fashion, 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 15.20: Modifications and Rectifications of Annex

1. A Party shall notify any proposed modification or rectification (modification) to its Schedule to Annex 15-A by circulating a notice in writing to the other Parties through the overall contact points designated under Article 27.5 (Contact Points). A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Parties if the proposed modification concerns one of the following:

(a) a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 15-A, such as:

(i) changes in the name of a procuring entity;

(ii) the merger of one or more procuring entities listed in its Schedule;

(iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the

procuring entities listed in the same Section of the Annex; and

(iv) changes in website references,

and no Party objects under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or (b).

3. Any Party whose rights under this Chapter may be affected by a proposed modification that is notified under paragraph 1 shall notify the other Parties of any objection to the proposed modification within 45 days of the date of circulation of the notice.

4. If a Party objects to a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, that Party may request additional information, including information on the nature of any government control or influence, with a view to clarifying and reaching agreement on the proposed modification, including the procuring entity's continued coverage under this Chapter. The modifying Party and any objecting Party shall make every attempt to resolve the objection through consultations.

5. If the modifying Party and any objecting Party resolve the objection through consultations, the modifying Party shall notify the other Parties of the resolution.

6. The Commission shall modify Annex 15-A to reflect any agreed modification.

Article 15.21: Facilitation of Participation by SMEs

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

3. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) endeavour to make all tender documentation available free of

charge;

(c) conduct procurement by electronic means or through other new information and communication technologies; and

(d) consider the size, design and structure of the procurement, including the use of subcontracting by SMEs.

Article 15.22: Cooperation

1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets.

2. The Parties shall endeavour to cooperate in matters such as:

(a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;

(b) exchanging experiences and information, such as regulatory frameworks, best practices and statistics;

(c) developing and expanding the use of electronic means in government procurement systems;

(d) building capability of government officials in best government procurement practices;

(e) institutional strengthening for the fulfilment of the provisions of this Chapter; and

(f) enhancing the ability to provide multilingual access to procurement opportunities.

Article 15.23: Committee on Government Procurement

The Parties hereby establish a Committee on Government Procurement (Committee), composed of government representatives of each Party. On request of a Party, the Committee shall meet to address matters related to the implementation and operation of this Chapter, such as:

(a) cooperation between the Parties, as provided for in Article 15.22 (Cooperation);

(b) facilitation of participation by SMEs in covered procurement, as provided for in Article 15.21 (Facilitation of Participation by SMEs);

(c) use of transitional measures; and

(d) consideration of further negotiations as provided for in Article 15.24 (Further Negotiations).

Article 15.24: Further Negotiations

1. The Committee shall review this Chapter and may decide to hold further negotiations with a view to:

(a) improving market access coverage through enlargement of procuring entity lists and reduction of exclusions and exceptions as set out in Annex 15-A;

(b) revising the thresholds set out in Annex 15-A;

(c) revising the Threshold Adjustment Formula in Section H of Annex 15-A; and

(d) reducing and eliminating discriminatory measures.

2. No later than three years after the date of entry into force of this Agreement, the Parties shall commence negotiations with a view to achieving expanded coverage, including sub-central coverage[2]. Parties may also agree to cover sub-central government procurement prior to or following the start of those negotiations.

[2] For those Parties that administer at the central level of government the kinds of procurement that other Parties may administer by sub-central entities, those negotiations may involve commitments at the central government level rather than at the sub-central government level.

CHAPTER 16

COMPETITION POLICY

Article 16.1: Competition Law and Authorities and Anticompetitive Business Conduct[1]

1. Each Party shall adopt or maintain national competition laws that proscribe anticompetitive business conduct, with the objective of promoting economic efficiency and consumer welfare, and shall take appropriate action with respect to that conduct. These laws should take into account the *APEC Principles to Enhance Competition and Regulatory Reform*, done at Auckland, September 13, 1999.

2. Each Party shall endeavour to apply its national competition laws to all commercial activities in its territory.[2] However, each Party may provide for certain exemptions from the application of its national competition laws provided that those exemptions are transparent and are based on public policy grounds or public interest grounds.

3. Each Party shall maintain an authority or authorities responsible for the enforcement of its national competition laws (national competition authorities). Each Party shall provide that it is the enforcement policy of that authority or authorities to act in accordance with the objectives set out in paragraph 1 and not to discriminate on the basis of nationality.

Article 16.2: Procedural Fairness in Competition Law Enforcement[3]

1. Each Party shall ensure that before it imposes a sanction or remedy against a person for violating its national competition laws, it affords that person:

(a) information about the national competition authority's competition concerns;

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[1] This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

[2] For greater certainty, nothing in paragraph 2 shall be construed to preclude a Party from applying its competition laws to commercial activities outside its borders that have anticompetitive effects within its jurisdiction.

[3] This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

(b) a reasonable opportunity to be represented by counsel; and

(c) a reasonable opportunity to be heard and present evidence in its defence, except that a Party may provide for the person to be heard and present evidence within a reasonable time after it imposes an interim sanction or remedy.

In particular, each Party shall afford that person a reasonable opportunity to present evidence or testimony in its defence, including: if applicable, to offer the analysis of a properly qualified expert, to cross-examine any testifying witness; and to review and rebut the evidence introduced in the enforcement proceeding[4].

2. Each Party shall adopt or maintain written procedures pursuant to which its national competition law investigations are conducted. If these investigations are not subject to definitive deadlines, each Party's national competition authorities shall endeavour to conduct their investigations within a reasonable time frame.

3. Each Party shall adopt or maintain rules of procedure and evidence that apply to enforcement proceedings concerning alleged violations of its national competition laws and the determination of sanctions and remedies thereunder. These rules shall include procedures for introducing evidence, including expert evidence if applicable, and shall apply equally to all parties to a proceeding.

4. Each Party shall provide a person that is subject to the imposition of a sanction or remedy for violation of its national competition laws with the opportunity to seek review of the sanction or remedy, including review of alleged substantive or procedural errors, in a court or other independent tribunal established under that Party's laws.

5. Each Party shall authorise its national competition authorities to resolve alleged violations voluntarily by consent of the authority and the person subject to the enforcement action. A Party may provide for such voluntary resolution to be subject to judicial or independent tribunal approval or a public comment period before becoming final.

6. If a Party's national competition authority issues a public notice that reveals the existence of a pending or ongoing investigation, that authority shall avoid implying in that notice that the person referred to in that notice has engaged in the alleged conduct or violated the Party's national competition laws.

7. If a Party's national competition authority alleges a violation of its national competition laws, that authority shall be responsible for establishing the

[4] For the purposes of this Article, "enforcement proceedings" means judicial or administrative proceedings following an investigation into the alleged violation of the competition laws.

legal and factual basis for the alleged violation in an enforcement proceeding.[5]

8. Each Party shall provide for the protection of business confidential information, and other information treated as confidential under its law, obtained by its national competition authorities during the investigative process. If a Party's national competition authority uses or intends to use that information in an enforcement proceeding, the Party shall, if it is permissible under its law and as appropriate, provide a procedure to allow the person under investigation timely access to information that is necessary to prepare an adequate defence to the national competition authority's allegations.

9. Each Party shall ensure that its national competition authorities afford a person under investigation for possible violation of the national competition laws of that Party reasonable opportunity to consult with those competition authorities with respect to significant legal, factual or procedural issues that arise during the investigation.

Article 16.3: Private Rights of Action[6]

1. For the purposes of this Article, "private right of action" means the right of a person to seek redress, including injunctive, monetary or other remedies, from a court or other independent tribunal for injury to that person's business or property caused by a violation of national competition laws, either independently or following a finding of violation by a national competition authority.

2. Recognising that a private right of action is an important supplement to the public enforcement of national competition laws, each Party should adopt or maintain laws or other measures that provide an independent private right of action.

3. If a Party does not adopt or maintain laws or other measures that provide an independent private right of action, the Party shall adopt or maintain laws or other measures that provide a right that allows a person:

(a) to request that the national competition authority initiate an investigation into an alleged violation of national competition laws; and

(b) to seek redress from a court or other independent tribunal following a finding of violation by the national competition

[5] Nothing in this paragraph shall prevent a Party from requiring that a person against whom such an allegation is made be responsible for establishing certain elements in defence of the allegation.

[6] This Article is subject to Annex 16-A (Application of Article 16.2, Article 16.3 and Article 16.4 to Brunei Darussalam).

authority.

4. Each Party shall ensure that a right provided pursuant to paragraph 2 or 3 is available to persons of another Party on terms that are no less favourable than those available to its own persons.

5. A Party may establish reasonable criteria for the exercise of any rights it creates or maintains in accordance with this Article.

Article 16.4: Cooperation

1. The Parties recognise the importance of cooperation and coordination between their respective national competition authorities to foster effective competition law enforcement in the free trade area. Accordingly, each Party shall:

(a) cooperate in the area of competition policy by exchanging information on the development of competition policy; and

(b) cooperate, as appropriate, on issues of competition law enforcement, including through notification, consultation and the exchange of information.

2. A Party's national competition authorities may consider entering into a cooperation arrangement or agreement with the competition authorities of another Party that sets out mutually agreed terms of cooperation.

3. The Parties agree to cooperate in a manner compatible with their respective laws, regulations and important interests, and within their reasonably available resources.

Article 16.5: Technical Cooperation

Recognising that the Parties can benefit by sharing their diverse experience in developing, applying and enforcing competition law and in developing and implementing competition policies, the Parties shall consider undertaking mutually agreed technical cooperation activities, subject to available resources, including:

(a) providing advice or training on relevant issues, including through the exchange of officials;

(b) exchanging information and experiences on competition advocacy, including ways to promote a culture of competition; and

(c) assisting a Party as it implements a new national competition law.

Article 16.6: Consumer Protection

1. The Parties recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets and enhancing consumer welfare in the free trade area.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example:

(a) a practice of making misrepresentations of material fact, including implied factual misrepresentations, that cause significant detriment to the economic interests of misled consumers;

(b) a practice of failing to deliver products or provide services to consumers after the consumers are charged; or

(c) a practice of charging or debiting consumers' financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws or other laws or regulations that proscribe fraudulent and deceptive commercial activities.[7]

4. The Parties recognise that fraudulent and deceptive commercial activities increasingly transcend national borders and that cooperation and coordination between the Parties is desirable to effectively address these activities.

5. Accordingly, the Parties shall promote, as appropriate, cooperation and coordination on matters of mutual interest related to fraudulent and deceptive commercial activities, including in the enforcement of their consumer protection laws.

6. The Parties shall endeavour to cooperate and coordinate on the matters set out in this Article through the relevant national public bodies or officials responsible for consumer protection policy, laws or enforcement, as determined by each Party and compatible with their respective laws, regulations and important interests and within their reasonably available resources.

[7] For greater certainty, the laws or regulations a Party adopts or maintains to proscribe these activities can be civil or criminal in nature.

Article 16.7: Transparency

1. The Parties recognise the value of making their competition enforcement policies as transparent as possible.

2. Recognising the value of the *APEC Competition Law and Policy Database* in enhancing the transparency of national competition laws, policies and enforcement activities, each Party shall endeavour to maintain and update its information on that database.

3. On request of another Party, a Party shall make available to the requesting Party public information concerning:

(a) its competition law enforcement policies and practices; and

(b) exemptions and immunities to its national competition laws, provided that the request specifies the particular good or service and market of concern and includes information explaining how the exemption or immunity may hinder trade or investment between the Parties.

4. Each Party shall ensure that a final decision finding a violation of its national competition laws is made in writing and sets out, in non-criminal matters, findings of fact and the reasoning, including legal and, if applicable, economic analysis, on which the decision is based.

5. Each Party shall further ensure that a final decision referred to in paragraph 4 and any order implementing that decision are published, or if publication is not practicable, are otherwise made available to the public in a manner that enables interested persons and other Parties to become acquainted with them. Each Party shall ensure that the version of the decision or order that is made available to the public does not include confidential information that is protected from public disclosure by its law.

Article 16.8: Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of another Party, a Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter affects trade or investment between the Parties. The Party addressed shall accord full and sympathetic consideration to the concerns of the requesting Party.

Article 16.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

ANNEX 16-A:

APPLICATION OF ARTICLE 16.2 (PROCEDURAL FAIRNESS IN COMPETITION LAW ENFORCEMENT), ARTICLE 16.3 (PRIVATE RIGHTS OF ACTION) AND ARTICLE 16.4 (COOPERATION) TO BRUNEI DARUSSALAM

1. If as of the date of entry into force of this Agreement, Brunei Darussalam does not have a national competition law which is in force and has not established a national competition authority, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall not apply to Brunei Darussalam for a period of no longer than 10 years after that date.

2. If Brunei Darussalam establishes a national competition authority or authorities before the end of the 10-year period, Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) shall apply to Brunei Darussalam from the date of establishment.

3. During the 10 year period, Brunei Darussalam shall take such steps as may be necessary to ensure that it is in compliance with Article 16.2 (Procedural Fairness in Competition Law Enforcement), Article 16.3 (Private Rights of Action) and Article 16.4 (Cooperation) at the end of the 10-year period and shall endeavour to comply with these obligations before the end of such period. Upon request of a Party, Brunei Darussalam shall inform the Parties of its progress since entry into force of the Agreement in developing and implementing an appropriate national competition law and establishing a national competition authority or authorities.

CHAPTER 17

STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Article 17.1: Definitions

For the purposes of this Chapter:

Arrangement means the *Arrangement on Officially Supported Export Credits*, developed within the framework of the Organization for Economic Co-operation and Development (OECD), or a successor undertaking, whether developed within or outside of the OECD framework, that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of January 1, 1979;

commercial activities means activities which an enterprise undertakes with an orientation toward profit-making[1] and which result in the production of a good or supply of a service that will be sold to a consumer in the relevant market in quantities and at prices determined by the enterprise;[2]

commercial considerations means price, quality, availability, marketability, transportation, and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry;

designate means to establish, designate or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;

designated monopoly means a privately owned monopoly that is designated after the date of entry into force of this Agreement and any government monopoly that a Party designates or has designated;

government monopoly means a monopoly that is owned, or controlled through ownership interests, by a Party or by another government monopoly;

independent pension fund means an enterprise that is owned, or controlled through ownership interests, by a Party that:

(a) is engaged exclusively in the following activities:

(i) administering or providing a plan for pension, retirement, social security, disability, death or employee benefits, or any

[1] For greater certainty, activities undertaken by an enterprise which operates on a not-for-profit basis or on a cost-recovery basis are not activities undertaken with an orientation toward profit-making.

[2] For greater certainty, measures of general application to the relevant market shall not be construed as the determination by a Party of pricing, production, or supply decisions of an enterprise.

combination thereof solely for the benefit of natural persons who are contributors to such a plan and their beneficiaries; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referred to in subparagraph (a)(i); and

(c) is free from investment direction from the government of the Party;[3]

market means the geographical and commercial market for a good or service;

monopoly means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;

non-commercial assistance[4] means assistance to a state-owned enterprise by virtue of that state-owned enterprise's government ownership or control, where:

(a) "assistance" means:

(i) direct transfers of funds or potential direct transfers of funds or liabilities, such as:

(A) grants or debt forgiveness;

(B) loans, loan guarantees or other types of financing on terms more favourable than those commercially available to that enterprise; or

(C) equity capital inconsistent with the usual investment practice, including for the provision of risk capital, of private investors; or

[3] Investment direction from the government of a Party: (a) does not include general guidance with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of government officials on the enterprise's board of directors or investment panel.

[4] For greater certainty, non-commercial assistance does not include: (a) intra-group transactions within a corporate group including state-owned enterprises, for example, between the parent and subsidiaries of the group, or among the group's subsidiaries, when normal business practices require reporting the financial position of the group excluding these intra-group transactions; (b) other transactions between state-owned enterprises that are consistent with the usual practices of privately owned enterprises in arm's length transactions; or (c) a Party's transfer of funds, collected from contributors to a plan for pension, retirement, social security, disability, death or employee benefits, or any combination thereof, to an independent pension fund for investment on behalf of the contributors and their beneficiaries.

(ii) goods or services other than general infrastructure on terms more favourable than those commercially available to that enterprise;

(b) "by virtue of that state-owned enterprise's government ownership or control" [5] means that the Party or any of the Party's state enterprises or state-owned enterprises:

(i) explicitly limits access to the assistance to the Party's state-owned enterprises;

(ii) provides assistance which is predominately used by the Party's state-owned enterprises;

(iii) provides a disproportionately large amount of the assistance to the Party's state-owned enterprises; or

(iv) otherwise favours the Party's state-owned enterprises through the use of its discretion in the provision of assistance;

public service mandate means a government mandate pursuant to which a state-owned enterprise makes available a service, directly or indirectly, to the general public in its territory;[6]

sovereign wealth fund means an enterprise owned, or controlled through ownership interests, by a Party that:

(a) serves solely as a special purpose investment fund or arrangement[7] for asset management, investment, and related activities, using financial assets of a Party; and

(b) is a Member of the International Forum of Sovereign Wealth Funds or endorses the *Generally Accepted Principles and Practices* ("Santiago Principles") issued by the International Working Group of Sovereign Wealth Funds, October 2008, or such other principles and practices as may be agreed to by the Parties,

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[5] In determining whether the assistance is provided "by virtue of that state-owned enterprise's government ownership or control", account shall be taken of the extent of diversification of economic activities within the territory of the Party, as well as of the length of time during which the non-commercial assistance programme has been in operation.

[6] For greater certainty, a service to the general public includes:

(a) the distribution of goods; and

(b) the supply of general infrastructure services.

[7] For greater certainty, the Parties understand that the word "arrangement" as an alternative to "fund" allows for a flexible interpretation of the legal arrangement through which the assets can be invested.

and includes any special purpose vehicles established solely for such activities described in subparagraph (a) wholly owned by the enterprise, or wholly owned by the Party but managed by the enterprise; and

state-owned enterprise means an enterprise that is principally engaged in commercial activities in which a Party:

(a) directly owns more than 50 per cent of the share capital;

(b) controls, through ownership interests, the exercise of more than 50 per cent of the voting rights; or

(c) holds the power to appoint a majority of members of the board of directors or any other equivalent management body.

Article 17.2: Scope[8]

1. This Chapter shall apply with respect to the activities of state-owned enterprises and designated monopolies of a Party that affect trade or investment between Parties within the free trade area.[9]

2. Nothing in this Chapter shall prevent a central bank or monetary authority of a Party from performing regulatory or supervisory activities or conducting monetary and related credit policy and exchange rate policy.

3. Nothing in this Chapter shall prevent a financial regulatory body of a Party, including a non-governmental body, such as a securities or futures exchange or market, clearing agency, or other organisation or association, from exercising regulatory or supervisory authority over financial services suppliers.

4. Nothing in this Chapter shall prevent a Party, or one of its state enterprises or state-owned enterprises from undertaking activities for the purpose of the resolution of a failing or failed financial institution or any other failing or failed enterprise principally engaged in the supply of financial services.

5. This Chapter shall not apply with respect to a sovereign wealth fund of a Party[10], except:

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[8] For the purposes of this Chapter, the terms “financial service supplier”, “financial institution” and “financial services” have the same meaning as in Article 11.1 (Definitions).

[9] This Chapter also applies with respect to the activities of state-owned enterprises of a Party that cause adverse effects in the market of a non-Party as provided in Article 17.7 (Adverse Effects).

[10] Malaysia shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement) with respect to enterprises owned or controlled by Khazanah Nasional Berhad for a period of two years following the entry into force of this Agreement for Malaysia, in light of ongoing development of state-owned enterprise reform legislation.

(a) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through a sovereign wealth fund; and

(b) Article 17.6.2 (Non-commercial Assistance) shall apply with respect to a sovereign wealth fund's provision of non-commercial assistance.

6. This Chapter shall not apply with respect to:

(a) an independent pension fund of a Party; or

(b) an enterprise owned or controlled by an independent pension fund of a Party, except:

(i) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by an independent pension fund; and

(ii) Article 17.6.1 and Article 17.6.3 (Non-commercial Assistance) shall apply with respect to a Party's indirect provision of non-commercial assistance through an enterprise owned or controlled by an independent pension fund.

7. This Chapter shall not apply to government procurement.

8. Nothing in this Chapter shall prevent a state-owned enterprise of a Party from providing goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions.

9. Nothing in this Chapter shall be construed to prevent a Party from:

(a) establishing or maintaining a state enterprise or a state-owned enterprise; or

(b) designating a monopoly.

10. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply to any service supplied in the exercise of governmental authority.[11]

11. Article 17.4.1(b), Article 17.4.1(c), Article 17.4.2(b) and Article 17.4.2(c) (Non-discriminatory Treatment and Commercial Considerations) shall not apply to the extent that a Party's state-owned enterprise or designated monopoly makes purchases and sales of goods or services pursuant to:

[11] For the purposes of this paragraph, "a service supplied in the exercise of governmental authority" has the same meaning as in GATS, including the meaning in the Financial Services Annex where applicable.

(a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article 9.12.1 (Non-Conforming Measures), Article 10.7.1 (Non-Conforming Measures) or Article 11.10.1 (Non-Conforming Measures), as set out in its Schedule to Annex I or in Section A of its Schedule to Annex III; or

(b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article 9.12.2 (Non-Conforming Measures), Article 10.7.2 (Non-Conforming Measures) or Article 11.10.2 (Non-Conforming Measures), as set out in its Schedule to Annex II or in Section B of its Schedule to Annex III.

Article 17.3: Delegated Authority

Each Party shall ensure that when its state-owned enterprises, state enterprises and designated monopolies exercise any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out, those entities act in a manner that is not inconsistent with that Party's obligations under this Agreement.[12]

Article 17.4: Non-discriminatory Treatment and Commercial Considerations

1. Each Party shall ensure that each of its state-owned enterprises, when engaging in commercial activities:

(a) acts in accordance with commercial considerations in its purchase or sale of a good or service, except to fulfil any terms of its public service mandate that are not inconsistent with subparagraph (c)(ii);

(b) in its purchase of a good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(c) in its sale of a good or service:

[12] Examples of regulatory, administrative or other governmental authority include the power to expropriate, grant licences, approve commercial transactions, or impose quotas, fees or other charges.

(i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party.[13]

2. Each Party shall ensure that each of its designated monopolies:

(a) acts in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, except to fulfil any terms of its designation that are not inconsistent with subparagraph (b), (c) or (d);

(b) in its purchase of the monopoly good or service:

(i) accords to a good or service supplied by an enterprise of another Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to a good or service supplied by an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to a like good or a like service supplied by enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(c) in its sale of the monopoly good or service:

(i) accords to an enterprise of another Party treatment no less favourable than it accords to enterprises of the Party, of any other Party or of any non-Party; and

(ii) accords to an enterprise that is a covered investment in the Party's territory treatment no less favourable than it accords to enterprises in the relevant market in the Party's territory that are investments of investors of the Party, of any other Party or of any non-Party; and

(d) does not use its monopoly position to engage in, either directly or indirectly, including through its dealings with its parent, subsidiaries or other entities the Party or the designated monopoly owns,

[13] Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the purchase or sale of shares, stock or other forms of equity by a state-owned enterprise as a means of its equity participation in another enterprise.

anticompetitive practices in a non-monopolised market in its territory that negatively affect trade or investment between the Parties.[14]

3. Paragraphs 1(b) and 1(c) and paragraphs 2(b) and 2(c) do not preclude a state-owned enterprise or designated monopoly from:

(a) purchasing or selling goods or services on different terms or conditions including those relating to price; or

(b) refusing to purchase or sell goods or services,

provided that such differential treatment or refusal is undertaken in accordance with commercial considerations.

Article 17.5: Courts and Administrative Bodies

1. Each Party shall provide its courts with jurisdiction over civil claims against an enterprise owned or controlled through ownership interests by a foreign government based on a commercial activity carried on in its territory.[15] This shall not be construed to require a Party to provide jurisdiction over such claims if it does not provide jurisdiction over similar claims against enterprises that are not owned or controlled through ownership interests by a foreign government.

2. Each Party shall ensure that any administrative body that the Party establishes or maintains that regulates a state-owned enterprise exercises its regulatory discretion in an impartial manner with respect to enterprises that it regulates, including enterprises that are not state-owned enterprises.[16]

[14] For greater certainty, a Party may comply with the requirements of this subparagraph through the enforcement or implementation of its generally applicable national competition laws and regulations, its economic regulatory laws and regulations, or other appropriate measures.

[15] This paragraph shall not be construed to preclude a Party from providing its courts with jurisdiction over claims against enterprises owned or controlled through ownership interests by a foreign government other than those claims referred to in this paragraph.

[16] For greater certainty, the impartiality with which an administrative body exercises its regulatory discretion is to be assessed by reference to a pattern or practice of that administrative body.

Article 17.6: Non-commercial Assistance

1. No Party shall cause[17] adverse effects to the interests of another Party through the use of non-commercial assistance that it provides, either directly or indirectly[18], to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

2. Each Party shall ensure that its state enterprises and state-owned enterprises do not cause adverse effects to the interests of another Party through the use of non-commercial assistance that the state enterprise or state-owned enterprise provides to any of its state-owned enterprises with respect to:

(a) the production and sale of a good by the state-owned enterprise;

(b) the supply of a service by the state-owned enterprise from the territory of the Party into the territory of another Party; or

(c) the supply of a service in the territory of another Party through an enterprise that is a covered investment in the territory of that other Party or any other Party.

3. No Party shall cause injury to a domestic industry[19] of another Party through the use of non-commercial assistance that it provides, either directly or indirectly, to any of its state-owned enterprises that is a covered investment in the territory of that other Party in circumstances where:

(a) the non-commercial assistance is provided with respect to the production and sale of a good by the state-owned enterprise in the territory of the other Party; and

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[17] For the purposes of paragraphs 1 and 2, it must be demonstrated that the adverse effects claimed have been caused by the non-commercial assistance. Thus, the non-commercial assistance must be examined within the context of other possible causal factors to ensure an appropriate attribution of causality.

[18] For greater certainty, indirect provision includes the situation in which a Party entrusts or directs an enterprise that is not a state-owned enterprise to provide non-commercial assistance.

[19] The term "domestic industry" refers to the domestic producers as a whole of the like good, or to those domestic producers whose collective output of the like good constitutes a major proportion of the total domestic production of the like good, excluding the state-owned enterprise that is a covered investment that has received the non-commercial assistance referred to in this paragraph.

(b) a like good is produced and sold in the territory of the other Party by the domestic industry of that other Party.[20]

4. A service supplied by a state-owned enterprise of a Party within that Party's territory shall be deemed not to cause adverse effects.[21]

Article 17.7: Adverse Effects

1. For the purposes of Article 17.6.1 and Article 17.6.2 (Non-commercial Assistance), adverse effects arise if the effect of the non-commercial assistance is:

(a) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from the Party's market imports of a like good of another Party or sales of a like good produced by an enterprise that is a covered investment in the territory of the Party;

(b) that the production and sale of a good by a Party's state-owned enterprise that has received the non-commercial assistance displaces or impedes from:

(i) the market of another Party sales of a like good produced by an enterprise that is a covered investment in the territory of that other Party, or imports of a like good of any other Party; or

(ii) the market of a non-Party imports of a like good of another Party;

(c) a significant price undercutting by a good produced by a Party's state-owned enterprise that has received the non-commercial assistance and sold by the enterprise in:

(i) the market of a Party as compared with the price in the same market of imports of a like good of another Party or a like good that is produced by an enterprise that is a covered investment in the territory of the Party, or significant price suppression, price depression or lost sales in the same market; or

(ii) the market of a non-Party as compared with the price in the same market of imports of a like good of another Party, or significant price suppression, price depression or lost sales in the same market;

[20] In situations of material retardation of the establishment of a domestic industry, it is understood that a domestic industry may not yet produce and sell the like good. However, in these situations, there must be evidence that a prospective domestic producer has made a substantial commitment to commence production and sales of the like good.

[21] For greater certainty, this paragraph shall not be construed to apply to a service that itself is a form of non-commercial assistance.

(d) that services supplied by a Party's state-owned enterprise that has received the non-commercial assistance displace or impede from the market of another Party a like service supplied by a service supplier of that other Party or any other Party; or

(e) a significant price undercutting by a service supplied in the market of another Party by a Party's state-owned enterprise that has received the non-commercial assistance as compared with the price in the same market of a like service supplied by a service supplier of that other Party or any other Party, or significant price suppression, price depression or lost sales in the same market.[22]

2. For the purposes of paragraphs 1(a), 1(b) and 1(d), the displacing or impeding of a good or service includes any case in which it has been demonstrated that there has been a significant change in relative shares of the market to the disadvantage of the like good or like service. "Significant change in relative shares of the market" shall include any of the following situations:

(a) there is a significant increase in the market share of the good or service of the Party's state-owned enterprise;

(b) the market share of the good or service of the Party's state-owned enterprise remains constant in circumstances in which, in the absence of the non-commercial assistance, it would have declined significantly; or

(c) the market share of the good or service of the Party's state-owned enterprise declines, but at a significantly slower rate than would have been the case in the absence of the non-commercial assistance.

The change must manifest itself over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the good or service concerned, which, in normal circumstances, shall be at least one year.

3. For the purposes of paragraphs 1(c) and 1(e), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of the prices of the good or service of the state-owned enterprise with the prices of the like good or service.

4. Comparisons of the prices in paragraph 3 shall be made at the same level of trade and at comparable times, and due account shall be taken for factors affecting price comparability. If a direct comparison of transactions is not possible, the existence of price undercutting may be demonstrated on some other reasonable basis, such as, in the case of goods, a comparison of unit values.

5. Non-commercial assistance that a Party provides:

(a) before the signing of this Agreement; or

[22] The purchase or sale of shares, stock or other forms of equity by a state-owned enterprise that has received non-commercial assistance as a means of its equity participation in another enterprise shall not be construed to give rise to adverse effects as provided for in Article 17.7.1 (Adverse Effects).

(b) within three years after the signing of this Agreement, pursuant to a law that is enacted, or contractual obligation undertaken, prior to the signing of this Agreement,

shall be deemed not to cause adverse effects.

6. For the purposes of Article 17.6.1(b) and Article 17.6.2(b) (Non-commercial Assistance), the initial capitalisation of a state-owned enterprise, or the acquisition by a Party of a controlling interest in an enterprise, that is principally engaged in the supply of services within the territory of the Party, shall be deemed not to cause adverse effects.

Article 17.8: Injury

1. For the purposes of Article 17.6.3 (Non-commercial Assistance), the term "injury" shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry. A determination of material injury shall be based on positive evidence and involve an objective examination of the relevant factors, including the volume of production by the covered investment that has received non-commercial assistance, the effect of such production on prices for like goods produced and sold by the domestic industry, and the effect of such production on the domestic industry producing like goods.[23]

2. With regard to the volume of production by the covered investment that has received non-commercial assistance, consideration shall be given as to whether there has been a significant increase in the volume of production, either in absolute terms or relative to production or consumption in the territory of the Party in which injury is alleged to have occurred. With regard to the effect of the production by the covered investment on prices, consideration shall be given as to whether there has been a significant price undercutting by the goods produced and sold by the covered investment as compared with the price of like goods produced and sold by the domestic industry, or whether the effect of production by the covered investment is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3. The examination of the impact on the domestic industry of the goods produced and sold by the covered investment that received the non-commercial assistance shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government

[23] The periods for examination of the non-commercial assistance and injury shall be reasonably established and shall end as closely as practical to the date of initiation of the proceeding before the panel.

support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

4. It must be demonstrated that the goods produced and sold by the covered investment are, through the effects[24] of the non-commercial assistance, causing injury within the meaning of this Article. The demonstration of a causal relationship between the goods produced and sold by the covered investment and the injury to the domestic industry shall be based on an examination of all relevant evidence. Any known factors other than the goods produced by the covered investment which at the same time are injuring the domestic industry shall be examined, and the injuries caused by these other factors must not be attributed to the goods produced and sold by the covered investment that has received non-commercial assistance. Factors which may be relevant in this respect include, among other things, the volumes and prices of other like goods in the market in question, contraction in demand or changes in the patterns of consumption, and developments in technology and the export performance and productivity of the domestic industry.

5. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility and shall be considered with special care. The change in circumstances which would create a situation in which non-commercial assistance to the covered investment would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, there should be consideration of relevant factors[25] and of whether the totality of the factors considered lead to the conclusion that further availability of goods produced by the covered investment is imminent and that, unless protective action is taken, material injury would occur.

[24] As set out in paragraphs 2 and 3.

[25] In making a determination regarding the existence of a threat of material injury, a panel pursuant to Chapter 28 (Dispute Settlement) should consider, among other things, such factors as: (a) the nature of the non-commercial assistance in question and the trade effects likely to arise therefrom; (b) a significant rate of increase in sales in the domestic market by the covered investment, indicating a likelihood of substantially increased sales; (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the covered investment indicating the likelihood of substantially increased production of the good by that covered investment, taking into account the availability of export markets to absorb additional production; (d) whether prices of goods sold by the covered investment will have a significant depressing or suppressing effect on the price of like goods; and (e) inventories of like goods.

Article 17.9: Party-Specific Annexes

1. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to the non-conforming activities of state-owned enterprises or designated monopolies that a Party lists in its Schedule to Annex IV in accordance with the terms of the Party's Schedule.

2. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.5 (Courts and Administrative Bodies), Article 17.6 (Non-commercial Assistance) and Article 17.10 (Transparency) shall not apply with respect to a Party's state-owned enterprises or designated monopolies as set out in Annex 17-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies).

3. (a) In the case of Singapore, Annex 17-E (Singapore) shall apply.

(b) In the case of Malaysia, Annex 17-F (Malaysia) shall apply.

Article 17.10: Transparency[26, 27]

1. Each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises no later than six months after the date of entry into force of this Agreement for that Party, and thereafter shall update the list annually.[28, 29]

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[26] This Article shall not apply to Brunei Darussalam with respect to the Entities listed in the entry at Annex IV – Brunei Darussalam - 4 that engage in the non-conforming activities described in that entry.

[27] This Article shall not apply to Viet Nam with respect to the Entities listed in:

(a) the entry at Annex IV – Viet Nam – 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and

(b) the entry at Annex IV – Viet Nam – 10 that engage in the non-conforming activities described in that entry.

[28] For Brunei Darussalam, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Brunei Darussalam. Separately, within three years after the date of entry into force of this Agreement, Brunei Darussalam shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

[29] For Viet Nam and Malaysia, this paragraph shall not apply until five years from the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively. Separately, within six months after the date of entry into force of this Agreement for Viet Nam and Malaysia, respectively, each Party shall provide to the other Parties or otherwise make publicly available on an official website a list of its state-owned enterprises that have an annual revenue derived from their commercial activities of more than SDR 500 million in one of the three preceding years, and shall thereafter update the list annually, until the obligation in this paragraph applies and replaces this obligation.

2. Each Party shall promptly notify the other Parties or otherwise make publicly available on an official website the designation of a monopoly or expansion of the scope of an existing monopoly and the terms of its designation.[30]

3. On the written request of another Party, a Party shall promptly provide the following information concerning a state-owned enterprise or a government monopoly, provided that the request includes an explanation of how the activities of the entity may be affecting trade or investment between the Parties:

(a) the percentage of shares that the Party, its state-owned enterprises or designated monopolies cumulatively own, and the percentage of votes that they cumulatively hold, in the entity;

(b) a description of any special shares or special voting or other rights that the Party, its state-owned enterprises or designated monopolies hold, to the extent these rights are different than the rights attached to the general common shares of the entity;

(c) the government titles of any government official serving as an officer or member of the entity's board of directors;

(d) the entity's annual revenue and total assets over the most recent three year period for which information is available;

(e) any exemptions and immunities from which the entity benefits under the Party's law; and

(f) any additional information regarding the entity that is publicly available, including annual financial reports and third-party audits, and that is sought in the written request.

4. On the written request of another Party, a Party shall promptly provide, in writing, information regarding any policy or programme it has adopted or maintains that provides for non-commercial assistance, provided that the request includes an explanation of how the policy or programme affects or could affect trade or investment between the Parties.

5. When a Party provides a response pursuant to paragraph 4, the information it provides shall be sufficiently specific to enable the requesting Party to understand the operation of and evaluate the policy or programme and its effects or potential effects on trade or investment between the Parties. The Party responding to a request shall ensure that the response it provides contains the following information:

(a) the form of the non-commercial assistance provided under the policy or programme, for example, grant or loan;

[30] Paragraphs 2, 3 and 4 shall not apply to Viet Nam with respect to the Entities listed in the entry at Annex IV – Viet Nam – 9 that engage in the non-conforming activities described in that entry.

(b) the names of the government agencies, state-owned enterprises, or state enterprises providing the non-commercial assistance and the names of the state-owned enterprises that have received or are eligible to receive the non-commercial assistance;

(c) the legal basis and policy objective of the policy or programme providing for the non-commercial assistance;

(d) with respect to goods, the amount per unit of the non-commercial assistance or, in cases where this is not possible, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the average amount per unit in the previous year;

(e) with respect to services, the total amount or the annual amount budgeted for the non-commercial assistance, indicating, if possible, the total amount in the previous year;

(f) with respect to policies or programmes providing for non-commercial assistance in the form of loans or loan guarantees, the amount of the loan or amount of the loan guaranteed, interest rates, and fees charged;

(g) with respect to policies or programmes providing for non-commercial assistance in the form of the provision of goods or services, the prices charged, if any;

(h) with respect to policies or programmes providing for non-commercial assistance in the form of equity capital, the amount invested, the number and a description of the shares received, and any assessments that were conducted with respect to the underlying investment decision;

(i) duration of the policy or programme or any other time-limits attached to it; and

(j) statistical data permitting an assessment of the effects of the non-commercial assistance on trade or investment between the Parties.

6. If a Party considers that it has not adopted or does not maintain any policies or programmes referred to in paragraph 4, it shall so inform the requesting Party in writing.

7. If any relevant points in paragraph 5 have not been addressed in the written response, an explanation shall be provided in the written response itself.

8. The Parties recognise that the provision of information under paragraphs 5 and 7 does not prejudge the legal status of the assistance that was the subject of the request under paragraph 4 or the effects of that assistance under this Agreement.

9. When a Party provides written information pursuant to a request under this Article and informs the requesting Party that it considers the information to be confidential, the requesting Party shall not disclose the information without the prior consent of the Party providing the information.

Article 17.11: Technical Cooperation

The Parties shall, where appropriate and subject to available resources, engage in mutually agreed technical cooperation activities, including:

(a) exchanging information regarding Parties' experiences in improving the corporate governance and operation of their state-owned enterprises;

(b) sharing best practices on policy approaches to ensure a level playing field between state-owned and privately owned enterprises, including policies related to competitive neutrality; and

(c) organising international seminars, workshops or any other appropriate forum for sharing technical information and expertise related to the governance and operations of state-owned enterprises.

Article 17.12: Committee on State-Owned Enterprises and Designated Monopolies[31]

1. The Parties hereby establish a Committee on State-Owned Enterprises and Designated Monopolies (Committee), composed of government representatives of each Party.

2. The Committee's functions shall include:

(a) reviewing and considering the operation and implementation of this Chapter;

(b) at a Party's request, consulting on any matter arising under this Chapter;

(c) developing cooperative efforts, as appropriate, to promote the principles underlying the disciplines contained in this Chapter in the free trade area and to contribute to the development of similar disciplines in other regional and multilateral institutions in which two or more Parties participate; and

(d) undertaking other activities as the Committee may decide.

[31] Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply to Viet Nam with respect to the Entities listed in:

(a) the entry at Annex IV – Viet Nam – 8 that engage in the non-conforming activities described in that entry, until that entry ceases to have effect; and

(b) the entry at Annex IV – Viet Nam – 10 that engage in the non-conforming activities described in that entry.

3. The Committee shall meet within one year after the date of entry into force of this Agreement, and at least annually thereafter, unless the Parties agree otherwise.

Article 17.13: Exceptions

1. Nothing in Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance) shall be construed to:

(a) prevent the adoption or enforcement by any Party of measures to respond temporarily to a national or global economic emergency; or

(b) apply to a state-owned enterprise with respect to which a Party has adopted or enforced measures on a temporary basis in response to a national or global economic emergency, for the duration of that emergency.

2. Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to the supply of financial services by a state-owned enterprise pursuant to a government mandate if that supply of financial services:

(a) supports exports or imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;[32]

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing, or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

3. The supply of financial services by a state-owned enterprise pursuant to a government mandate shall be deemed not to give rise to adverse effects under Article

[32] In circumstances where no comparable financial services are offered in the commercial market: (a) for the purposes of paragraphs 2(a)(ii), 2(b)(ii), 3(a)(ii) and 3(b)(ii), the state-owned enterprise may rely as necessary on available evidence to establish a benchmark of the terms on which such services would be offered in the commercial market; and (b) for the purposes of paragraphs 2(a)(i), 2(b)(i), 3(a)(i) and 3(b)(i), the supply of the financial services shall be deemed not to be intended to displace commercial financing.

17.6.1(b) (Non-commercial Assistance) or Article 17.6.2(b), or under Article 17.6.1(c) or Article 17.6.2(c) where the Party in which the financial service is supplied requires a local presence in order to supply those services, if that supply of financial services:[33]

(a) supports exports and imports, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;

(b) supports private investment outside the territory of the Party, provided that these services are:

(i) not intended to displace commercial financing; or

(ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or

(c) is offered on terms consistent with the Arrangement, provided that it falls within the scope of the Arrangement.

4. Article 17.6 (Non-commercial Assistance) shall not apply with respect to an enterprise located outside the territory of a Party over which a state-owned enterprise of that Party has assumed temporary ownership as a consequence of foreclosure or a similar action in connection with defaulted debt, or payment of an insurance claim by the state-owned enterprise, associated with the supply of the financial services referred to in paragraphs 2 and 3, provided that any support the Party, a state enterprise or state-owned enterprise of the Party, provides to the enterprise during the period of temporary ownership is provided in order to recoup the state-owned enterprise's investment in accordance with a restructuring or liquidation plan that will result in the ultimate divestiture from the enterprise.

5. Article 17.4 (Non-discriminatory Treatment and Commercial Considerations), Article 17.6 (Non-commercial Assistance), Article 17.10 (Transparency) and Article 17.12 (Committee on State-Owned Enterprises and Designated Monopolies) shall not apply with respect to a state-owned enterprise or designated monopoly if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the state-owned enterprise or designated monopoly was less than a threshold amount which shall be calculated in accordance with Annex 17-A.[34, 35]

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[33] For the purposes of this paragraph, in cases where the country in which the financial service is supplied requires a local presence in order to supply those services, the supply of the financial services identified in this paragraph through an enterprise that is a covered investment shall be deemed to not give rise to adverse effects.

[34] When a Party invokes this exception during consultations under Article 28.5 (Consultations), the consulting Parties should exchange and discuss available evidence concerning the annual revenue of the state-owned enterprise or the designated monopoly derived from the commercial activities during the

Article 17.14: Further Negotiations

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of the disciplines in this Chapter in accordance with Annex 17-C (Further Negotiations).

Article 17.15: Process for Developing Information

Annex 17-B (Process for Developing Information Concerning State-Owned Enterprises and Designated Monopolies) shall apply in any dispute under Chapter 28 (Dispute Settlement) regarding a Party's conformity with Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance).

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three previous consecutive fiscal years in an effort to resolve during the consultations period any disagreement regarding the application of this exception.

[35] Notwithstanding this paragraph, for a period of five years after the date of entry into force of this Agreement for Brunei Darussalam, Malaysia or Viet Nam, Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) and Article 17.6 (Non-commercial Assistance) shall not apply with respect to a state-owned enterprise or designated monopoly of Brunei Darussalam, Malaysia or Viet Nam, respectively, if in any one of the three previous consecutive fiscal years, the annual revenue derived from the commercial activities of the enterprise was less than SDR 500 million.

ANNEX 17-A

THRESHOLD CALCULATION

1. On the date of entry into force of this Agreement, the threshold referred to in Article 17.13.5 (Exceptions) shall be 200 million Special Drawing Rights (SDRs).

2. The amount of the threshold shall be adjusted at three-year intervals with each adjustment taking effect on 1 January. The first adjustment shall take place on the first 1 January following the entry into force of this Agreement, in accordance with the formula set out in this Annex.

3. The threshold shall be adjusted for changes in general price levels using a composite SDR inflation rate, calculated as a weighted sum of cumulative per cent changes in the Gross Domestic Product (GDP) deflators of SDR component currencies over the three-year period ending 30 June of the year prior to the adjustment taking effect, and using the following formula:

$$T_1 = (1 + (\Sigma\, \mathrm{w}_i^{SDR} \,.\, \Pi_i^{SDR}))T_0$$

where:

T_0 = threshold value at base period;
T_1 = new (adjusted) threshold value;
w_i^{SDR} = respective (fixed) weights of each currency, i, in the SDR (as at 30 June of the year prior to adjustment taking effect); and
Π_i^{SDR} = cumulative per cent change in the GDP deflator of each currency, i, in the SDR over the three-year period ending 30 June of the year prior to adjustment taking effect.

4. Each Party shall convert the threshold into national currency terms where the conversion rates shall be the average of monthly values of that Party's national currency in SDR terms over the three-year period to 30 June of the year before the threshold is to take effect. Each Party shall notify the other Parties of their applicable threshold in their respective national currencies.

5. For the purposes of this Chapter, all data shall be drawn from the International Monetary Fund's *International Financial Statistics* database.

6. The Parties shall consult if a major change in a national currency *vis-à-vis* the SDR were to create a significant problem with regard to the application of this Chapter.

ANNEX 17-B

PROCESS FOR DEVELOPING INFORMATION CONCERNING STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

1. If a panel has been established pursuant to Chapter 28 (Dispute Settlement) to examine a complaint arising under Article 17.4 (Non-discriminatory Treatment and Commercial Considerations) or Article 17.6 (Non-commercial Assistance), the disputing Parties may exchange written questions and responses, as set forth in paragraphs 2, 3 and 4, to obtain information relevant to the complaint that is not otherwise readily available.

2. A disputing Party (questioning Party) may provide written questions to another disputing Party (answering Party) within 15 days of the date the panel is established. The answering Party shall provide its responses to the questions to the questioning Party within 30 days of the date it receives the questions.

3. The questioning Party may provide any follow-up written questions to the answering Party within 15 days of the date it receives the responses to the initial questions. The answering Party shall provide its responses to the follow-up questions to the questioning Party within 30 days of the date it receives the follow-up questions.

4. If the questioning Party considers that the answering Party has failed to cooperate in the information-gathering process under this Annex, the questioning Party shall inform the panel and the answering Party in writing within 30 days of the date the responses to the questioning Party's final questions are due, and provide the basis for its view. The panel shall afford the answering Party an opportunity to reply in writing.

5. A disputing Party that provides written questions or responses to another disputing Party pursuant to these procedures shall, on the same day, provide the questions or answers to the panel. In the event that a panel has not yet been composed, each disputing Party shall, upon the composition of the panel, promptly provide the panel with any questions or responses it has provided to the other disputing Party.

6. The answering Party may designate information in its responses as confidential information in accordance with the procedures set out in the Rules of Procedure established under Article 27.2.1(f) (Functions of the Commission) or other rules of procedure agreed to by the disputing Parties.

7. The time periods in paragraphs 2, 3 and 4 may be modified upon agreement of the disputing Parties or approval by the panel.

8. In determining whether a disputing Party has failed to cooperate in the information-gathering process, the panel shall take into account the reasonableness of the questions and the efforts the answering Party has made to respond to the questions in a cooperative and timely manner.

9. In making findings of fact and its initial report, the panel should draw adverse inferences from instances of non-cooperation by a disputing Party in the information-gathering process.

10. The panel may deviate from the time period set out in Chapter 28 (Dispute Settlement) for the issuance of the initial report if necessary to accommodate the information-gathering process.

11. The panel may seek additional information from a disputing Party that was not provided to the panel through the information-gathering process where the panel considers the information necessary to resolve the dispute. However, the panel shall not request additional information to complete the record where the information would support a Party's position and the absence of that information in the record is the result of that Party's non-cooperation in the information-gathering process.

ANNEX 17-C

FURTHER NEGOTIATIONS

Within five years of the date of entry into force of this Agreement, the Parties shall conduct further negotiations on extending the application of:

(a) the disciplines in this Chapter to the activities of state-owned enterprises that are owned or controlled by a sub-central level of government, and designated monopolies designated by a sub-central level of government, where such activities have been listed in Annex 17-D (Application to Sub-Central State-Owned Enterprises and Designated Monopolies); and

(b) the disciplines in Article 17.6 (Non-commercial Assistance) and Article 17.7 (Adverse Effects) to address effects caused, in a market of a non-Party, by the supply of services by a state-owned enterprise.

ANNEX 17-D

APPLICATION TO SUB-CENTRAL STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Pursuant to Article 17.9.2 (Party-Specific Annexes), the following obligations shall not apply with respect to a state-owned enterprise owned or controlled by a sub-central level of government and a designated monopoly designated by a sub-central level of government:[36]

(a) For Australia:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Australia;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(v) Article 17.10.1 (Transparency).

(b) For Canada:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;

[36] For the purposes of this Annex, "sub-central level of government" means the regional level of government and the local level of government of a Party.

(v) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment;

(vi) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);

(vii) Article 17.6.3 (Non-commercial Assistance);

(viii) Article 17.10.1 (Transparency); and

(ix) Article 17.10.4 (Transparency), with respect to a policy or program adopted or maintained by a sub-central level of government.

(c) For Chile:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Chile;

(v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

(d) For Japan:

(i) Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance) with respect to the production and sale of a good:

(A) by a state-owned enterprise in competition with a like good produced and sold by a covered investment of another Party in the territory of Japan; or

(B) by a state-owned enterprise that is a covered investment in competition with like good produced and sold by a covered investment of another Party in the territory of any other Party;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);

(v) Article 17.6.3 (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

(e) For Malaysia:

(i) Article 17.4 (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;

(iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Malaysia;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(v) Article 17.10 (Transparency).

(f) For Mexico:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good

produced and sold by a covered investment in the territory of Mexico;

(v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(vi) Article 17.10 (Transparency).

(g) For New Zealand:

(i) Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.6.1 (a) (Non-commercial Assistance) and Article 17.6.2 (a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of New Zealand;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance);

(v) Article 17.6.3 (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

(h) For Peru:

(i) Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iii) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Peru;

(v) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(vi) Article 17.10.1 (Transparency).

(i) For the United States:

(i) Article 17.4.1 (a) (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.4.1 (b) (Non-discriminatory Treatment and Commercial Considerations), with respect to purchases of a good or service;

(iii) Article 17.4.1(c)(i) (Non-discriminatory Treatment and Commercial Considerations);

(iv) Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations), with respect to designated monopolies designated by a sub-central level of government;

(v) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;

(vi) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of the United States;

(vii) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(viii) Article 17.10.1 (Transparency).

(j) For Viet Nam:

(i) Article 17.4 (Non-discriminatory Treatment and Commercial Considerations);

(ii) Article 17.5.2 (Courts and Administrative Bodies), with respect to administrative regulatory bodies established or maintained by a sub-central level of government;

(iii) Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.2(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Viet Nam;

(iv) Article 17.6.1(b) and (c) (Non-commercial Assistance), and Article 17.6.2(b) and (c) (Non-commercial Assistance); and

(v) Article 17.10 (Transparency).

ANNEX 17-E

SINGAPORE

1. Neither Singapore, nor a sovereign wealth fund of Singapore[37], shall take action to direct or influence decisions of a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore, including through the exercise of any rights or ownership interests over such state-owned enterprises, except in a manner consistent with this Chapter. However, Singapore, or a sovereign wealth fund of Singapore, may exercise its voting rights in any state-owned enterprise it owns or controls through ownership interests in a manner that is not inconsistent with this Chapter.

2. Article 17.4.1 (Non-discriminatory Treatment and Commercial Considerations) shall not apply with respect to a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore.

3. Article 17.6.2 (Non-commercial Assistance) shall not apply with respect to a state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore, unless:

(a) in the five-year period preceding the purported breach of Article 17.6.2 (Non-commercial Assistance), Singapore or a sovereign wealth fund of Singapore has:

(i) appointed [38] the CEO or a majority of the other senior management of the state-owned enterprise;

(ii) appointed a majority of the members of the board of directors of that state-owned enterprise;[39] or

(iii) taken action to exercise its legal rights in that state-owned enterprise to actively direct and control the business decisions of that state-owned enterprise in a manner that would be inconsistent with the obligations in this Chapter; or

(b) the state-owned enterprise, pursuant to law, government policy or other measures, is required to:

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[37] For the purposes of this Chapter, sovereign wealth funds of Singapore include GIC Private Limited and Temasek Holdings (Private) Limited. Temasek Holdings (Private) Limited is the legal owner of its assets.

[38] For paragraphs 3(a)(i) and 3(a)(ii), such appointment includes an appointment that occurred before the aforementioned five-year period, provided the tenure falls during that period.

[39] For greater certainty, the mere exercise of a shareholder vote to approve the election of directors does not constitute the appointment of such directors.

(i) provide non-commercial assistance to another state-owned enterprise; or

(ii) make decisions about its commercial purchase or sales.

4. Singapore is deemed to comply with Article 17.10.1 (Transparency) with respect to any state-owned enterprise owned or controlled by a sovereign wealth fund of Singapore if:

(a) Singapore provides to the other Parties or otherwise makes publicly available on an official website the annual report of the sovereign wealth fund which owns that state-owned enterprise;

(b) any class of securities of that state-owned enterprise is listed on a securities exchange regulated by a member of an internationally recognised securities commissions body including the International Organisation of Securities Commissions; or

(c) that state-owned enterprise files its annual financial reports based on internationally-recognised financial reporting standards including the *International Financial Reporting Standards*.

ANNEX 17-F

MALAYSIA

Permodalan Nasional Berhad

1. The obligations in this Chapter shall not apply with respect to Permodalan Nasional Berhad or an enterprise owned or controlled by Permodalan Nasional Berhad, provided that Permodalan Nasional Berhad:

(a) engages exclusively in the following activities:

(i) administering or providing a plan for members of the public relating to collective investment schemes for the purpose of enhancing their savings and investments, in furtherance of a national agenda solely for the benefit of natural persons who are participants to such a plan and their beneficiaries; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referenced in subparagraph (a); and

(c) is free from investment direction from the Government of Malaysia.[40]

2. Notwithstanding paragraph 1 of this Annex, Article 17.6.1 (Non-commercial Assistance) and Article 17.6.3 shall apply with respect to Malaysia's:

(a) direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by Permodalan Nasional Berhad;[41] and

(b) indirect provision of non-commercial assistance through an enterprise owned or controlled by Permodalan Nasional Berhad.

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[40] Investment direction from the Government of Malaysia: (a) does not include general guidance of the Malaysian Government with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of Malaysian government officials on the enterprise's board of directors or investment panel.

[41] For greater certainty, for the purposes of this Annex, non-commercial assistance does not include Malaysia's transfer of funds collected from contributors to Permodalan Nasional Berhad for investment on behalf of the contributors and their beneficiaries.

Lembaga Tabung Haji

3. The obligations in this Chapter shall not apply with respect to Lembaga Tabung Haji or an enterprise owned or controlled by Lembaga Tabung Haji, provided that Lembaga Tabung Haji:

(a) engages exclusively in the following activities:

(i) administering or providing a personal savings and investment plan solely for the benefit of the natural persons who are contributors to such a plan and their beneficiaries, for the purpose of:

(A) enabling individual Muslim beneficiaries, through the investment of their savings in investment activities permissible in Islam, to support their expenditure during pilgrimage; and

(B) protecting, safeguarding the interests and ensuring the welfare of pilgrims during pilgrimage by providing various facilities and services; or

(ii) investing the assets of these plans;

(b) has a fiduciary duty to the natural persons referenced in subparagraph (a); and

(c) is free from investment direction from the Government of Malaysia.[42]

4. Notwithstanding paragraph 3 of this Annex, Article 17.6.1 (Non-commercial Assistance) and Article 17.6.3 (Non-commercial Assistance), shall apply with respect to Malaysia's:

(a) direct or indirect provision of non-commercial assistance to an enterprise owned or controlled by Lembaga Tabung Haji[43]; and

(b) indirect provision of non-commercial assistance through an enterprise owned or controlled by Lembaga Tabung Haji.

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[42] Investment direction from the Government of Malaysia: (a) does not include general guidance of the Malaysian Government with respect to risk management and asset allocation that is not inconsistent with usual investment practices; and (b) is not demonstrated, alone, by the presence of Malaysian government officials on the enterprise's board of directors or investment panel.

[43] For greater certainty, for the purposes of this Annex, non-commercial assistance does not include Malaysia's transfer of funds collected from contributors to Lembaga Tabung Haji for investment on behalf of the contributors and their beneficiaries.

CHAPTER 18

INTELLECTUAL PROPERTY

Section A: General Provisions

Article 18.1: Definitions

1. For the purposes of this Chapter:

Berne Convention means the *Berne Convention for the Protection of Literary and Artistic Works*, as revised at Paris, July 24, 1971;

Budapest Treaty means the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended on September 26, 1980;

Declaration on TRIPS and Public Health means the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), adopted on November 14, 2001;

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;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

Madrid Protocol means the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, done at Madrid, June 27, 1989;

Paris Convention means the *Paris Convention for the Protection of Industrial Property,* as revised at Stockholm, July 14, 1967;

performance means a performance fixed in a phonogram unless otherwise specified;

with respect to copyright and related rights, the term **right to authorise or prohibit** refers to exclusive rights;

Singapore Treaty means the *Singapore Treaty on the Law of Trademarks*, done at Singapore, March 27, 2006;

UPOV 1991 means the *International Convention for the Protection of New Varieties of Plants*, as revised at Geneva, March 19, 1991;

WCT means the *WIPO Copyright Treaty*, done at Geneva, December 20, 1996;

WIPO means the World Intellectual Property Organization;

for greater certainty, **work** includes a cinematographic work, photographic work and computer program; and

WPPT means the *WIPO Performances and Phonograms Treaty*, done at Geneva, December 20, 1996.

2. For the purposes of Article 18.8 (National Treatment), Article 18.31(a) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.62.1 (Related Rights):

a **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 18.7 (International Agreements) or the TRIPS Agreement.

Article 18.2: Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of 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 18.3: Principles

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. Appropriate measures, provided that they are consistent with the provisions of this Chapter, 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.

Article 18.4: Understandings in Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

(a) promote innovation and creativity;

(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and

(c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.

Article 18.5: 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 18.6: Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the *Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health* (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the *Amendment of the TRIPS Agreement*, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1,WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

2. Each Party shall notify, if it has not already done so, the WTO of its acceptance of the *Protocol amending the TRIPS Agreement,* done at Geneva on December 6, 2005.

Article 18.7: International Agreements

1. Each Party affirms that it has ratified or acceded to the following agreements:

(a) *Patent Cooperation Treaty,* as amended September 28, 1979;

(b) Paris Convention; and

(c) Berne Convention.

2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement for that Party:

(a) Madrid Protocol;

(b) Budapest Treaty;

(c) Singapore Treaty;[1]

(d) UPOV 1991;[2]

(e) WCT; and

(f) WPPT.

Article 18.8: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter,[3] 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[4] of intellectual property rights.

2. With respect to secondary uses of phonograms by means of analog 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 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

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[1] A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.

[2] Annex 18-A applies to this subparagraph.

[3] For greater certainty, with respect to copyrights and related rights that are not covered under Section H (Copyright and Related Rights), nothing in this Agreement limits a Party from taking an otherwise permissible derogation from national treatment with respect to those rights.

[4] For the purposes of this paragraph, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, "protection" also includes the prohibition on the circumvention of effective technological measures set out in Article 18.68 (TPMs) and the provisions concerning rights management information set out in Article 18.69 (RMI). For greater certainty, "matters affecting the use of intellectual property rights specifically covered by this Chapter" in respect of works, performances and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party's interpretation of "matters affecting the use of intellectual property rights" in footnote 3 of the TRIPS Agreement.

(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 18.9: Transparency

1. Further to Article 26.2 (Publication) and Article 18.73.1 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights.[5, 6]

3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.[7]

Article 18.10: Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, including in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives 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.

2. Unless provided in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be

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[5] For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 18.24 (Electronic Trademarks System).

[6] For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

[7] For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.

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 18.11: Exhaustion of Intellectual Property Rights

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.[8]

Section B: Cooperation

Article 18.12: Contact Points for Cooperation

Further to Article 21.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 27.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.

Article 18.13: 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 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) small and medium-sized enterprises;

(ii) science, technology and innovation activities; and

[8] For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

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

(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; and

(g) technical assistance for developing countries.

Article 18.14: Patent Cooperation and Work Sharing

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 shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:

(a) making search and examination results available to the patent offices of other Parties;[9] and

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

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

4. The Parties recognise the importance of giving due consideration to ratifying or acceding to the *Patent Law Treaty*, done at Geneva, June 1, 2000; or in the alternative, adopting or maintaining procedural standards consistent with the objective of the *Patent Law Treaty*.

Article 18.15: Public Domain

1. The Parties recognise the importance of a rich and accessible public domain.

[9] The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

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.

Article 18.16: Cooperation in the Area of Traditional Knowledge

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.

3. The Parties shall endeavour to pursue quality patent examination, which may include:

(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;

(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;

(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and

(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Article 18.17: Cooperation on Request

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 involved.

Section C: Trademarks

Article 18.18: Types of Signs Registrable as Trademarks

No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 18.19: Collective and Certification Marks

Each Party shall provide that trademarks 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 shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.[10]

Article 18.20: 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, including subsequent geographical indications,[11, 12] for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

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[10] Consistent with the definition of a geographical indication in Article 18.1 (Definitions), 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.

[11] For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

[12] For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

Article 18.21: 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 18.22: Well-Known Trademarks

1. No 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 identical or similar to those identified by a well-known trademark,[13] whether registered or not, 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 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 September 20 to 29, 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[14], 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 such measures including in cases in which the subsequent trademark is likely to deceive.

Article 18.23: 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:

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[13] In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

[14] 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.

(a) communicating to the applicant in writing, which may be 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[15] 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 18.24: 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 18.25: 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 at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:

(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;[16] and

[15] For greater certainty, cancellation for purposes of this Section may be implemented through nullification or revocation proceedings.

[16] 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 18.26: 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 18.27: Non-Recordal of a Licence

No Party shall require recordal of trademark licences:

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

(b) as a condition for 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 18.28: Domain Names

1. 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) 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 protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies[17] shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

Section D: Country Names

Article 18.29: 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 18.30: Recognition of Geographical Indications

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

Article 18.31: Administrative Procedures for the Protection or Recognition 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 for that recognition:

(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals;[18]

[17] The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

[18] This subparagraph also applies to judicial procedures that protect or recognise a geographical indication.

(b) process those applications or petitions without imposition of overly burdensome formalities;

(c) 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;

(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;

(e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and

(f) provide for cancellation[19] of the protection or recognition afforded to a geographical indication.

Article 18.32: Grounds of Opposition and Cancellation[20]

1. If a Party protects or recognises a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least, on the following grounds:

(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;

(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and

(c) the geographical indication is a term customary in common language as the common name[21] for the relevant good in the territory of the Party.

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[19] For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

[20] A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.

2. If a Party has protected or recognised a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party.[22]

3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.

4. If a Party has in place a *sui generis* system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any of the circumstances identified in paragraph 1 has been established.[23] That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.

5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.

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[21] For greater certainty, if a Party provides for the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, the Parties understand nothing shall require a Party to protect or recognise a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

[22] For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraph 2 or paragraph 4 of this Article in relation to that geographical indication.

[23] As an alternative to this paragraph, if a Party has in place a *sui generis* system of the type referred to in this paragraph as of the applicable date under Article 18.36.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.

Article 18.33: Guidelines for Determining Whether a Term is the Term Customary in the Common Language

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include:

(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and

(b) how the good referenced by the term is marketed and used in trade in the territory of that Party.[24]

Article 18.34: Multi-Component Terms

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.

Article 18.35: Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date[25] in the Party or the registration date in the Party, as applicable.

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[24] For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of the Party.

[25] For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention.

Article 18.36: International Agreements

1. If a Party protects or recognises a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications)[26] or Article 18.32.4 (Grounds of Opposition and Cancellation), that Party shall apply at least procedures and grounds that are equivalent to those in Article 18.31(e) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32.1 (Grounds of Opposition and Cancellation), as well as:

(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognising the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;

(b) make available to the public, on the Internet, details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;

(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and

(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.

2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall:[27, 28]

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[26] Each Party shall apply Article 18.33 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 18.34 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.

[27] In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.

(a) apply paragraph 1(b);

(b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or recognised; and

(c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.

3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.

4. For the purposes of this Article, a Party is not required to apply Article 18.32 (Grounds of Opposition and Cancellation), or obligations equivalent to Article 18.32, to geographical indications for wines and spirits or applications for those geographical indications.

5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which the agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of the agreement, on that later date.

6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:

(a) was concluded, or agreed in principle[29], prior to the date of conclusion, or agreement in principle, of this Agreement;

(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or

(c) entered into force for a Party prior to the date of entry into force of this Agreement for that Party.

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[28] A Party may comply with this Article by applying Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation).

[29] For the purpose of this Article, an agreement "agreed in principle" means an agreement involving another government, government entity or international organisation in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.

Section F: Patents and Undisclosed Test or Other Data

Subsection A: General Patents

Article 18.37: Patentable Subject Matter

1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.[30]

2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product. A Party may limit those new processes to those that do not claim the use of the product as such.

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

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

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

4. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants.

[30] For the purposes of this Section, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled, or having ordinary skill in the art, having regard to the prior art.

Article 18.38: Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure:[31, 32]

(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and

(b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

Article 18.39: Patent Revocation

1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.

2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.

Article 18.40: Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

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[31] No Party shall be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office, unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title, by a third person who obtained the information directly or indirectly from the inventor.

[32] For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorised by, or derived from, the patent applicant.

Article 18.41: Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.

Article 18.42: Patent Filing

Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date,[33] unless that application has, prior to publication,[34] been withdrawn, abandoned or refused.

Article 18.43: Amendments, Corrections and Observations

Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.[35]

Article 18.44: Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.

2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

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[33] A Party shall not be required to apply this Article in cases involving derivation or in situations involving any application that has or had, at any time, at least one claim having an effective filing date before the date of entry into force of this Agreement for that Party or any application that has or had, at any time, a priority claim to an application that contains or contained such a claim.

[34] For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

[35] A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 18.45: Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement for that Party:

(a) search and examination results, including details of, or information related to, relevant prior art searches;

(b) as appropriate, non-confidential communications from applicants; and

(c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays

1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.

3. If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for such delays.[36]

4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of such delays, periods of time that do not

[36] Annex 18-D applies to this paragraph.

occur during the processing[37] of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable[38] to the granting authority; as well as periods of time that are attributable to the patent applicant.[39]

Subsection B: Measures Relating to Agricultural Chemical Products

Article 18.47: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval[40] for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,[41] 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[42] product on the basis of that information or the marketing approval granted to the person that submitted such test or other data for at least 10 years[43] from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed

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[37] For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.

[38] A Party may treat delays "that are not directly attributable to the granting authority" as delays that are outside the direction or control of the granting authority.

[39] Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement for that Party, or the date two years after the signing of this Agreement, whichever is later for that Party.

[40] For the purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.

[41] Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

[42] For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

[43] For greater certainty, a Party may limit the period of protection under this Article to 10 years.

test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

3. For the purposes of this Article, a new agricultural chemical product is one that contains[44] a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Subsection C: Measures Relating to Pharmaceutical Products

Article 18.48: Patent Term Adjustment for Unreasonable Curtailment

1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. With respect to a pharmaceutical product[45] that is subject to a patent, each Party shall make available an adjustment[46] of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.[47, 48]

3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.

4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.

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[44] For the purposes of this Article, a Party may treat "contain" as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat "utilise" as requiring the new chemical entity to be primarily responsible for the product's intended effect.

[45] A Party may comply with the obligations of this paragraph with respect to a pharmaceutical product or, alternatively, with respect to a pharmaceutical substance.

[46] For greater certainty, a Party may alternatively make available a period of additional *sui generis* protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The *sui generis* protection shall confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3.

[47] Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all applications for marketing approval filed after the date of entry into force of this Article for that Party.

[48] Annex 18-D applies to this paragraph.

Article 18.49: Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 18.40 (Exceptions), each Party shall adopt or maintain a regulatory review exception[49] for pharmaceutical products.

Article 18.50: Protection of Undisclosed Test or Other Data[50]

1. (a) 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 the safety and efficacy of the product,[51] 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[52] product on the basis of:

   (i) that information; or

   (ii) the marketing approval granted to the person that submitted such information,

   for at least five years[53] from the date of marketing approval of the new pharmaceutical product in the territory of the Party.

   (b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted such information concerning the safety

[49] For greater certainty, consistent with Article 18.40 (Exceptions), nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country or both.

[50] Annex 18-B and Annex 18-C apply to paragraphs 1 and 2 of this Article.

[51] Each Party confirms that the obligations of this Article, and Article 18.51 (Biologics) apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

[52] 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.

[53] For greater certainty, a Party may limit the period of protection under paragraph 1 to five years, and the period of protection under Article 18.51.1(a) (Biologics) to eight years.

and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party.[54]

2. Each Party shall:[55]

(a) apply paragraph 1, *mutatis mutandis*, for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; or, alternatively,

(b) apply paragraph 1, *mutatis mutandis*, for a period of at least five years to new pharmaceutical products that contain[56] a chemical entity that has not been previously approved in that Party.[57]

3. Notwithstanding paragraphs 1 and 2 and Article 18.51 (Biologics), a Party may take measures to protect public health in accordance with:

(a) the Declaration on TRIPS and Public Health;

(b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or

(c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.

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[54] Annex 18-D applies to this subparagraph.

[55] A Party that provides a period of at least eight years of protection pursuant to paragraph 1 is not required to apply paragraph 2.

[56] For the purposes of this Article, a Party may treat "contain" as meaning utilise.

[57] For the purposes of Article 18.50.2(b) (Protection of Undisclosed Test or Other Data), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.

Article 18.51: Biologics[58]

1. With regard to protecting new biologics, a Party shall either:

(a) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic,[59,60] provide effective market protection through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, *mutatis mutandis*, for a period of at least eight years from the date of first marketing approval of that product in that Party; or, alternatively,

(b) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic, provide effective market protection:

(i) through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, *mutatis mutandis*, for a period of at least five years from the date of first marketing approval of that product in that Party,

(ii) through other measures, and

(iii) recognising that market circumstances also contribute to effective market protection

to deliver a comparable outcome in the market.

2. For the purposes of this Section, each Party shall apply this Article to, at a minimum, a product that is, or, alternatively, contains, a protein produced using biotechnology processes, for use in human beings for the prevention, treatment, or cure of a disease or condition.

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[58] Annex 18-B, Annex 18-C and Annex 18-D apply to this Article.

[59] Nothing requires a Party to extend the protection of this paragraph to:

(a) any second or subsequent marketing approval of such a pharmaceutical product; or

(b) a pharmaceutical product that is or contains a previously approved biologic.

[60] Each Party may provide that an applicant may request approval of a pharmaceutical product that is or contains a biologic under the procedures set forth in Article 18.50.1(a) (Protection of Undisclosed Test or Other Data) and Article 18.50.1(b) within five years of the date of entry into force of this Agreement for that Party, provided that other pharmaceutical products in the same class of products have been approved by that Party under the procedures set forth in Article 18.50.1(a) and Article 18.50.1(b) before the date of entry into force of this Agreement for that Party.

3. Recognising that international and domestic regulation of new pharmaceutical products that are or contain a biologic is in a formative stage and that market circumstances may evolve over time, the Parties shall consult after 10 years from the date of entry into force of this Agreement, or as otherwise decided by the Commission, to review the period of exclusivity provided in paragraph 1 and the scope of application provided in paragraph 2, with a view to providing effective incentives for the development of new pharmaceutical products that are or contain a biologic, as well as with a view to facilitating the timely availability of follow-on biosimilars, and to ensuring that the scope of application remains consistent with international developments regarding approval of additional categories of new pharmaceutical products that are or contain a biologic.

Article 18.52: Definition of New Pharmaceutical Product

For the purposes of Article 18.50.1 (Protection of Undisclosed Test or Other Data), a **new pharmaceutical product** means a pharmaceutical product that does not contain[61] a chemical entity that has been previously approved in that Party.

Article 18.53: Measures Relating to the Marketing of Certain Pharmaceutical Products

1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:

(a) a system to provide notice to a patent holder[62] or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;

(b) adequate time and opportunity for such a patent holder to seek, prior to the marketing[63] of an allegedly infringing product, available remedies in subparagraph (c); and

[61] For the purposes of this Article, a Party may treat "contain" as meaning utilise.

[62] For greater certainty, for the purposes of this Article, a Party may provide that a "patent holder" includes a patent licensee or the authorised holder of marketing approval.

[63] For the purposes of paragraph 1(b), a Party may treat "marketing" as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national

(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.

2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, 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.

Article 18.54: Alteration of Period of Protection

Subject to Article 18.50.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 18.50 or Article 18.51 (Biologics) and is also covered by a patent in the territory of that Party, the Party shall not alter the period of protection that it provides pursuant to Article 18.47, Article 18.50 or Article 18.51 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 18.47, Article 18.50 or Article 18.51.

Section G: Industrial Designs

Article 18.55: Protection

1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs:

(a) embodied in a part of an article; or, alternatively,

(b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.

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healthcare programme operated by a Party and inscribed in the Appendix to Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices).

2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.

Article 18.56: Improving Industrial Design Systems

The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems, as well as facilitating the process of cross-border acquisition of rights in their respective industrial design systems, including giving due consideration to ratifying or acceding to the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva, July 2, 1999.

Section H: Copyright and Related Rights

Article 18.57: Definitions

For the purposes of Article 18.58 (Right of Reproduction) and Article 18.60 (Right of Distribution) through Article 18.70 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the 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;

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 the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performers means 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;

phonogram means the fixation of the 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;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

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.

Article 18.58: Right of Reproduction

Each Party shall provide[64] to authors, performers and producers of phonograms[65] 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 18.59: Right of Communication to the Public

Without prejudice to Article 11(1)(ii), Article 11*bis*(1)(i) and (ii), Article 11*ter*(1)(ii), Article 14(1)(ii), and Article 14*bis*(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.[66]

Article 18.60: 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[67] of their works, performances and phonograms through sale or other transfer of ownership.

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[64] 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.

[65] References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

[66] 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 11*bis*(2) of the Berne Convention.

[67] 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.

Article 18.61: No Hierarchy

Each Party shall provide that in cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram:

(a) the need for the authorisation of the author does not cease to exist because the authorisation of the performer or producer is also required; and

(b) the need for the authorisation of the performer or producer does not cease to exist because the authorisation of the author is also required.

Article 18.62: 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[68] of another Party; and to performances or phonograms first published or first fixed[69] in the territory of another Party.[70] 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.

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[68] 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.

[69] For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

[70] 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, consistent with Article 18.8 (National Treatment), 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.

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,[71, 72] 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 18.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog 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.[73]

Article 18.63: Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:[74]

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;[75] and

(b) on a basis other than the life of a natural person, the term shall be:

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[71] 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 it is done in a manner consistent with that Party's obligations under Article 18.8 (National Treatment).

[72] 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.

[73] 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.

[74] 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 18.65 (Limitations and Exceptions) and that Party's international obligations.

[75] The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 18.8 (National Treatment) 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.

(i) not less than 70 years from the end of the calendar year of the first authorised publication[76] of the work, performance or phonogram; or

(ii) failing such authorised publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.[77]

Article 18.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Article 18.65: 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 18.66: Balance in Copyright and Related Rights Systems

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 18.65 (Limitations and Exceptions), 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

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[76] 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.

[77] For greater certainty, a Party may calculate a term of protection for an anonymous or pseudonymous work or a work of joint authorship in accordance with Article 7(3) or Article 7*bis* of the Berne Convention, provided that the Party implements the corresponding numerical term of protection required under this Article.

to published works for persons who are blind, visually impaired or otherwise print disabled.[78, 79]

Article 18.67: Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right[80] 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.[81]

Article 18.68: Technological Protection Measures (TPMs)[82]

1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorised acts in respect of their works, performances, and phonograms, each Party shall provide that any person that:

(a) knowingly, or having reasonable grounds to know,[83] circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram;[84] or

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[78] As recognised by the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled,* done at Marrakesh, June 27, 2013 (Marrakesh Treaty). The Parties recognise that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.

[79] For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 18.65 (Limitations and Exceptions).

[80] For greater certainty, this provision does not affect the exercise of moral rights.

[81] Nothing in this Article affects 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.

[82] Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.

(b) manufactures, imports, distributes,[85] offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:

(i) are promoted, advertised, or otherwise marketed by that person[86] for the purpose of circumventing any effective technological measure;

(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure;[87] or

(iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,

is liable and subject to the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies).

Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully[88] and for the purposes of commercial advantage or financial gain[89] in any of the above activities.[90]

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[83] For the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

[84] For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance or phonogram, but does not control access to such that work, performance or phonogram.

[85] A Party may provide that the obligations described in this subparagraph with respect to manufacturing, importation, and distribution apply only in cases in which those activities are undertaken for sale or rental, or if those activities prejudice the interests of the right holder of the copyright or related right.

[86] The Parties understand that this provision still applies in cases in which the person promotes, advertises, or markets through the services of a third person.

[87] A Party may comply with this paragraph if the conduct referred to in this subparagraph does not have a commercially significant purpose or use other than to circumvent an effective technological measure.

[88] For greater certainty, for purposes of this Article and Article 18.69 (RMI), wilfulness contains a knowledge element.

[89] For greater certainty, for purposes of this Article, Article 18.69 (RMI) and Article 18.77 (Criminal Procedures and Penalties), the Parties understand that a Party may treat “financial gain” as “commercial purposes”.

A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity. A Party may also provide that the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies) do not apply to any of the same entities provided that the above activities are carried out in good faith without knowledge that the conduct is prohibited.

2. In implementing paragraph 1, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, provided that the product does not otherwise violate a measure implementing paragraph 1.

3. Each Party shall provide that a violation of a measure implementing this Article is independent of any infringement that might occur under the Party's law on copyright and related rights.[91]

4. With regard to measures implementing paragraph 1:

(a) a Party may provide certain limitations and exceptions to the measures implementing paragraph 1(a) or paragraph 1(b) in order to enable non-infringing uses if there is an actual or likely adverse impact of those measures on those non-infringing uses, as determined through a legislative, regulatory, or administrative process in accordance with the Party's law, giving due consideration to evidence when presented in that process, including with respect to whether appropriate and effective measures have been taken by rights holders to enable the beneficiaries to enjoy the limitations and exceptions to copyright and related rights under that Party's law;[92]

(b) any limitations or exceptions to a measure that implements paragraph 1(b) shall be permitted only to enable the legitimate use of a limitation or exception permissible under this Article by its

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[90] For greater certainty, no Party is required to impose liability under this Article and Article 18.69 (RMI) for actions taken by that Party or a third person acting with the authorisation or consent of that Party.

[91] For greater certainty, a Party is not required to treat the criminal act of circumvention set forth in paragraph 1(a) as an independent violation, where the Party criminally penalises such acts through other means.

[92] For greater certainty, nothing in this provision requires a Party to make a new determination via the legislative, regulatory, or administrative process with respect to limitations and exceptions to the legal protection of effective technological measures: (i) previously established pursuant to trade agreements in force between two or more Parties; or (ii) previously implemented by the Parties, provided that such limitations and exceptions are otherwise consistent with this paragraph.

intended beneficiaries[93] and does not authorise the making available of devices, products, components, or services beyond those intended beneficiaries;[94] and

(c) a Party shall not, by providing limitations and exceptions under paragraph 4(a) and paragraph 4(b), undermine the adequacy of that Party's legal system for the protection of effective technological measures, or the effectiveness of legal remedies against the circumvention of such measures, that authors, performers, or producers of phonograms use in connection with the exercise of their rights, or that restrict unauthorised acts in respect of their works, performances or phonograms, as provided for in this Chapter.

5. **Effective technological measure** means any effective[95] technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or related rights related to a work, performance or phonogram.

Article 18.69: Rights Management Information (RMI)[96]

1. In order to provide adequate and effective legal remedies to protect RMI:

(a) each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate or conceal an infringement of the copyright or related right of authors, performers or producers of phonograms:

(i) knowingly[97] removes or alters any RMI;

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[93] For greater certainty, a Party may provide an exception to paragraph 1(b) without providing a corresponding exception to paragraph 1(a), provided that the exception to paragraph 1(b) is limited to enabling a legitimate use that is within the scope of limitations or exceptions to paragraph 1(a) as provided under this subparagraph.

[94] For the purposes of interpreting paragraph 4(b) only, paragraph 1(a) should be read to apply to all effective technological measures as defined in paragraph 5, *mutatis mutandis*.

[95] For greater certainty, a technological measure that can, in a usual case, be circumvented accidentally is not an "effective" technological measure.

[96] A Party may comply with the obligations in this Article by providing legal protection only to electronic RMI.

[97] For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in sub-subparagraphs (i), (ii) and (iii), and to other related right holders.

(ii) knowingly distributes or imports for distribution RMI knowing that the RMI has been altered without authority;[98] or

(iii) knowingly distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances or phonograms, knowing that RMI has been removed or altered without authority,

is liable and subject to the remedies set out in Article 18.74 (Civil and Administrative Procedures and Remedies).

Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully and for purposes of commercial advantage or financial gain in any of the above activities.

A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution or public non-commercial broadcasting entity.[99]

2. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraph 1 a lawfully authorised activity that is carried out for the purpose of law enforcement, essential security interests or other related governmental purposes, such as the performance of a statutory function.

3. For greater certainty, nothing in this Article shall obligate a Party to require a right holder in a work, performance or phonogram to attach RMI to copies of the work, performance or phonogram, or to cause RMI to appear in connection with a communication of the work, performance or phonogram to the public.

4. **RMI** means:

(a) information that identifies a work, performance or phonogram, the author of the work, the performer of the performance or the producer of the phonogram; or the owner of any right in the work, performance or phonogram;

(b) information about the terms and conditions of the use of the work, performance or phonogram; or

[98] A Party may comply with its obligations under this sub-subparagraph by providing for civil judicial proceedings concerning the enforcement of moral rights under its copyright law. A Party may also meet its obligation under this sub-subparagraph, if it provides effective protection for original compilations, provided that the acts described in this sub-subparagraph are treated as infringements of copyright in those original compilations.

[99] For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.

(c) any numbers or codes that represent the information referred to in subparagraphs (a) and (b),

if any of these items is attached to a copy of the work, performance or phonogram or appears in connection with the communication or making available of a work, performance or phonogram to the public.

Article 18.70: Collective Management

The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties[100] based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Section I: Enforcement

Article 18.71: General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law[101] 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.[102] 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.

2. Each Party confirms that the enforcement procedures set forth in Article 18.74 (Civil and Administrative Procedures and Remedies), Article 18.75 (Provisional Measures) and Article 18.77 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

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[100] For greater certainty, royalties may include equitable remuneration.

[101] For greater certainty, "law" is not limited to legislation.

[102] For greater certainty, and subject to Article 44 of the TRIPS Agreement and the provisions of this Agreement, each Party confirms that it makes such remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.

4. This Section does not create any obligation:

(a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or

(b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.

5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

Article 18.72: Presumptions

1. In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption[103] that, in the absence of proof to the contrary:

(a) the person whose name is indicated in the usual manner[104] as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and

(b) the copyright or related right subsists in such subject matter.

2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered *prima facie* valid.

3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted[105] by the competent authority of a Party, that Party shall provide that

[103] For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

[104] For greater certainty, a Party may establish the means by which it shall determine what constitutes the "usual manner" for a particular physical support.

[105] For greater certainty, nothing in this Chapter prevents a Party from making available third party procedures in connection with its fulfilment of the obligations under paragraphs 2 and 3.

each claim in the patent be considered *prima facie* to satisfy the applicable criteria of patentability in the territory of the Party.[106, 107]

Article 18.73: Enforcement Practices with Respect to Intellectual Property Rights

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

(a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and

(b) are published[108] or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.

2. Each Party recognises the importance of collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.

3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.

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[106] For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.

[107] A Party may provide that this paragraph applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement for that Party.

[108] For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

Article 18.74: Civil and Administrative Procedures and Remedies

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.[109]

2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.

3. Each Party shall provide[110] that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.

5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement.[111]

6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms or performances, each Party shall establish or maintain a system that provides for one or more of the following:

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[109] For the purposes of this Article, the term "right holders" shall include those authorised licensees, federations and associations that have the legal standing and authority to assert such rights. The term "authorised licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

[110] A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5 and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6 and 7 to be ordered in parallel.

[111] A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages.[112]

7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

(a) pre-established damages, which shall be available on the election of the right holder; or

(b) additional damages.[113]

8. Pre-established damages under paragraphs 6 and 7 shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.

9. In awarding additional damages under paragraphs 6 and 7, judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.

10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.

11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties to the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

12. Each Party shall provide that in civil judicial proceedings:

(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;

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[112] For greater certainty, additional damages may include exemplary or punitive damages.

[113] For greater certainty, additional damages may include exemplary or punitive damages.

(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risk of further infringement; and

(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. The information may include information regarding any person involved in any aspect of the infringement or alleged infringement and the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of the goods or services and of their channels of distribution.

14. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.

15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights, including trademarks, geographical indications, patents, copyright and related rights and industrial designs, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

16. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that

those procedures conform to principles equivalent in substance to those set out in this Article.

17. In civil judicial proceedings concerning the acts described in Article 18.68 (TPMs) and Article 18.69 (RMI):

(a) each Party shall provide that its judicial authorities have the authority at least to:[114]

(i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity;

(ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article;[115]

(iii) order court costs, fees or expenses as provided for under paragraph 10; and

(iv) order the destruction of devices and products found to be involved in the prohibited activity; and

(b) a Party may provide that damages shall not be available against a non-profit library, archive, educational institution, museum or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.

Article 18.75: Provisional Measures

1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right *inaudita altera parte* expeditiously in accordance with that Party's judicial rules.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to

[114] For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 18.68 (TPMs) and Article 18.69 (RMI), if those remedies are available under its copyright law.

[115] If a Party's copyright law provides for both pre-established damages and additional damages, that Party may comply with the requirements of this subparagraph by providing for only one of these forms of damages.

provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.

3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 18.76: Special Requirements related to Border Measures

1. Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.[116]

2. Each Party shall provide that any right holder initiating procedures for its competent authorities[117] to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.

3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the

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[116] For the purposes of this Article:

(a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and

(b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

[117] For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:

(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods;[118] or

(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.

5. Each Party shall provide that its competent authorities may initiate border measures *ex officio*[119] with respect to goods under customs control[120] that are:

(a) imported;

(b) destined for export;[121] or

(c) in transit,[122, 123]

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[118] For greater certainty, a Party may establish reasonable procedures to receive or access that information.

[119] For greater certainty, that *ex officio* action does not require a formal complaint from a third party or right holder.

[120] For the purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.

[121] For the purposes of this Article, a Party may treat goods "destined for export" as meaning exported.

[122] This subparagraph applies to suspect goods that are in transit from one customs office to another customs office in the Party's territory from which the goods will be exported.

and that are suspected of being counterfeit trademark goods or pirated copyright goods.

6. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraph 1, paragraph 5(a), paragraph 5(b) and, if applicable, paragraph 5(c), whether the suspect goods infringe an intellectual property right.[124] If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

7. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

8. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.

9. This Article also shall apply to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.[125]

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[123] As an alternative to this subparagraph, a Party shall instead endeavour to provide, if appropriate and with a view to eliminating international trade in counterfeit trademark goods or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transhipped through its territory and destined for the territory of the other Party, to inform that other Party's efforts to identify suspect goods upon arrival in its territory.

[124] A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

[125] For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.

Article 18.77: Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of wilful copyright or related rights piracy, "on a commercial scale" includes at least:

(a) acts carried out for commercial advantage or financial gain; and

(b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.[126, 127]

2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.[128]

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation[129] and domestic use, in the course of trade and on a commercial scale, of a label or packaging:[130]

(a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark registered in its territory; and

(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.

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[126] The Parties understand that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law.

[127] A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

[128] The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, criminal procedures and penalties as specified in paragraphs 1, 2 and 3 are applicable in any free trade zones in a Party.

[129] A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

[130] A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

4. Recognising the need to address the unauthorised copying[131] of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.

5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in paragraphs 1 through 5, each Party shall provide the following:

(a) Penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.[132]

(b) Its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.[133]

(c) Its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.

(d) Its judicial authorities have the authority to order the forfeiture, at least for serious offences, of any assets derived from or obtained through the infringing activity.

(e) Its judicial authorities have the authority to order the forfeiture or destruction of:

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[131] For the purposes of this Article, a Party may treat the term "copying" as synonymous with reproduction.

[132] The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

[133] A Party may also account for such circumstances through a separate criminal offence.

(i) all counterfeit trademark goods or pirated copyright goods;

(ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and

(iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.

In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant.

(f) Its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil[134] infringement proceedings.

(g) Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.[135]

7. With respect to the offences described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 18.78: Trade Secrets[136]

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that

[134] A Party may also provide this authority in connection with administrative infringement proceedings.

[135] With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder's ability to exploit the work, performance or phonogram in the market.

[136] For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.[137] As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.

2. Subject to paragraph 3, each Party shall provide for criminal procedures and penalties for one or more of the following:

(a) the unauthorised and wilful access to a trade secret held in a computer system;

(b) the unauthorised and wilful misappropriation[138] of a trade secret, including by means of a computer system; or

(c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.

3. With respect to the relevant acts referred to in paragraph 2, a Party may, as appropriate, limit the availability of its criminal procedures, or limit the level of penalties available, to one or more of the following cases in which:

(a) the acts are for the purposes of commercial advantage or financial gain;

(b) the acts are related to a product or service in national or international commerce;

(c) the acts are intended to injure the owner of such trade secret;

(d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or

(e) the acts are detrimental to a Party's economic interests, international relations, or national defence or national security.

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[137] For the purposes of this paragraph "a manner contrary to honest commercial practices" means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.

[138] A Party may deem the term "misappropriation" to be synonymous with "unlawful acquisition".

Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals

1. Each Party shall make it a criminal offence to:

(a) manufacture, assemble, modify,[139] import, export, sell, lease or otherwise distribute a tangible or intangible device or system knowing or having reason to know[140] that the device or system meets at least one of the following conditions:

(i) it is intended to be used to assist;

(ii) it is primarily of assistance; or

(iii) its principal function is solely to assist,

in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor[141] of such signal;[142] and

(b) with respect to an encrypted program-carrying satellite signal, wilfully:

(i) receive[143] such a signal; or
(ii) further distribute[144] such signal,

knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

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[139] For greater certainty, a Party may treat "assemble" and "modify" as incorporated in "manufacture".

[140] For the purposes of this paragraph, a Party may provide that "having reason to know" may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party's "knowledge" requirements. A Party may treat "having reason to know" as meaning "wilful negligence".

[141] With regard to the criminal offences and penalties in paragraph 1 and paragraph 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.

[142] The obligation regarding export may be met by making it a criminal offence to possess and distribute a device or system described in this paragraph. For the purposes of this Article, a Party may provide that a "lawful distributor" means a person that has the lawful right in that Party's territory to distribute the encrypted program-carrying signal and authorise its decoding.

[143] For greater certainty and for the purposes of paragraph 1(b) and paragraph 3(b), a Party may provide that wilful receipt of an encrypted program-carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.

[144] For greater certainty, a Party may interpret "further distribute" as "retransmit to the public".

2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1.

3. Each Party shall provide for criminal penalties or civil remedies[145] for wilfully:

(a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorised reception of any encrypted program-carrying cable signal; and

(b) receiving, or assisting another to receive,[146] an encrypted program-carrying cable signal without authorisation of the lawful distributor of the signal.

Article 18.80: Government Use of Software

1. Each Party recognises the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights.

2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence. These measures shall apply to the acquisition and management of the software for government use.[147]

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[145] If a Party provides for civil remedies, it may require a demonstration of injury.

[146] A Party may comply with its obligation in respect of "assisting another to receive" by providing for criminal penalties to be available against a person wilfully publishing any information in order to enable or assist another person to receive a signal without authorisation of the lawful distributor of the signal.

[147] For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable, to use computer software in a manner which is not authorised by the relevant licence.

Section J: Internet Service Providers[148]

Article 18.81: Definitions

For the purposes of this Section:

the term **copyright** includes related rights; and

Internet Service Provider means:

(a) a provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 18.82.2(a) (Legal Remedies and Safe Harbours); or

(b) a provider of online services undertaking the functions in Article 18.82.2(c) or Article 18.82.2(d) (Legal Remedies and Safe Harbours).

For greater certainty, Internet Service Provider includes a provider of the services listed above that engages in caching carried out through an automated process.

Article 18.82: Legal Remedies and Safe Harbours[149]

1. The Parties recognise the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address such copyright infringement and shall establish or maintain appropriate safe harbours in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbours shall include:

(a) legal incentives[150] for Internet Service Providers to cooperate with copyright owners to deter the unauthorised storage and transmission of copyrighted materials or, in the alternative, to take

[148] Annex 18-F applies to this Section.

[149] Annex 18-E applies to Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours).

[150] For greater certainty, the Parties understand that implementation of the obligations in paragraph 1(a) on "legal incentives" may take different forms.

other action to deter the unauthorised storage and transmission of copyrighted materials; and

(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.[151]

2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:

(a) transmitting, routing or providing connections for material without modification of its content[152] or the intermediate and transient storage of that material done automatically in the course of such a technical process;

(b) caching carried out through an automated process;

(c) storage[153], at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider;[154] and

(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b):[155, 156]

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[151] The Parties understand that, to the extent that a Party determines, consistent with its international legal obligations, that a particular act does not constitute copyright infringement, there is no obligation to provide for a limitation in relation to that act.

[152] The Parties understand that such modification does not include a modification made as part of a technical process or for solely technical reasons such as division into packets.

[153] For greater certainty, a Party may interpret "storage" as "hosting".

[154] For greater certainty, the storage of material may include e-mails and their attachments stored in the Internet Service Provider's server and web pages residing on the Internet Service Provider's server.

[155] A Party may comply with the obligations in paragraph 3 by maintaining a framework in which:

(a) there is a stakeholder organisation that includes representatives of both Internet Service Providers and right holders, established with government involvement;

(a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice[157] of alleged infringement from the right holder or a person authorised to act on its behalf,

(b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.[158]

(b) that stakeholder organisation develops and maintains effective, efficient and timely procedures for entities certified by the stakeholder organisation to verify, without undue delay, the validity of each notice of alleged copyright infringement by confirming that the notice is not the result of mistake or misidentification, before forwarding the verified notice to the relevant Internet Service Provider;

(c) there are appropriate guidelines for Internet Service Providers to follow in order to qualify for the limitation described in paragraph 1(b), including requiring that the Internet Service Provider promptly removes or disables access to the identified materials upon receipt of a verified notice; and be exempted from liability for having done so in good faith in accordance with those guidelines; and

(d) there are appropriate measures that provide for liability in cases in which an Internet Service Provider has actual knowledge of the infringement or awareness of facts or circumstances from which the infringement is apparent.

[156] The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.

[157] For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that:

(a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and

(b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice.

[158] With respect to the function in subparagraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.

4. If a system for counter-notices is provided under a Party's law, and if material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.

5. Each Party shall ensure that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party[159] as a result of an Internet Service Provider relying on the misrepresentation.

6. Eligibility for the limitations in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.

7. Each Party shall provide procedures, whether judicial or administrative, in accordance with that Party's legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.

8. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defences under a Party's legal system.

9. The Parties recognise the importance, in implementing their obligations under this Article, of taking into account the impacts on right holders and Internet Service Providers.

Section K: Final Provisions

Article 18.83: Final Provisions

1. Except as otherwise provided in Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2, 3 and 4, each Party

[159] For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognised under that Party's law.

shall give effect to the provisions of this Chapter on the date of entry into force of this Agreement for that Party.[160]

2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement. This Section does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.

3. With respect to works of any Party that avails itself of a transition period permitted to it with regard to implementation of Article 18.63 (Term of Protection for Copyright and Related Rights) as it relates to the term of copyright protection (transition Party), Japan and Mexico shall apply at least the term of protection available under the transition Party's law for the relevant works during the transition period and apply Article 18.8.1 (National Treatment) with respect to copyright term only when that Party fully implements Article 18.63.

4. With regard to obligations subject to a transition period, a Party shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement for that Party.

(a) In the case of Brunei Darussalam, with respect to:

(i) Article 18.7.2(d) (International Agreements), UPOV 1991, three years;

(ii) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(iii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), 18 months;

(iv) Article 18.50 (Protection of Undisclosed Test or Other Data), four years; [++]

(v) Article 18.51 (Biologics), four years; [++]

(vi) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), two years; and

(vii) With respect to Section J (Internet Service Providers), three years.

[160] Only the following Parties have determined that, in order to implement and comply with Article 18.51.1 (Biologics), they require changes to their law, and thus require transition periods: Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam.

++ If there are unreasonable delays in Brunei Darussalam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Brunei Darussalam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (a)(iv) and (a)(v), Brunei Darussalam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Brunei Darussalam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Brunei Darussalam of such products.

(b) In the case of Malaysia, with respect to:

(i) Article 18.7.2(a) (International Agreements), Madrid Protocol, four years;

(ii) Article 18.7.2(b) (International Agreements), Budapest Treaty, four years;

(iii) Article 18.7.2(c) (International Agreements), Singapore Treaty, four years;

(iv) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;

(v) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(vi) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;

(vii) Article 18.51 (Biologics), five years;

(viii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), 4.5 years;

(ix) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, two years;

(x) Article 18.76 (Special Requirements Related to Border Measures), with respect to applications to suspend the release of, or to detain, 'confusingly similar' trademark goods, four years;

(xi) Article 18.76.5(b) and (c) (Special Requirements Related to Border Measures), with respect to *ex officio* border enforcement for in transit and export, four years; and

(xii) Article 18.79.2 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), four years.

(c) In the case of Mexico, with respect to:

(i) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;

(ii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;

(iii) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;

(iv) Article 18.50 (Protection of Undisclosed Test or Other Data), five years;[++]

(v) Article 18.51 (Biologics), five years;[++] and

(vi) Section J (Internet Service Providers), three years.

[++] If there are unreasonable delays in Mexico in the initiation of the filing of marketing approval applications for new pharmaceutical products after implementing its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (c)(iv) and (c)(v), Mexico may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Mexico shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such

measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Mexico of such products.

(d) In the case of New Zealand, with respect to Article 18.63 (Term of Protection for Copyright and Related Rights), eight years. Except that from the date of entry into force of this Agreement for New Zealand, New Zealand shall provide that the term of protection for a work, performance or phonogram that would, during that eight years, have expired under the term that was provided in New Zealand law before the entry into force of this Agreement, instead expires 60 years from the relevant date in Article 18.63 that is the basis for calculating the term of protection under this Agreement. The Parties understand that, in applying Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), New Zealand shall not be required to restore or extend the term of protection to the works, performances and phonograms with a term provided pursuant to the previous sentence, once these works, performances and phonograms fall into the public domain in its territory.

(e) In the case of Peru, with respect to:

(i) Article 18.50.2 (Protection of Undisclosed Test or Other Data), five years; and

(ii) Article 18.51 (Biologics), 10 years.

(f) In the case of Viet Nam, with respect to:

(i) Article 18.7.2(b) (International Agreements), Budapest Treaty, two years;

(ii) Article 18.7.2(e) (International Agreements), WCT, three years;

(iii) Article 18.7.2(f) (International Agreements), WPPT, three years;

(iv) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;

(v) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming pharmaceutical products, five years;^

(vi) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming agricultural chemical products, five years;^

(vii) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), three years;[161]

(viii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;

(ix) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), five years;

(x) Article 18.50 (Protection of Undisclosed Test or Other Data), 10 years;*/++

(xi) Article 18.51 (Biologics), 10 years;*/++

(xii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), three years;

(xiii) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, five years;

(xiv) Article 18.68 (TPMs), three years;

(xv) Article 18.69 (RMI), three years;

(xvi) Article 18.76.5(b) (Special Requirements Related to Border Measures), with respect to *ex officio* border measures for export, three years;

(xvii) Article 18.76.5(c) (Special Requirements Related to Border Measures), with respect to *ex officio* border measures for in transit, two years;

(xviii) Article 18.77.1(b) (Criminal Procedures and Penalties), three years;

[161] Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), for Viet Nam this Article shall apply to all applications filed after the conclusion of the three-year transition period under paragraph 4(f)(vii) or any applicable transition under paragraphs 4(f)(v) and 4(f)(vi) of this Article.

(xix) Article 18.77.2 (Criminal Procedures and Penalties), with respect to importation of pirated copyright goods, three years;

(xx) Article 18.77.2 (Criminal Procedures and Penalties), with respect to exportation, three years;

(xxi) Article 18.77.4 (Criminal Procedures and Penalties), with respect to camcording, three years;

(xxii) Article 18.77.6(g) (Criminal Procedures and Penalties), with respect to enforcement without the right holder's request for rights other than copyright, three years;

(xxiii) Article 18.78.2 and Article 18.78.3 (Trade Secrets), three years;

(xxiv) Article 18.79.1 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to criminal remedies, three years;

(xxv) Article 18.79.3 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to cable signals, three years; and

(xxvi) Section J (Internet Service Providers), three years.

^ For transitions for Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays) for patents claiming pharmaceutical products and agricultural chemical products, the Parties will consider a justified request from Viet Nam for an extension of the transition period for up to one additional year. Viet Nam's request shall include the reasons for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional one-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.46.3 and Article 18.46.4.

* For transitions for Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) for pharmaceutical products:

(A) The Parties will consider a justified request from Viet Nam for an extension of the transition period for up to two additional years. Viet Nam's request shall include the reason for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics).

(B) Viet Nam may make a further request for an additional one-time extension pursuant to Chapter 27 (Administrative and Institutional Provisions). Viet Nam's request shall include the reason for the request. The Commission shall decide pursuant to the procedures set forth in Article 27.3 (Decision-Making), whether to grant the request based on relevant factors, which may include capacity as well as other appropriate circumstances. Viet Nam shall make the request no later than one year prior to the expiration of the two-year transition period referred to in the first sentence of paragraph (A). The Parties shall give due consideration to that request. If the Committee grants Viet Nam's request, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) no later than the date on which the extension period expires.

(C) Viet Nam's implementation of Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) during three years after the conclusion of the extension period referred to in paragraph (A) shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement).

++ If there are unreasonable delays in Viet Nam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Viet Nam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (f)(x) and (f)(xi), Viet Nam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Viet Nam shall notify the other Parties

through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Viet Nam of such products.

Annex 18-A

Annex to Article 18.7.2

1. Notwithstanding the obligations in Article 18.7.2 (International Agreements), and subject to paragraphs 2, 3 and 4 of this Annex, New Zealand shall:

(a) accede to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand; or

(b) adopt a *sui generis* plant variety rights system that gives effect to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand.

2. Nothing in paragraph 1 shall preclude the adoption by New Zealand of measures it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against a person of another Party.

3. The consistency of any measures referred to in paragraph 2 with the obligations in paragraph 1 shall not be subject to the dispute settlement provisions of this Agreement.

4. The interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Annex. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 2 is inconsistent with a Party's rights under this Agreement.

Annex 18-B

Chile

1. Nothing in Article 18.50.1 or Article 18.50.2 (Protection of Undisclosed Test or Other Data) or Article 18.51 (Biologics) prevents Chile from maintaining or applying the provisions of Article 91 of Chile's Law No. 19.039 on Industrial Property, as in effect on the date of agreement in principle of this Agreement.

2. Notwithstanding Article 1.2 (Relation to Other Agreements), paragraph 1 is without prejudice to any Party's rights and obligations under an international agreement in effect prior to the date of entry into force of this Agreement for Chile, including any rights and obligations under a trade agreement between Chile and another Party.

Annex 18-C

Malaysia

1. Malaysia may, for the purpose of granting protection as specified in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics), require an applicant to commence the process of obtaining marketing approval for pharmaceutical products covered under those Articles within 18 months from the date that the product is first granted marketing approval in any country.

2. For greater certainty, the periods of protection referred to in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics) shall begin on the date of marketing approval of the pharmaceutical product in Malaysia.

Annex 18-D

Peru

Part 1: Applicable to Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment)

To the extent that Andean Decision 486, *Common Industrial Property Regime*, and Andean Decision 689, *Adequacy of Certain Articles of Decision 486*, restricts Peru's implementation of its obligations set forth in Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), Peru commits to make its best efforts to obtain a waiver from the Andean Community that allows it to adjust its patent term in a way that is consistent with Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment). Further, if Peru demonstrates that the Andean Community withheld its request for a waiver despite its best efforts, Peru will continue ensuring that it does not discriminate with respect to the availability or enjoyment of patent rights based on the field of technology, the place of invention, and whether products are imported or locally produced. Thus, Peru confirms that the treatment of pharmaceutical patents will be no less favourable than treatment of other patents in respect of the processing and examination of patent applications.

Part 2: Applicable to Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics)

1. If Peru relies, pursuant to Article 18.50.1(b) (Protection of Undisclosed Test or Other Data), on a marketing approval granted by another Party, and grants approval within six months of the date of the filing of a complete application for marketing approval filed in Peru, Peru may provide that the protection specified in Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics), as applicable, shall begin with the date of the first marketing approval relied on. In implementing Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51.1(b)(i) (Biologics), Peru may apply the period of protection established in Article 16.10.2(b) of the *United States – Peru Trade Promotion Agreement*, done at Washington, District of Columbia, April 12, 2006.

2. Peru may apply paragraph 1 to Article 18.50.2 (Protection of Undisclosed Test or Other Data).

Annex 18-E

Annex to Section J

1. In order to facilitate the enforcement of copyright on the Internet and to avoid unwarranted market disruption in the online environment, Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) shall not apply to a Party provided that, as from the date of agreement in principle of this Agreement, it continues to:

(a) prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in Article 18.82.1(b) (Legal Remedies and Safe Harbours);

(b) provide statutory secondary liability for copyright infringement in cases in which a person, by means of the Internet or another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to factors set out in its law, such as:

(i) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;

(ii) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;

(iii) whether the service has significant uses other than to enable acts of copyright infringement;

(iv) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;

(v) any benefits the person received as a result of enabling the acts of copyright infringement; and

(vi) the economic viability of the service if it were not used to enable acts of copyright infringement;

(c) require Internet Service Providers carrying out the functions referred to in Article 18.82.2(a) and (c) (Legal Remedies and Safe Harbours) to participate in a system for forwarding notices of alleged infringement, including if material is made available online, and if

the Internet Service Provider fails to do so, subjecting that provider to pre-established monetary damages for that failure;

(d) induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and communicate to the public, as part of offering the information location tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and

(e) induce Internet Service Providers carrying out the function referred to in Article 18.82.2(c) (Legal Remedies and Safe Harbours) to remove or disable access to material upon becoming aware of a decision of a court of that Party to the effect that the person storing the material infringes copyright in the material.

2. For a Party to which Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) do not apply pursuant to paragraph 1 of this Annex, and in light of, among other things, paragraph 1(b) of this Annex, for the purposes of Article 18.82.1(a), legal incentives shall not mean the conditions for Internet Service Providers to qualify for the limitations provided for in Article 18.82.1(b), as set out in Article 18.82.3.

Annex 18-F

Annex to Section J

As an alternative to implementing Section J (Internet Service Providers), a Party may implement Article 17.11.23 of the *United States – Chile Free Trade Agreement*, done at Miami, June 6, 2003, which is incorporated into and made part of this Annex.

CHAPTER 19

LABOUR

Article 19.1: Definitions

For the purposes of this Chapter:

ILO Declaration means the International Labour Organization (ILO) *Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*;

labour laws means statutes and regulations, or provisions of statutes and regulations, of a Party that are directly related to the following internationally recognised labour rights:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour protections for children and minors;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) acceptable conditions of work with respect to minimum wages[1], hours of work, and occupational safety and health;

statutes and regulations and **statutes or regulations** means:[2]

(a) for Australia, Acts of the Commonwealth Parliament, or regulations made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament;

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[1] For Singapore, minimum wages may include wage payments and adjustments gazetted under the *Employment Act* and wage supplement schemes under the *Central Provident Fund Act*.

[2] For greater certainty, for each Party setting out a definition, which has a federal form of government, its definition provides coverage for substantially all workers.

(b) for Malaysia, the Federal Constitution, Acts of Parliament and subsidiary legislation or regulations made under Acts of Parliament;

(c) for Mexico, Acts of Congress or regulations and provisions promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United Mexican States; and

(d) for the United States, Acts of Congress or regulations promulgated pursuant to Acts of Congress and, for the purposes of this Chapter, includes the Constitution of the United States.

Article 19.2: Statement of Shared Commitment

1. The Parties affirm their obligations as members of the ILO, including those stated in the ILO Declaration, regarding labour rights within their territories.

2. The Parties recognise that, as stated in paragraph 5 of the ILO Declaration, labour standards should not be used for protectionist trade purposes.

Article 19.3: Labour Rights

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights as stated in the ILO Declaration[3, 4]:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour and, for the purposes of this Agreement, a prohibition on the worst forms of child labour; and

(d) the elimination of discrimination in respect of employment and occupation.

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[3] The obligations set out in Article 19.3 (Labour Rights), as they relate to the ILO, refer only to the ILO Declaration.

[4] To establish a violation of an obligation under Article 19.3.1 (Labour Rights) or Article 19.3.2, a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation or practice in a manner affecting trade or investment between the Parties.

2. Each Party shall adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.[5]

Article 19.4: Non Derogation

The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in each Party's labour laws. Accordingly, no Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations:

(a) implementing Article 19.3.1 (Labour Rights), if the waiver or derogation would be inconsistent with a right set out in that paragraph; or

(b) implementing Article 19.3.1 (Labour Rights) or Article 19.3.2 , if the waiver or derogation would weaken or reduce adherence to a right set out in Article 19.3.1, or to a condition of work referred to in Article 19.3.2, in a special trade or customs area, such as an export processing zone or foreign trade zone, in the Party's territory,

in a manner affecting trade or investment between the Parties.

Article 19.5: Enforcement of Labour Laws

1. No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement.

2. If a Party fails to comply with an obligation under this Chapter, a decision made by that Party on the provision of enforcement resources shall not excuse that failure. Each Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources between labour enforcement activities among the fundamental labour rights and acceptable conditions of work enumerated in Article 19.3.1 (Labour Rights) and Article 19.3.2, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

[5] For greater certainty, this obligation relates to the establishment by a Party in its statutes, regulations and practices thereunder, of acceptable conditions of work as determined by that Party.

3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of another Party.

Article 19.6: Forced or Compulsory Labour

Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.[6]

Article 19.7: Corporate Social Responsibility

Each Party shall endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour issues that have been endorsed or are supported by that Party.

Article 19.8: Public Awareness and Procedural Guarantees

1. Each Party shall promote public awareness of its labour laws, including by ensuring that information related to its labour laws and enforcement and compliance procedures is publicly available.

2. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to impartial and independent tribunals for the enforcement of the Party's labour laws. These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals or labour tribunals, as provided for in each Party's law.

3. Each Party shall ensure that proceedings before these tribunals for the enforcement of its labour laws: are fair, equitable and transparent; comply with due process of law; and do not entail unreasonable fees or time limits or unwarranted delays. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that:

[6] For greater certainty, nothing in this Article authorises a Party to take initiatives that would be inconsistent with its obligations under other provisions of this Agreement, the WTO Agreement or other international trade agreements.

(a) the parties to these proceedings are entitled to support or defend their respective positions, including by presenting information or evidence; and

(b) final decisions on the merits of the case:

(i) are based on information or evidence in respect of which the parties were offered the opportunity to be heard;

(ii) state the reasons on which they are based; and

(iii) are available in writing without undue delay to the parties to the proceedings and, consistent with its law, to the public.

5. Each Party shall provide that parties to these proceedings have the right to seek review or appeal, as appropriate under its law.

6. Each Party shall ensure that the parties to these proceedings have access to remedies under its law for the effective enforcement of their rights under the Party's labour laws and that these remedies are executed in a timely manner.

7. Each Party shall provide procedures to effectively enforce the final decisions of its tribunals in these proceedings.

8. For greater certainty, and without prejudice to whether a tribunal's decision is inconsistent with a Party's obligations under this Chapter, nothing in this Chapter shall be construed to require a tribunal of a Party to reopen a decision that it has made in a particular matter.

Article 19.9: Public Submissions

1. Each Party, through its contact point designated under Article 19.13 (Contact Points), shall provide for the receipt and consideration of written submissions from persons of a Party on matters related to this Chapter in accordance with its domestic procedures. Each Party shall make readily accessible and publicly available its procedures, including timelines, for the receipt and consideration of written submissions.

2. A Party may provide in its procedures that, to be eligible for consideration, a submission should, at a minimum:

(a) raise an issue directly relevant to this Chapter;

(b) clearly identify the person or organisation making the submission; and

(c) explain, to the degree possible, how and to what extent the issue raised affects trade or investment between the Parties.

3. Each Party shall:

(a) consider matters raised by the submission and provide a timely response to the submitter, including in writing as appropriate; and

(b) make the submission and the results of its consideration available to the other Parties and the public, as appropriate, in a timely manner.

4. A Party may request from the person or organisation that made the submission additional information that is necessary to consider the substance of the submission.

Article 19.10: Cooperation

1. The Parties recognise the importance of cooperation as a mechanism for effective implementation of this Chapter, to enhance opportunities to improve labour standards and to further advance common commitments regarding labour matters, including workers' wellbeing and quality of life and the principles and rights stated in the ILO Declaration.

2. In undertaking cooperative activities, the Parties shall be guided by the following principles:

(a) consideration of each Party's priorities, level of development and available resources;

(b) broad involvement of, and mutual benefit to, the Parties;

(c) relevance of capacity and capability-building activities, including technical assistance between the Parties to address labour protection issues and activities to promote innovative workplace practices;

(d) generation of measurable, positive and meaningful labour outcomes;

(e) resource efficiency, including through the use of technology, as appropriate, to optimise resources used in cooperative activities;

(f) complementarity with existing regional and multilateral initiatives to address labour issues; and

(g) transparency and public participation.

3. Each Party shall invite the views and, as appropriate, participation of its stakeholders, including worker and employer representatives, in identifying potential areas for cooperation and undertaking cooperative activities. Subject to the agreement of the Parties involved, cooperative activities may occur through bilateral or plurilateral engagement and may involve relevant regional or international organisations, such as the ILO, and non-Parties.

4. The funding of cooperative activities undertaken within the framework of this Chapter shall be decided by the Parties involved on a case-by-case basis.

5. In addition to the cooperative activities outlined in this Article, the Parties shall, as appropriate, caucus and leverage their respective membership in regional and multilateral fora to further their common interests in addressing labour issues.

6. Areas of cooperation may include:

(a) job creation and the promotion of productive, quality employment, including policies to generate job-rich growth and promote sustainable enterprises and entrepreneurship;

(b) creation of productive, quality employment linked to sustainable growth and skills development for jobs in emerging industries, including environmental industries;

(c) innovative workplace practices to enhance workers' well-being and business and economic competitiveness;

(d) human capital development and the enhancement of employability, including through lifelong learning, continuous education, training and the development and upgrading of skills;

(e) work-life balance;

(f) promotion of improvements in business and labour productivity, particularly in respect of SMEs;

(g) remuneration systems;

(h) promotion of the awareness of and respect for the principles and rights as stated in the ILO Declaration and for the concept of Decent Work as defined by the ILO;

(i) labour laws and practices, including the effective implementation of the principles and rights as stated in the ILO Declaration;

(j) occupational safety and health;

(k) labour administration and adjudication, for example, strengthening capacity, efficiency and effectiveness;

(l) collection and use of labour statistics;

(m) labour inspection, for example, improving compliance and enforcement mechanisms;

(n) addressing the challenges and opportunities of a diverse, multigenerational workforce, including:

    (i) promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers, or in the areas of age, disability and other characteristics not related to merit or the requirements of employment;

    (ii) promotion of equality of, elimination of discrimination against, and the employment interests of women; and

    (iii) protection of vulnerable workers, including migrant workers, and low-waged, casual or contingent workers;

(o) addressing the labour and employment challenges of economic crises, such as through areas of common interest in the ILO *Global Jobs Pact*;

(p) social protection issues, including workers' compensation in case of occupational injury or illness, pension systems and employment assistance schemes;

(q) best practice for labour relations, for example, improved labour relations, including promotion of best practice in alternative dispute resolution;

(r) social dialogue, including tripartite consultation and partnership;

(s) with respect to labour relations in multi-national enterprises, promoting information sharing and dialogue related to conditions of employment by enterprises operating in two or more Parties with representative worker organisations in each Party;

(t) corporate social responsibility; and

(u) other areas as the Parties may decide.

7. Parties may undertake activities in the areas of cooperation in paragraph 6 through:

(a) workshops, seminars, dialogues and other fora to share knowledge, experiences and best practices, including online fora and other knowledge-sharing platforms;

(b) study trips, visits and research studies to document and study policies and practices;

(c) collaborative research and development related to best practices in subjects of mutual interest;

(d) specific exchanges of technical expertise and assistance, as appropriate; and

(e) other forms as the Parties may decide.

Article 19.11: Cooperative Labour Dialogue

1. A Party may request dialogue with another Party on any matter arising under this Chapter at any time by delivering a written request to the contact point that the other Party has designated under Article 19.13 (Contact Points).

2. The requesting Party shall include information that is specific and sufficient to enable the receiving Party to respond, including identification of the matter at issue, an indication of the basis of the request under this Chapter and, when relevant, how trade or investment between the Parties is affected.

3. Unless the requesting and receiving Parties (the dialoguing Parties) decide otherwise, dialogue shall commence within 30 days of a Party's receipt of a request for dialogue. The dialoguing Parties shall engage in dialogue in good faith. As part of the dialogue, the dialoguing Parties shall provide a means for receiving and considering the views of interested persons on the matter.

4. Dialogue may be held in person or by any technological means available to the dialoguing Parties.

5. The dialoguing Parties shall address all the issues raised in the request. If the dialoguing Parties resolve the matter, they shall document any outcome, including, if appropriate, specific steps and timelines that they have agreed. The dialoguing Parties shall make the outcome available to the public, unless they decide otherwise.

6. In developing an outcome pursuant to paragraph 5, the dialoguing Parties should consider all available options and may jointly decide on any course of action they consider appropriate, including:

(a) the development and implementation of an action plan in any form that they find satisfactory, which may include specific and verifiable steps, such as on labour inspection, investigation or compliance action, and appropriate timeframes;

(b) the independent verification of compliance or implementation by individuals or entities, such as the ILO, chosen by the dialoguing Parties; and

(c) appropriate incentives, such as cooperative programmes and capacity building, to encourage or assist the dialoguing Parties to identify and address labour matters.

Article 19.12: Labour Council

1. The Parties hereby establish a Labour Council (Council) composed of senior governmental representatives at the ministerial or other level, as designated by each Party.

2. The Council shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Council shall meet every two years, unless the Parties decide otherwise.

3. The Council shall:

(a) consider matters related to this Chapter;

(b) establish and review priorities to guide decisions by the Parties about labour cooperation and capacity building activities undertaken pursuant to this Chapter, taking into account the principles in Article 19.10.2 (Cooperation);

(c) agree on a general work programme in accordance with the priorities established under subparagraph (b);

(d) oversee and evaluate the general work programme;

(e) review reports from the contact points designated under Article 19.13 (Contact Points);

(f) discuss matters of mutual interest;

(g) facilitate public participation and awareness of the implementation of this Chapter; and

(h) perform any other functions as the Parties may decide.

4. During the fifth year after the date of entry into force of this Agreement, or as otherwise decided by the Parties, the Council shall review the implementation of this Chapter with a view to ensuring its effective operation and report the findings and any recommendations to the Commission.

5. The Council may undertake subsequent reviews as agreed by the Parties.

6. The Council shall be chaired by each Party on a rotational basis.

7. All Council decisions and reports shall be made by consensus and be made publicly available, unless the Council decides otherwise.

8. The Council shall agree on a joint summary report on its work at the end of each Council meeting.

9. The Parties shall, as appropriate, liaise with relevant regional and international organisations, such as the ILO and APEC, on matters related to this Chapter. The Council may seek to develop joint proposals or collaborate with those organisations or with non-Parties.

Article 19.13: Contact Points

1. Each Party shall designate an office or official within its labour ministry or equivalent entity as a contact point to address matters related to this Chapter within 90 days of the date of entry into force of this Agreement for that Party. Each Party shall notify the other Parties promptly in the event of any change to its contact point.

2. The contact points shall:

(a) facilitate regular communication and coordination between the Parties;

(b) assist the Council;

(c) report to the Council, as appropriate;

(d) act as a channel for communication with the public in their respective territories; and

(e) work together, including with other appropriate agencies of their governments, to develop and implement cooperative activities, guided by the priorities of the Council, areas of cooperation identified in Article 19.10.6 (Cooperation) and the needs of the Parties.

3. Contact points may develop and implement specific cooperative activities bilaterally or plurilaterally.

4. Contact points may communicate and coordinate activities in person or through electronic or other means of communication.

Article 19.14: Public Engagement

1. In conducting its activities, including meetings, the Council shall provide a means for receiving and considering the views of interested persons on matters related to this Chapter.

2. Each Party shall establish or maintain, and consult, a national labour consultative or advisory body or similar mechanism, for members of its public, including representatives of its labour and business organisations, to provide views on matters regarding this Chapter.

Article 19.15: Labour Consultations

1. The Parties shall make every effort through cooperation and consultation based on the principle of mutual respect to resolve any matter arising under this Chapter.

2. A Party (requesting Party) may, at any time, request labour consultations with another Party (responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis of the request under this Chapter. The requesting Party shall circulate the request to the other Parties through their respective contact points.

3. The responding Party shall, unless agreed otherwise with the requesting Party, reply to the request in writing no later than seven days after the date of its receipt. The responding Party shall circulate the reply to the other Parties and enter into labour consultations in good faith.

4. A Party other than the requesting Party or the responding Party (the consulting Parties) that considers that it has a substantial interest in the matter may participate in the labour consultations by delivering a written notice to the

other Parties within seven days of the date of circulation by the requesting Party of the request for labour consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

5. The Parties shall begin labour consultations no later than 30 days after the date of receipt by the responding Party of the request.

6. In the labour consultations:

(a) each consulting Party shall provide sufficient information to enable a full examination of the matter; and

(b) any Party participating in the consultations shall treat any confidential information exchanged in the course of the consultations on the same basis as the Party providing the information.

7. Labour consultations may be held in person or by any technological means available to the consulting Parties. If labour consultations are held in person, they shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

8. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through labour consultations under this Article, taking into account opportunities for cooperation related to the matter. The consulting Parties may request advice from an independent expert or experts chosen by the consulting Parties to assist them. The consulting Parties may have recourse to such procedures as good offices, conciliation or mediation.

9. In labour consultations under this Article, a consulting Party may request another consulting Party to make available personnel of its government agencies or other regulatory bodies with expertise in the matter that is the subject of the labour consultations.

10. If the consulting Parties are unable to resolve the matter, any consulting Party may request that the Council representatives of the consulting Parties convene to consider the matter by delivering a written request to the other consulting Party through its contact point. The Party making that request shall inform the other Parties through their contact points. The Council representatives of the consulting Parties shall convene no later than 30 days after the date of receipt of the request, unless the consulting Parties agree otherwise, and shall seek to resolve the matter, including, if appropriate, by consulting independent experts and having recourse to such procedures as good offices, conciliation or mediation.

11. If the consulting Parties are able to resolve the matter, they shall document any outcome including, if appropriate, specific steps and timelines agreed upon.

The consulting Parties shall make the outcome available to the other Parties and to the public, unless they agree otherwise.

12. If the consulting Parties have failed to resolve the matter no later than 60 days after the date of receipt of a request under paragraph 2, the requesting Party may request the establishment of a panel under Article 28.7 (Establishment of a Panel) and, as provided in Chapter 28 (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter.

13. No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.

14. A Party may have recourse to labour consultations under this Article without prejudice to the commencement or continuation of cooperative labour dialogue under Article 19.11 (Cooperative Labour Dialogue).

15. Labour consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

CHAPTER 20

ENVIRONMENT

Article 20.1: Definitions

For the purposes of this Chapter:

environmental law means a statute or regulation of a Party, or provision thereof, including any that implements the Party's obligations under a multilateral environmental agreement, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

(a) the prevention, abatement or control of: the release, discharge or emission of pollutants or environmental contaminants;

(b) the control of environmentally hazardous or toxic chemicals, substances, materials or wastes, and the dissemination of information related thereto; or

(c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas[1, 2]

but does not include a statute or regulation, or provision thereof, directly related to worker safety or health, nor any statute or regulation, or provision thereof, the primary purpose of which is managing the subsistence or aboriginal harvesting of natural resources; and

statute or regulation means:

(a) for Australia, an Act of the Commonwealth Parliament, or a regulation made by the Governor-General in Council under delegated authority under an Act of the Commonwealth Parliament, that is enforceable at the central level of government;

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[1] For the purposes of this Chapter, the term "specially protected natural areas" means those areas as defined by the Party in its legislation.

[2] The Parties recognise that such protection or conservation may include the protection or conservation of biological diversity.

(b) for Brunei Darussalam, an Act, Order or a Regulation promulgated pursuant to the Constitution of Brunei Darussalam, enforceable by the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam;

(c) for Canada, an Act of the Parliament of Canada or regulation made under an Act of the Parliament of Canada that is enforceable by action of the central level of government;

(d) for Chile, a law of National Congress or decree of the President of the Republic, enacted as indicated by the Political Constitution of the Republic of Chile;

(e) for Japan, a Law of the Diet, a Cabinet Order, or a Ministerial Ordinance and other Orders established pursuant to a Law of the Diet, that is enforceable by action of the central level of government;

(f) for Malaysia, an Act of Parliament or regulation promulgated pursuant to an Act of Parliament that is enforceable by action of the federal government;

(g) for Mexico, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the federal level of government;

(h) for New Zealand, an Act of the Parliament of New Zealand or a regulation made under an Act of the Parliament of New Zealand by the Governor-General in Council, which is enforceable by action of the central level of government;

(i) for Peru, a law of Congress, Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government;

(j) for Singapore, an Act of the Parliament of Singapore, or a Regulation promulgated pursuant to an Act of the Parliament of Singapore, which is enforceable by action of the Government of Singapore;

(k) for the United States, an Act of Congress or regulation promulgated pursuant to an Act of Congress that is enforceable by action of the central level of government; and

(l) for Viet Nam, a law of the National Assembly, an ordinance of the Standing Committee of the National Assembly, or a regulation promulgated by the central level of government to implement a law

of the National Assembly or an ordinance of the Standing Committee of the National Assembly that is enforceable by action of the central level of government.

Article 20.2: Objectives

1. The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.

2. Taking account of their respective national priorities and circumstances, the Parties recognise that enhanced cooperation to protect and conserve the environment and sustainably manage their natural resources brings benefits that can contribute to sustainable development, strengthen their environmental governance and complement the objectives of this Agreement.

3. The Parties further recognise that it is inappropriate to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the Parties.

Article 20.3: General Commitments

1. The Parties recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.

2. The Parties recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.

3. Each Party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection.

4. No Party shall fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement for that Party.

5. The Parties recognise that each Party retains the right to exercise discretion and to make decisions regarding: (a) investigatory, prosecutorial, regulatory and compliance matters; and (b) the allocation of environmental enforcement resources with respect to other environmental laws determined to

have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws a Party is in compliance with paragraph 4 if a course of action or inaction reflects a reasonable exercise of that discretion, or results from a *bona fide* decision regarding the allocation of those resources in accordance with priorities for enforcement of its environmental laws.

6. Without prejudice to paragraph 2, the Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protection afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

7. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party.

Article 20.4: Multilateral Environmental Agreements

1. The Parties recognise that multilateral environmental agreements to which they are party play an important role, globally and domestically, in protecting the environment and that their respective implementation of these agreements is critical to achieving the environmental objectives of these agreements. Accordingly, each Party affirms its commitment to implement the multilateral environmental agreements to which it is a party.

2. The Parties emphasise the need to enhance the mutual supportiveness between trade and environmental law and policies, through dialogue between the Parties on trade and environmental issues of mutual interest, particularly with respect to the negotiation and implementation of relevant multilateral environmental agreements and trade agreements.

Article 20.5: Protection of the Ozone Layer

1. The Parties recognise that emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. Accordingly, each Party shall take measures to control the production and consumption of, and trade in, such substances.[3, 4, 5]

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[3] For greater certainty, for each Party, this provision pertains to substances controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987 (Montreal Protocol), including any future amendments thereto, as applicable to it.

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the protection of the ozone layer. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to ozone layer protection.

3. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest related to ozone-depleting substances. Cooperation may include, but is not limited to exchanging information and experiences in areas related to:

(a) environmentally friendly alternatives to ozone-depleting substances;

(b) refrigerant management practices, policies and programmes;

(c) methodologies for stratospheric ozone measurements; and

(d) combating illegal trade in ozone-depleting substances.

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[4] A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-A implementing its obligations under the Montreal Protocol or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[5] If compliance with this provision is not established pursuant to footnote 4, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to control the production and consumption of, and trade in, certain substances that can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment, in a manner affecting trade or investment between the Parties.

Article 20.6: Protection of the Marine Environment from Ship Pollution

1. The Parties recognise the importance of protecting and preserving the marine environment. To that end, each Party shall take measures to prevent the pollution of the marine environment from ships.[6, 7, 8]

2. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures to prevent the pollution of the marine environment from ships. Each Party shall make publicly available appropriate information about its programmes and activities, including cooperative programmes, that are related to the prevention of pollution of the marine environment from ships.

3. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest with respect to pollution of the marine environment from ships. Areas of cooperation may include:

(a) accidental pollution from ships;

(b) pollution from routine operations of ships;

(c) deliberate pollution from ships;

(d) development of technologies to minimise ship-generated waste;

(e) emissions from ships;

(f) adequacy of port waste reception facilities;

(g) increased protection in special geographic areas; and

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[6] For greater certainty, for each Party, this provision pertains to pollution regulated by *the International Convention for the Prevention of Pollution from Ships*, done at London, November 2, 1973, as modified by the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships*, done at London, February 17, 1978, and the *Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973 as Modified by the Protocol of 1978 relating thereto*, done at London, September 26, 1997 (MARPOL), including any future amendments thereto, as applicable to it.

[7] A Party shall be deemed in compliance with this provision if it maintains the measure or measures listed in Annex 20-B implementing its obligations under MARPOL, or any subsequent measure or measures that provide an equivalent or higher level of environmental protection as the measure or measures listed.

[8] If compliance with this provision is not established pursuant to footnote 7, to establish a violation of this provision, a Party must demonstrate that the other Party has failed to take measures to prevent the pollution of the marine environment from ships in a manner affecting trade or investment between the Parties.

(h) enforcement measures including notifications to flag States and, as appropriate, by port States.

Article 20.7: Procedural Matters

1. Each Party shall promote public awareness of its environmental laws and policies, including enforcement and compliance procedures, by ensuring that relevant information is available to the public.

2. Each Party shall ensure that an interested person residing or established in its territory may request that the Party's competent authorities investigate alleged violations of its environmental laws, and that the competent authorities give those requests due consideration, in accordance with the Party's law.

3. Each Party shall ensure that judicial, quasi-judicial or administrative proceedings for the enforcement of its environmental laws are available under its law and that those proceedings are fair, equitable, transparent and comply with due process of law. Any hearings in these proceedings shall be open to the public, except when the administration of justice otherwise requires, and in accordance with its applicable laws.

4. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to proceedings referred to in paragraph 3.

5. Each Party shall provide appropriate sanctions or remedies for violations of its environmental laws for the effective enforcement of those laws. Those sanctions or remedies may include a right to bring an action directly against the violator to seek damages or injunctive relief, or a right to seek governmental action.

6. Each Party shall ensure that it takes appropriate account of relevant factors in the establishment of the sanctions or remedies referred to in paragraph 5. Those factors may include the nature and gravity of the violation, damage to the environment and any economic benefit the violator derived from the violation.

Article 20.8: Opportunities for Public Participation

1. Each Party shall seek to accommodate requests for information regarding the Party's implementation of this Chapter.

2. Each Party shall make use of existing, or establish new, consultative mechanisms, for example national advisory committees, to seek views on matters related to the implementation of this Chapter. These mechanisms may include

persons with relevant experience, as appropriate, including experience in business, natural resource conservation and management, or other environmental matters.

Article 20.9: Public Submissions

1. Each Party shall provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this Chapter.[9] Each Party shall respond in a timely manner to such submissions in writing and in accordance with domestic procedures, and make the submissions and its responses available to the public, for example by posting on an appropriate public website.

2. Each Party shall make its procedures for the receipt and consideration of written submissions readily accessible and publicly available, for example by posting on an appropriate public website. These procedures may provide that to be eligible for consideration the submission should:

(a) be in writing in one of the official languages of the Party receiving the submission;

(b) clearly identify the person making the submission;

(c) provide sufficient information to allow for the review of the submission including any documentary evidence on which the submission may be based;

(d) explain how, and to what extent, the issue raised affects trade or investment between the Parties;

(e) not raise issues that are the subject of ongoing judicial or administrative proceedings; and

(f) indicate whether the matter has been communicated in writing to the relevant authorities of the Party and the Party's response, if any.

3. Each Party shall notify the other Parties of the entity or entities responsible for receiving and responding to any written submissions referred to in paragraph 1 within 180 days of the date of entry into force of this Agreement for that Party.

4. If a submission asserts that a Party is failing to effectively enforce its environmental laws and following the written response to the submission by that Party, any other Party may request that the Committee on Environment

[9] If available and appropriate, a Party may use an existing institutional body or mechanism for this purpose.

(Committee) discuss that submission and written response with a view to further understanding the matter raised in the submission and, as appropriate, to consider whether the matter could benefit from cooperative activities.

5. At its first meeting, the Committee shall establish procedures for discussing submissions and responses that are referred to it by a Party. These procedures may provide for the use of experts or existing institutional bodies to develop a report for the Committee comprised of information based on facts relevant to the matter.

6. No later than three years after the date of entry into force of this Agreement, and thereafter as decided by the Parties, the Committee shall prepare a written report for the Commission on the implementation of this Article. For the purposes of preparing this report, each Party shall provide a written summary regarding its implementation activities under this Article.

Article 20.10: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or jurisdiction, to adopt voluntarily, into their policies and practices, principles of corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party.

Article 20.11: Voluntary Mechanisms to Enhance Environmental Performance

1. The Parties recognise that flexible, voluntary mechanisms, for example, voluntary auditing and reporting, market-based incentives, voluntary sharing of information and expertise, and public-private partnerships, can contribute to the achievement and maintenance of high levels of environmental protection and complement domestic regulatory measures. The Parties also recognise that those mechanisms should be designed in a manner that maximises their environmental benefits and avoids the creation of unnecessary barriers to trade.

2. Therefore, in accordance with its laws, regulations or policies and to the extent it considers appropriate, each Party shall encourage:

(a) the use of flexible and voluntary mechanisms to protect natural resources and the environment in its territory; and

(b) its relevant authorities, businesses and business organisations, non-governmental organisations and other interested persons involved in the development of criteria used to evaluate environmental performance, with respect to these voluntary mechanisms, to continue to develop and improve such criteria.

3. Further, if private sector entities or non-governmental organisations develop voluntary mechanisms for the promotion of products based on their environmental qualities, each Party should encourage those entities and organisations to develop voluntary mechanisms that, among other things:

(a) are truthful, are not misleading and take into account scientific and technical information;

(b) if applicable and available, are based on relevant international standards, recommendations or guidelines, and best practices;

(c) promote competition and innovation; and

(d) do not treat a product less favourably on the basis of origin.

Article 20.12: Cooperation Frameworks

1. The Parties recognise the importance of cooperation as a mechanism to implement this Chapter, to enhance its benefits and to strengthen the Parties' joint and individual capacities to protect the environment and to promote sustainable development as they strengthen their trade and investment relations.

2. Taking account of their national priorities and circumstances, and available resources, the Parties shall cooperate to address matters of joint or common interest among the participating Parties related to the implementation of this Chapter, when there is mutual benefit from that cooperation. This cooperation may be carried out on a bilateral or plurilateral basis between Parties and, subject to consensus by the participating Parties, may include non-governmental bodies or organisations and non-Parties to this Agreement.

3. Each Party shall designate the authority or authorities responsible for cooperation related to the implementation of this Chapter to serve as its national contact point on matters that relate to coordination of cooperation activities and shall notify the other Parties in writing within 90 days of the date of entry into force of this Agreement for that Party of its contact point. On notifying the other Parties of its contact point, or at any time thereafter through the contact points, a Party may:

(a) share its priorities for cooperation with the other Parties, including the objectives of that cooperation; and

(b) propose cooperation activities related to the implementation of this Chapter to another Party or Parties.

4. When possible and appropriate, the Parties shall seek to complement and use their existing cooperation mechanisms and take into account relevant work of regional and international organisations.

5. Cooperation may be undertaken through various means including: dialogues, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate cooperation and training; the sharing of best practices on policies and procedures; and the exchange of experts.

6. In developing cooperative activities and programmes, a Party shall, if relevant, identify performance measures and indicators to assist in examining and evaluating the efficiency, effectiveness and progress of specific cooperative activities and programmes and share those measures and indicators, as well as the outcome of any evaluation during or following the completion of a cooperative activity or programme, with the other Parties.

7. The Parties, through their contact points for cooperation, shall periodically review the implementation and operation of this Article and report their findings, which may include recommendations, to the Committee to inform its review under Article 20.19(3)(c) (Environment Committee and Contact Points). The Parties, through the Committee, may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties decide to establish such an entity, the Parties shall agree on the funding of the entity on a voluntary basis to support the entity's operation.

8. Each Party shall promote public participation in the development and implementation of cooperative activities, as appropriate. This may include activities such as encouraging and facilitating direct contacts and cooperation among relevant entities and the conclusion of arrangements among them for the conduct of cooperative activities under this Chapter.

9. Where a Party has defined the environmental laws under Article 20.1 (Definitions) to include only laws at the central level of government (first Party), and where another Party (second Party) considers that an environmental law at the sub-central level of government of the first Party is not being effectively enforced by the relevant sub-central government through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties, the second Party may request a dialogue with the first Party. The request shall contain information that is specific and sufficient to enable the first Party to evaluate the matter at issue and an indication of how the matter is negatively affecting trade or investment of the second Party.

10. All cooperative activities under this Chapter are subject to the availability of funds and of human and other resources, and to the applicable laws and regulations

of the participating Parties. The participating Parties shall decide, on a case-by-case basis, the funding of cooperative activities.

Article 20.13: Trade and Biodiversity

1. The Parties recognise the importance of conservation and sustainable use of biological diversity and their key role in achieving sustainable development.

2. Accordingly, each Party shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.

3. The Parties recognise the importance of respecting, preserving and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity.

4. The Parties recognise the importance of facilitating access to genetic resources within their respective national jurisdictions, consistent with each Party's international obligations. The Parties further recognise that some Parties require, through national measures, prior informed consent to access such genetic resources in accordance with national measures and, where such access is granted, the establishment of mutually agreed terms, including with respect to sharing of benefits from the use of such genetic resources, between users and providers.

5. The Parties also recognise the importance of public participation and consultation, in accordance with their respective law or policy, in the development and implementation of measures concerning the conservation and sustainable use of biological diversity. Each Party shall make publicly available information about its programmes and activities, including cooperative programmes, related to the conservation and sustainable use of biological diversity.

6. Consistent with Article 20.12 (Cooperation Frameworks), the Parties shall cooperate to address matters of mutual interest. Cooperation may include, but is not limited to, exchanging information and experiences in areas related to:

(a) the conservation and sustainable use of biological diversity;

(b) the protection and maintenance of ecosystems and ecosystem services; and

(c) access to genetic resources and the sharing of benefits arising from their utilisation.

Article 20.14: Invasive Alien Species

1. The Parties recognise that the movement of terrestrial and aquatic invasive alien species across borders through trade-related pathways can adversely affect

the environment, economic activities and development, and human health. The Parties also recognise that the prevention, detection, control and, when possible, eradication, of invasive alien species are critical strategies for managing those adverse impacts.

2. Accordingly, the Committee shall coordinate with the Committee on Sanitary and Phytosanitary Measures established under Article 7.5 (Committee on Sanitary and Phytosanitary Measures) to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species.

Article 20.15: Transition to a Low Emissions and Resilient Economy

1. The Parties acknowledge that transition to a low emissions economy requires collective action.

2. The Parties recognise that each Party's actions to transition to a low emissions economy should reflect domestic circumstances and capabilities and, consistent with Article 20.12 (Cooperation Frameworks), Parties shall cooperate to address matters of joint or common interest. Areas of cooperation may include, but are not limited to: energy efficiency; development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources; sustainable transport and sustainable urban infrastructure development; addressing deforestation and forest degradation; emissions monitoring; market and non-market mechanisms; low emissions, resilient development and sharing of information and experiences in addressing this issue. Further, the Parties shall, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low emissions economy.

Article 20.16: Marine Capture Fisheries[10]

1. The Parties acknowledge their role as major consumers, producers and traders of fisheries products and the importance of the marine fisheries sector to their development and to the livelihoods of their fishing communities, including artisanal or small-scale fisheries. The Parties also acknowledge that the fate of marine capture fisheries is an urgent resource problem facing the international community. Accordingly, the Parties recognise the importance of taking measures aimed at the conservation and the sustainable management of fisheries.

[10] For greater certainty, this Article does not apply with respect to aquaculture.

2. In this regard, the Parties acknowledge that inadequate fisheries management, fisheries subsidies that contribute to overfishing and overcapacity, and illegal, unreported and unregulated (IUU) fishing[11] can have significant negative impacts on trade, development and the environment and recognise the need for individual and collective action to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. Accordingly, each Party shall seek to operate a fisheries management system that regulates marine wild capture fishing and that is designed to:

(a) prevent overfishing and overcapacity;

(b) reduce bycatch of non-target species and juveniles, including through the regulation of fishing gear that results in bycatch and the regulation of fishing in areas where bycatch is likely to occur; and

(c) promote the recovery of overfished stocks for all marine fisheries in which that Party's persons conduct fishing activities.

Such a management system shall be based on the best scientific evidence available and on internationally recognised best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species.[12]

4. Each Party shall promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures. Such measures should include, as appropriate:

(a) for sharks: the collection of species specific data, fisheries bycatch mitigation measures, catch limits, and finning prohibitions; and

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[11] The term "illegal, unreported and unregulated fishing" is to be understood to have the same meaning as paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (2001 IUU Fishing Plan of Action) of the UN Food and Agricultural Organisation (FAO), adopted in Rome, 2001.

[12] These instruments include, among others, and as they may apply, UNCLOS, the *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, done at New York, December 4, 1995 (UN *Fish Stocks Agreement*), the FAO *Code of Conduct for Responsible Fisheries*, the 1993 FAO *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, (Compliance Agreement) done at Rome, November 24, 1993 and the 2001 IUU Fishing Plan of Action.

(b) for marine turtles, seabirds, and marine mammals: fisheries bycatch mitigation measures, conservation and relevant management measures, prohibitions, and other measures in accordance with relevant international agreements to which the Party is party.

5. The Parties recognise that the implementation of a fisheries management system that is designed to prevent overfishing and overcapacity and to promote the recovery of overfished stocks must include the control, reduction and eventual elimination of all subsidies that contribute to overfishing and overcapacity. To that end, no Party shall grant or maintain any of the following subsidies[13] within the meaning of Article 1.1 of the SCM Agreement that are specific within the meaning of Article 2 of the SCM Agreement:

(a) subsidies for fishing[14] that negatively affect[15] fish stocks that are in an overfished[16] condition; and

(b) subsidies provided to any fishing vessel[17] while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing in accordance with the rules and procedures of that organisation or arrangement and in conformity with international law.

6. Subsidy programmes that are established by a Party before the date of entry into force of this Agreement for that Party and which are inconsistent with paragraph 5(a) shall be brought into conformity with that paragraph as soon as

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[13] For the purposes of this Article, a subsidy shall be attributable to the Party conferring it, regardless of the flag of the vessel involved or the application of rules of origin to the fish involved.

[14] For the purposes of this paragraph, "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish.

[15] The negative effect of such subsidies shall be determined based on the best scientific evidence available.

[16] For the purposes of this Article, a fish stock is overfished if the stock is at such a low level that mortality from fishing needs to be restricted to allow the stock to rebuild to a level that produces maximum sustainable yield or alternative reference points based on the best scientific evidence available. Fish stocks that are recognised as overfished by the national jurisdiction where the fishing is taking place or by a relevant Regional Fisheries Management Organisation shall also be considered overfished for the purposes of this paragraph.

[17] The term "fishing vessels" refers to any vessel, ship or other type of boat used for, equipped to be used for, or intended to be used for fishing or fishing related activities.

possible and no later than three years[18] of the date of entry into force of this Agreement for that Party.

7. In relation to subsidies that are not prohibited by paragraph 5(a) or 5(b), and taking into consideration a Party's social and developmental priorities, including food security concerns, each Party shall make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies within the meaning of Article 1.1 of the SCM Agreement, to the extent they are specific within the meaning of Article 2 of the SCM Agreement, that contribute to overfishing or overcapacity.

8. With a view to achieving the objective of eliminating subsidies that contribute to overfishing and overcapacity, the Parties shall review the disciplines in paragraph 5 at regular meetings of the Committee.

9. Each Party shall notify the other Parties, within one year of the date of entry into force of this Agreement for it and every two years thereafter, of any subsidy within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement, that the Party grants or maintains to persons engaged in fishing or fishing related activities.

10. These notifications shall cover subsidies provided within the previous two-year period and shall include the information required under Article 25.3 of the SCM Agreement and, to the extent possible, the following information:[19]

(a) programme name;

(b) legal authority for the programme;

(c) catch data by species in the fishery for which the subsidy is provided;

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[18] Notwithstanding this paragraph, and solely for the purpose of completing a stock assessment that it has already initiated, Viet Nam may request an extension of two additional years to bring any subsidy programmes into conformity with Article 20.16.5(a) (Marine Capture Fisheries) by providing a written request to the Committee no later than six months before the expiry of the three-year period provided for in this paragraph. Viet Nam's request shall include the reason for the requested extension and the information about its subsidy programmes as provided for in Article 20.16.10. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this footnote unless the Committee decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Committee in writing a report on the measures it has taken to fulfil its obligation under Article 20.16.5(a).

[19] Sharing information and data on existing fisheries subsidy programmes does not prejudge their legal status, effects or nature under the GATT 1994 or the SCM Agreement and is intended to complement WTO data reporting requirements.

(d) status of the fish stocks in the fishery for which the subsidy is provided (for example, overexploited, depleted, fully exploited, recovering or underexploited);

(e) fleet capacity in the fishery for which the subsidy is provided;

(f) conservation and management measures in place for the relevant fish stock; and

(g) total imports and exports per species.

11. Each Party shall also provide, to the extent possible, information in relation to other fisheries subsidies that the Party grants or maintains that are not covered by paragraph 5, in particular fuel subsidies.

12. A Party may request additional information from the notifying Party regarding the notifications under paragraphs 9 and 10. The notifying Party shall respond to that request as quickly as possible and in a comprehensive manner.

13. The Parties recognise the importance of concerted international action to address IUU fishing as reflected in regional and international instruments[20] and shall endeavour to improve cooperation internationally in this regard, including with and through competent international organisations.

14. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from those practices, each Party shall:

(a) cooperate with other Parties to identify needs and to build capacity to support the implementation of this Article;

(b) support monitoring, control, surveillance, compliance and enforcement systems, including by adopting, reviewing, or revising, as appropriate measures to:

(i) deter vessels that are flying its flag and its nationals from engaging in IUU fishing activities; and

(ii) address the transhipment at sea of fish or fish products caught through IUU fishing activities;

[20] Regional and international instruments include, among others, and as they may apply, the 2001 IUU Fishing Plan of Action, the *2005 Rome Declaration on IUU Fishing*, adopted in Rome on March 12, 2005, the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, done at Rome, November 22, 2009, as well as instruments establishing and adopted by Regional Fisheries Management Organisations, which are defined as intergovernmental fisheries organisations or arrangements, as appropriate, that have the competence to establish conservation and management measures.

(c) implement port State measures;

(d) strive to act consistently with relevant conservation and management measures adopted by Regional Fisheries Management Organisations of which it is not a member so as not to undermine those measures; and

(e) endeavour not to undermine catch or trade documentation schemes operated by Regional Fisheries Management Organisations or Arrangements or an intergovernmental organisation whose scope includes the management of shared fisheries resources, including straddling and highly migratory species, where that Party is not a member of those organisations or arrangements.

15. Consistent with Article 26.2.2 (Publication), a Party shall, to the extent possible, provide other Parties the opportunity to comment on proposed measures that are designed to prevent trade in fisheries products that results from IUU fishing.

Article 20.17: Conservation and Trade

1. The Parties affirm the importance of combating the illegal take[21] of, and illegal trade in, wild fauna and flora, and acknowledge that this trade undermines efforts to conserve and sustainably manage those natural resources, has social consequences, distorts legal trade in wild fauna and flora, and reduces the economic and environmental value of these natural resources.

2. Accordingly, each Party shall adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).[22, 23, 24]

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[21] The term "take" means captured, killed or collected and with respect to a plant, also means harvested, cut, logged or removed.

[22] For the purposes of this Article, a Party's CITES obligations include existing and future amendments to which it is a Party and any existing and future reservations, exemptions, and exceptions applicable to it.

[23] To establish a violation of this paragraph, a Party must demonstrate that the other Party has failed to adopt, maintain or implement laws, regulations or other measures to fulfil its obligations under CITES in a manner affecting trade or investment between the Parties.

[24] If a Party considers that another Party is failing to comply with its obligations under this paragraph, it shall endeavour, in the first instance, to address the matter through a consultative or other procedure under CITES.

3. The Parties commit to promote conservation and to combat the illegal take of, and illegal trade in, wild fauna and flora. To that end, the Parties shall:

(a) exchange information and experiences on issues of mutual interest related to combating the illegal take of, and illegal trade in, wild fauna and flora, including combating illegal logging and associated illegal trade, and promoting the legal trade in associated products;

(b) undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora; and

(c) endeavour to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.

4. Each Party further commits to:

(a) take appropriate measures to protect and conserve wild fauna and flora that it has identified to be at risk within its territory, including measures to conserve the ecological integrity of specially protected natural areas, for example wetlands;

(b) maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavour to enhance public participation and transparency in these institutional frameworks; and

(c) endeavour to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of, and illegal trade in, wild fauna and flora.

5. In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence[25], were taken or traded in violation of that Party's law or another applicable law[26], the primary purpose of which is to conserve,

[25] For greater certainty, for the purposes of this paragraph, each Party retains the right to determine what constitutes "credible evidence".

[26] For greater certainty, "another applicable law" means a law of the jurisdiction where the take or trade occurred and is only relevant to the question of whether the wild fauna and flora has been taken or traded in violation of that law.

protect, or manage wild fauna or flora. Such measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.

6. The Parties recognise that each Party retains the right to exercise administrative, investigatory and enforcement discretion in its implementation of paragraph 5, including by taking into account in relation to each situation the strength of the available evidence and the seriousness of the suspected violation. In addition, the Parties recognise that in implementing paragraph 5, each Party retains the right to make decisions regarding the allocation of administrative, investigatory and enforcement resources.

7. In order to promote the widest measure of law enforcement cooperation and information sharing between the Parties to combat the illegal take of, and illegal trade in, wild fauna and flora, the Parties shall endeavour to identify opportunities, consistent with their respective law and in accordance with applicable international agreements, to enhance law enforcement cooperation and information sharing, for example by creating and participating in law enforcement networks.

Article 20.18: Environmental Goods and Services

1. The Parties recognise the importance of trade and investment in environmental goods and services as a means of improving environmental and economic performance and addressing global environmental challenges.

2. The Parties further recognise the importance of this Agreement to promoting trade and investment in environmental goods and services in the free trade area.

3. Accordingly, the Committee shall consider issues identified by a Party or Parties related to trade in environmental goods and services, including issues identified as potential non-tariff barriers to that trade. The Parties shall endeavour to address any potential barriers to trade in environmental goods and services that may be identified by a Party, including by working through the Committee and in conjunction with other relevant committees established under this Agreement, as appropriate.

4. The Parties may develop bilateral and plurilateral cooperative projects on environmental goods and services to address current and future global trade-related environmental challenges.

Article 20.19: Environment Committee and Contact Points

1. Each Party shall designate and notify a contact point from its relevant authorities within 90 days of the date of entry into force of this Agreement for it, in order to facilitate communication between the Parties in the implementation of this Chapter. Each Party shall promptly notify the other Parties in the event of any change to its contact point.

2. The Parties establish an Environment Committee (Committee) composed of senior government representatives, or their designees, of the relevant trade and environment national authorities of each Party responsible for the implementation of this Chapter.

3. The purpose of the Committee is to oversee the implementation of this Chapter and its functions shall be to:

(a) provide a forum to discuss and review the implementation of this Chapter;

(b) provide periodic reports to the Commission regarding the implementation of this Chapter;

(c) provide a forum to discuss and review cooperative activities under this Chapter;

(d) consider and endeavour to resolve matters referred to it under Article 20.21 (Senior Representative Consultations);

(e) coordinate with other committees established under this Agreement as appropriate; and

(f) perform any other functions as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Committee shall meet every two years unless the Committee agrees otherwise. The Chair of the Committee and the venue of its meetings shall rotate among each of the Parties in English alphabetical order, unless the Committee agrees otherwise.

5. All decisions and reports of the Committee shall be made by consensus, unless the Committee agrees otherwise or unless otherwise provided in this Chapter.

6. All decisions and reports of the Committee shall be made available to the public, unless the Committee agrees otherwise.

7. During the fifth year after the date of entry into force of this Agreement, the Committee shall:

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

(b) report its findings, which may include recommendations, to the Parties and the Commission; and

(c) undertake subsequent reviews at intervals to be decided by the Parties.

8. The Committee shall provide for public input on matters relevant to the Committee's work, as appropriate, and shall hold a public session at each meeting.

9. The Parties recognise the importance of resource efficiency in the implementation of this Chapter and the desirability of using new technologies to facilitate communication and interaction between the Parties and with the public.

Article 20.20: Environment Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter, and shall make every effort through dialogue, consultation, exchange of information and, if appropriate, cooperation to address any matter that might affect the operation of this Chapter.

2. A Party (the requesting Party) may request consultations with any other Party (the responding Party) regarding any matter arising under this Chapter by delivering a written request to the responding Party's contact point. The requesting Party shall include information that is specific and sufficient to enable the responding Party to respond, including identification of the matter at issue and an indication of the legal basis for the request. The requesting Party shall circulate its request for consultations to the other Parties through their respective contact points.

3. A Party other than the requesting or the responding Party that considers it has a substantial interest in the matter (a participating Party) may participate in the consultations by delivering a written notice to the contact point of the requesting and responding Parties no later than seven days after the date of circulation of the request for consultations. The participating Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the requesting and the responding Parties (the consulting Parties) agree otherwise, the consulting Parties shall enter into consultations promptly, and no later than 30 days after the date of receipt by the responding Party of the request.

5. The consulting Parties shall make every effort to arrive at a mutually satisfactory resolution to the matter, which may include appropriate cooperative activities. The consulting Parties may seek advice or assistance from any person or body they deem appropriate in order to examine the matter.

Article 20.21: Senior Representative Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), a consulting Party may request that the Committee representatives from the consulting Parties convene to consider the matter by delivering a written request to the contact point of the other consulting Party or Parties. At the same time, the consulting Party making the request shall circulate the request to the contact points of other Parties.

2. The Committee representatives from the consulting Parties shall promptly convene following the delivery of the request, and shall seek to resolve the matter including, if appropriate, by gathering relevant scientific and technical information from governmental or non-governmental experts. Committee representatives from any other Party that considers it has a substantial interest in the matter may participate in the consultations.

Article 20.22: Ministerial Consultations

1. If the consulting Parties have failed to resolve the matter under Article 20.21 (Senior Representative Consultations), a consulting Party may refer the matter to the relevant Ministers of the consulting Parties who shall seek to resolve the matter.

2. Consultations pursuant to Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and this Article may be held in person or by any technological means available as agreed by the consulting Parties. If in person, consultations shall be held in the capital of the responding Party, unless the consulting Parties agree otherwise.

3. Consultations shall be confidential and without prejudice to the rights of any Party in any future proceedings.

Article 20.23: Dispute Resolution

1. If the consulting Parties have failed to resolve the matter under Article 20.20 (Environment Consultations), Article 20.21 (Senior Representative Consultations) and Article 20.22 (Ministerial Consultations) within 60 days after the date of receipt of a request under Article 20.20, or any other period as the consulting Parties may agree, the requesting Party may request consultations

under Article 28.5 (Consultations) or request the establishment of a panel under Article 28.7 (Establishment of a Panel).

2. Notwithstanding Article 28.15 (Role of Experts), in a dispute arising under Article 20.17.2 (Conservation and Trade) a panel convened under Chapter 28 (Dispute Settlement) shall:

(a) seek technical advice or assistance, if appropriate, from an entity authorised under CITES to address the particular matter, and provide the consulting Parties with an opportunity to comment on any such technical advice or assistance received; and

(b) provide due consideration to any interpretive guidance received pursuant to subparagraph (a) on the matter to the extent appropriate in light of its nature and status in making its findings and determinations under Article 28.17.4 (Initial Report).

3. Before a Party initiates dispute settlement under this Agreement for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, that Party shall consider whether it maintains environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute.

4. If a Party requests consultations with another Party under Article 20.20 (Environment Consultations) for a matter arising under Article 20.3.4 (General Commitments) or Article 20.3.6, and the responding Party considers that the requesting Party does not maintain environmental laws that are substantially equivalent in scope to the environmental laws that would be the subject of the dispute, the Parties shall discuss the issue during the consultations.

ANNEX 20-A

For Australia, the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

For Brunei Darussalam, the *Customs (Prohibition and Restriction on Imports and Exports), Order*.

For Canada, the *Ozone-depleting Substances Regulations, 1998* of the *Canadian Environmental Protection Act, 1999* (CEPA).

For Chile, *Supreme Decree N° 238* (1990) of the Ministry of Foreign Affairs and *Law N° 20.096*.

For Japan, the *Law concerning the Protection of the Ozone Layer through the Control of Specified Substances and Other Measures* (Law No. 53, 1988).

For Malaysia, the *Environmental Quality Act 1974*.

For Mexico, the *General Law on Ecological Equilibrium and Environmental Protection* (*Ley General del Equilibrio Ecológico y la Protección al Ambiente – LGEEPA*), under Title IV Environmental Protection, Chapter I and II regarding federal enforcement of atmospheric provisions.

For New Zealand, the *Ozone Layer Protection Act 1996*.

For Peru, the *Supreme Decree No. 033-2000-ITINCI*.

For Singapore, the *Environmental Protection and Management Act*, including regulations made thereunder.

For the United States, 42 U.S.C §§ 7671-7671q (*Stratospheric Ozone Protection*).

For Viet Nam, the *Law on Environmental Protection 2014*; Joint Circular No. 47/2011/TTLT-BCT-BTNMT dated 30 December 2011 of the Ministry of Industry and Trade and the Ministry of Natural Resources and Environment, regulating the management of import, export and temporary import for re-export of ozone depleting substances according to the Montreal Protocol; Decision No. 15/2006/QĐ-BTNMT dated 08 September 2006 of the Ministry of Natural Resources and Environment, issuing a list of refrigeration equipment using chlorofluorocarbons prohibited for import.

ANNEX 20-B

For Australia, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Navigation Act 2012*.

For Brunei Darussalam, the *Prevention of Pollution of the Sea Order 2005*; the *Prevention of Pollution of the Sea (Oil) Regulations 2008*; and the *Prevention of the Pollution of the Seas (Noxious Liquid Substances in Bulk) Regulations, 2008*.

For Canada, the *Canada Shipping Act, 2001* and its related regulations.

For Chile, the *Decree N°1.689* (1995) of the Ministry of Foreign Affairs.

For Japan, the *Law Relating to the Prevention of Marine Pollution and Maritime Disasters* (Law No. 136, 1970).

For Malaysia, the *Act 515 Merchant Shipping (Oil Pollution) Act 1994*; *Merchant Shipping Ordinance 1952* (amended in 2007 by *Act A1316*); and the *Environmental Quality Act 1974*.

For Mexico, Article 132 of the *General Law on Ecological Equilibrium and Environmental Protection* (*Ley General del Equilibrio Ecológico y la Protección al Ambiente – LGEEPA*).

For New Zealand, the *Maritime Transport Act 1994*.

For Peru, the *Decree Law No. 22703*; and the *1978 Protocol by Decree Law No. 22954* (March 26, 1980).

For Singapore, the *Prevention of Pollution of the Sea Act*, including regulations made thereunder.

For the United States, the *Act to Prevent Pollution from Ships*, 33 U.S.C §§ 1901-1915.

For Viet Nam, the *Law on Environmental Protection 2014*; the *Maritime Code 2005*; Circular 50/2012/TT-BGTVT dated 19 December 2012 of the Ministry of Transport, regulating the management of receiving and processing oil-containing liquid waste from sea vessels at Viet Nam's sea ports; the *National Technical Regulation on Marine Pollution Prevention Systems of Ships* QCVN 26: 2014/BGTVT.

CHAPTER 21

COOPERATION AND CAPACITY BUILDING

Article 21.1: General Provisions

1. The Parties acknowledge the importance of cooperation and capacity building activities and shall undertake and strengthen these activities to assist in implementing this Agreement and enhancing its benefits, which are intended to accelerate economic growth and development.

2. The Parties recognise that cooperation and capacity building activities may be undertaken between two or more Parties, on a mutually agreed basis, and shall seek to complement and build on existing agreements or arrangements between them.

3. The Parties also recognise that the involvement of the private sector is important in these activities, and that SMEs may require assistance in participating in global markets.

Article 21.2: Areas of Cooperation and Capacity Building

1. The Parties may undertake and strengthen cooperation and capacity building activities to assist in:

(a) implementing the provisions of this Agreement;

(b) enhancing each Party's ability to take advantage of the economic opportunities created by this Agreement; and

(c) promoting and facilitating trade and investment of the Parties.

2. Cooperation and capacity building activities may include, but are not necessarily limited to, the following areas:

(a) agricultural, industrial and services sectors;

(b) promotion of education, culture and gender equality; and

(c) disaster risk management.

3. The Parties recognise that technology and innovation provides added value to cooperation and capacity building activities, and may be incorporated into cooperation and capacity building activities under this Article.

4. The Parties may undertake cooperation and capacity building activities through modes such as: dialogue, workshops, seminars, conferences, collaborative programmes and projects; technical assistance to promote and facilitate capacity building and training; the sharing of best practices on policies and procedures; and the exchange of experts, information and technology.

Article 21.3: Contact Points for Cooperation and Capacity Building

1. Each Party shall designate and notify a contact point on matters relating to the coordination of cooperation and capacity building activities in accordance with Article 27.5 (Contact Points).

2. A Party may make a request for cooperation and capacity building activities related to this Agreement to another Party or Parties through the contact points.

Article 21.4: Committee on Cooperation and Capacity Building

1. The Parties hereby establish a Committee on Cooperation and Capacity Building (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) facilitate the exchange of information between the Parties in areas including, but not limited to, experiences and lessons learned through cooperation and capacity building activities undertaken between the Parties;

(b) discuss and consider issues or proposals for future cooperation and capacity building activities;

(c) initiate and undertake collaboration, as appropriate, to enhance donor coordination and facilitate public-private partnerships in cooperation and capacity building activities;

(d) invite, as appropriate, international donor institutions, private sector entities, non-governmental organisations or other relevant institutions, to assist in the development and implementation of cooperation and capacity building activities;

(e) establish *ad hoc* working groups, as appropriate, which may include government representatives, non-government representatives or both;

(f) coordinate with other committees, working groups and any other subsidiary body established under this Agreement as appropriate,

in support of the development and implementation of cooperation and capacity building activities;

(g) review the implementation or operation of this Chapter; and

(h) engage in other activities as the Parties may decide.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Committee shall produce an agreed record of its meetings, including decisions and next steps and, as appropriate, report to the Commission.

Article 21.5: Resources

Recognising the different levels of development of the Parties, the Parties shall work to provide the appropriate financial or in-kind resources for cooperation and capacity building activities conducted under this Chapter, subject to the availability of resources and the comparative capabilities that different Parties possess to achieve the goals of this Chapter.

Article 21.6: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 22

COMPETITIVENESS AND BUSINESS FACILITATION

Article 22.1: Definitions

For the purposes of this Chapter:

supply chain means a cross-border network of enterprises operating together as an integrated system to design, develop, produce, market, distribute, transport, and deliver products and services to customers.

Article 22.2: Committee on Competitiveness and Business Facilitation

1. The Parties recognise that, in order to enhance the domestic, regional and global competitiveness of their economies, and to promote economic integration and development within the free trade area, their business environments must be responsive to market developments.

2. Accordingly, the Parties hereby establish a Committee on Competitiveness and Business Facilitation (Committee), composed of government representatives of each Party.

3. The Committee shall:

(a) discuss effective approaches and develop information sharing activities to support efforts to establish a competitive environment that is conducive to the establishment of businesses, facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;

(b) explore ways to take advantage of the trade and investment opportunities that this Agreement creates;

(c) provide advice and recommendations to the Commission on ways to further enhance the competitiveness of the Parties' economies, including recommendations aimed at enhancing the participation of SMEs in regional supply chains;

(d) explore ways to promote the development and strengthening of supply chains within the free trade area in accordance with Article 22.3 (Supply Chains); and

(e) engage in other activities as the Parties may decide.

4. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

5. In carrying out its functions, the Committee may work with other committees, working groups and any other subsidiary body established under this Agreement. The Committee may also seek advice from, and consider the work of, appropriate experts, such as international donor institutions, enterprises and non-governmental organisations.

Article 22.3: Supply Chains

1. The Committee shall explore ways in which this Agreement may be implemented so as to promote the development and strengthening of supply chains in order to integrate production, facilitate trade and reduce the costs of doing business within the free trade area.

2. The Committee shall develop recommendations and promote seminars, workshops or other capacity building activities with appropriate experts, including private sector and international donor organisations, to assist participation by SMEs in supply chains in the free trade area.

3. The Committee shall, as appropriate, work with other committees, working groups and any other subsidiary body established under this Agreement, including through joint meetings, to identify and discuss measures affecting the development and strengthening of supply chains. The Committee shall ensure that it does not duplicate the activities of these other bodies.

4. The Committee shall identify and explore best practices and experiences relevant to the development and strengthening of supply chains between the Parties.

5. The Committee shall commence a review of the extent to which this Agreement has facilitated the development, strengthening and operation of supply chains in the free trade area during the fourth year after the date of entry into force of this Agreement. Unless the Parties agree otherwise, the Committee shall conduct further reviews every five years thereafter.

6. In conducting its review, the Committee shall consider the views of interested persons that a Party has received pursuant to Article 22.4 (Engagement with Interested Persons) and provided to the Committee.

7. No later than two years after the commencement of a review under paragraph 5, the Committee shall submit a report to the Commission containing the Committee's findings and recommendations on ways in which the Parties can promote and strengthen the development of supply chains in the free trade area.

8. Following the Commission's consideration of the report, the Committee shall make the report publicly available, unless the Parties agree otherwise.

Article 22.4: Engagement with Interested Persons

The Committee shall establish mechanisms appropriate to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing competitiveness and business facilitation.

Article 22.5: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 23

DEVELOPMENT

Article 23.1: General Provisions

1. The Parties affirm their commitment to promote and strengthen an open trade and investment environment that seeks to improve welfare, reduce poverty, raise living standards and create new employment opportunities in support of development.

2. The Parties acknowledge the importance of development in promoting inclusive economic growth, as well as the instrumental role that trade and investment can play in contributing to economic development and prosperity. Inclusive economic growth includes a more broad-based distribution of the benefits of economic growth through the expansion of business and industry, the creation of jobs, and the alleviation of poverty.

3. The Parties acknowledge that economic growth and development contribute to achieving the objectives of this Agreement of promoting regional economic integration.

4. The Parties also acknowledge that effective domestic coordination of trade, investment and development policies can contribute to sustainable economic growth.

5. The Parties recognise the potential for joint development activities between the Parties to reinforce efforts to achieve sustainable development goals.

6. The Parties also recognise that activities carried out under Chapter 21 (Cooperation and Capacity Building) are an important component of joint development activities.

Article 23.2: Promotion of Development

1. The Parties acknowledge the importance of each Party's leadership in implementing development policies, including policies that are designed for its nationals to maximise the use of the opportunities created by this Agreement.

2. The Parties acknowledge that this Agreement has been designed in a manner that takes into account the different levels of economic development of the Parties, including through provisions that support and enable the achievement of national development goals.

3. The Parties further recognise that transparency, good governance and accountability contribute to the effectiveness of development policies.

Article 23.3: Broad-Based Economic Growth

1. The Parties acknowledge that broad-based economic growth reduces poverty, enables sustainable delivery of basic services, and expands opportunities for people to live healthy and productive lives.

2. The Parties recognise that broad-based economic growth promotes peace, stability, democratic institutions, attractive investment opportunities, and effectiveness in addressing regional and global challenges.

3. The Parties also recognise that generating and sustaining broad-based economic growth requires sustained high-level commitment by their governments to effectively and efficiently administer public institutions, invest in public infrastructure, welfare, health and education systems, and foster entrepreneurship and access to economic opportunity.

4. The Parties may enhance broad-based economic growth through policies that take advantage of trade and investment opportunities created by this Agreement in order to contribute to, among other things, sustainable development and the reduction of poverty. These policies may include those related to the promotion of market-based approaches aimed at improving trading conditions and access to finance for vulnerable areas or populations, and SMEs.

Article 23.4: Women and Economic Growth

1. The Parties recognise that enhancing opportunities in their territories for women, including workers and business owners, to participate in the domestic and global economy contributes to economic development. The Parties further recognise the benefit of sharing their diverse experiences in designing, implementing and strengthening programmes to encourage this participation.

2. Accordingly, the Parties shall consider undertaking cooperative activities aimed at enhancing the ability of women, including workers and business owners, to fully access and benefit from the opportunities created by this Agreement. These activities may include providing advice or training, such as through the exchange of officials, and exchanging information and experience on:

(a) programmes aimed at helping women build their skills and capacity, and enhance their access to markets, technology and financing;

(b) developing women's leadership networks; and

(c) identifying best practices related to workplace flexibility.

Article 23.5: Education, Science and Technology, Research and Innovation

1. The Parties recognise that the promotion and development of education, science and technology, research and innovation can play an important role in accelerating growth, enhancing competitiveness, creating jobs, and expanding trade and investment among the Parties.

2. The Parties further recognise that policies related to education, science and technology, research and innovation can help Parties maximise the benefits derived from this Agreement. Accordingly, Parties may encourage the design of policies in these areas that take into consideration trade and investment opportunities arising from this Agreement, in order to further increase those benefits. Those policies may include initiatives with the private sector, including those aimed at developing relevant expertise and managerial skills, and enhancing enterprises' ability to transform innovations into competitive products and start-up businesses.

Article 23.6: Joint Development Activities

1. The Parties recognise that joint activities between the Parties to promote maximisation of the development benefits derived from this Agreement can reinforce national development strategies, including, where appropriate, through work with bilateral partners, private companies, academic institutions and non-governmental organisations.

2. When mutually agreed, two or more Parties shall endeavour to facilitate joint activities between relevant government, private and multilateral institutions so that the benefits derived from this Agreement might more effectively advance each Party's development goals. These joint activities may include:

(a) discussion between Parties to promote, where appropriate, alignment of Parties' development assistance and finance programmes with national development priorities;

(b) consideration of ways to expand engagement in science, technology and research to foster the application of innovative uses of science and technology, promote development and build capacity;

(c) facilitation of public and private sector partnerships that enable private enterprises, including SMEs, to bring their expertise and

resources to cooperative ventures with government agencies in support of development goals; and

(d) involvement of the private sector, including philanthropic organisations and businesses, and non-governmental organisations in activities to support development.

Article 23.7: Committee on Development

1. The Parties hereby establish a Committee on Development (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) facilitate the exchange of information on Parties' experiences regarding the formulation and implementation of national policies intended to derive the greatest possible benefits from this Agreement;

(b) facilitate the exchange of information on Parties' experiences and lessons learned through joint development activities undertaken under Article 23.6 (Joint Development Activities);

(c) discuss any proposals for future joint development activities in support of development policies related to trade and investment;

(d) invite, as appropriate, international donor institutions, private sector entities, non-governmental organisations or other relevant institutions to assist in the development and implementation of joint development activities;

(e) carry out other functions as the Parties may decide in respect of maximising the development benefits derived from this Agreement; and

(f) consider issues associated with the implementation and operation of this Chapter, with a view towards considering ways the Chapter may enhance the development benefits of this Agreement.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. In carrying out its functions, the Committee may work with other committees, working groups and any other subsidiary body established under this Agreement.

Article 23.8: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 23.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 24

SMALL AND MEDIUM-SIZED ENTERPRISES

Article 24.1: Information Sharing

1. Each Party shall establish or maintain its own publicly accessible website containing information regarding this Agreement, including:

(a) the text of this Agreement, including all 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 in this Agreement that the Party considers to be relevant to SMEs; and

(ii) any additional information that the Party considers useful for SMEs interested in benefitting from the opportunities provided by this Agreement.

2. Each Party shall include in its website links to:

(a) the equivalent websites of the other Parties; and

(b) the websites of its 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;

(b) regulations and procedures concerning intellectual property rights;

(c) technical regulations, standards, and sanitary and phytosanitary measures relating to importation and exportation;

(d) foreign investment regulations;

(e) business registration procedures;

(f) employment regulations; and

(g) taxation information.

When possible, each Party shall endeavour to make the information available in English.

4. Each Party shall regularly review the information and links on the website referred to in paragraphs 1 and 2 to ensure that such information and links are up-to-date and accurate.

Article 24.2: Committee on SMEs

1. The Parties hereby establish a Committee on SMEs (Committee), composed of government representatives of each Party.

2. The Committee shall:

(a) identify ways to assist SMEs of the Parties to take advantage of the commercial opportunities under this Agreement;

(b) exchange and discuss each Party's experiences and best practices in supporting and assisting SME exporters with respect to, among other things, training programmes, trade education, trade finance, identifying commercial partners in other Parties and establishing good business credentials;

(c) develop and promote seminars, workshops or other activities to inform SMEs of the benefits available to them under this Agreement;

(d) explore opportunities for capacity building to assist the Parties in developing and enhancing SME export counselling, assistance and training programmes;

(e) recommend additional information that a Party may include on the website referred to in Article 24.1 (Information Sharing);

(f) review and coordinate the Committee's work programme with those of other committees, working groups and any subsidiary body established under this Agreement, as well as those of other relevant international bodies, in order not to duplicate those work programmes and to identify appropriate opportunities for

cooperation to improve the ability of SMEs to engage in trade and investment opportunities provided by this Agreement;

(g) facilitate the development of programmes to assist SMEs to participate and integrate effectively into the global supply chain;

(h) exchange information to assist in monitoring the implementation of this Agreement as it relates to SMEs;

(i) submit a report of its activities on a regular basis and make appropriate recommendations to the Commission; and

(j) consider any other matter pertaining to SMEs as the Committee may decide, including any issues raised by SMEs regarding their ability to benefit from this Agreement.

3. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Committee may seek to collaborate with appropriate experts and international donor organisations in carrying out its programmes and activities.

Article 24.3: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 25

REGULATORY COHERENCE

Article 25.1: Definitions

For the purposes of this Chapter:

covered regulatory measure means the regulatory measure determined by each Party to be subject to this Chapter in accordance with Article 25.3 (Scope of Covered Regulatory Measures); and

regulatory measure means a measure of general application related to any matter covered by this Agreement adopted by regulatory agencies with which compliance is mandatory.

Article 25.2: General Provisions

1. For the purposes of this Chapter, regulatory coherence refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.

2. The Parties affirm the importance of:

(a) sustaining and enhancing the benefits of this Agreement through regulatory coherence in terms of facilitating increased trade in goods and services and increased investment between the Parties;

(b) each Party's sovereign right to identify its regulatory priorities and establish and implement regulatory measures to address these priorities, at the levels that the Party considers appropriate;

(c) the role that regulation plays in achieving public policy objectives;

(d) taking into account input from interested persons in the development of regulatory measures; and

(e) developing regulatory cooperation and capacity building between the Parties.

Article 25.3: Scope of Covered Regulatory Measures

Each Party shall promptly, and no later than one year after the date of entry into force of this Agreement for that Party, determine and make publicly available the scope of its covered regulatory measures. In determining the scope of covered regulatory measures, each Party should aim to achieve significant coverage.

Article 25.4: Coordination and Review Processes or Mechanisms

1. The Parties recognise that regulatory coherence can be facilitated through domestic mechanisms that increase interagency consultation and coordination associated with processes for developing regulatory measures. Accordingly, each Party shall endeavour to ensure that it has processes or mechanisms to facilitate the effective interagency coordination and review of proposed covered regulatory measures. Each Party should consider establishing and maintaining a national or central coordinating body for this purpose.

2. The Parties recognise that while the processes or mechanisms referred to in paragraph 1 may vary between Parties depending on their respective circumstances (including differences in levels of development and political and institutional structures), they should generally have as overarching characteristics the ability to:

(a) review proposed covered regulatory measures to determine the extent to which the development of such measures adheres to good regulatory practices, which may include but are not limited to those set out in Article 25.5 (Implementation of Core Good Regulatory Practices), and make recommendations based on that review;

(b) strengthen consultation and coordination among domestic agencies so as to identify potential overlap and duplication and to prevent the creation of inconsistent requirements across agencies;

(c) make recommendations for systemic regulatory improvements; and

(d) publicly report on regulatory measures reviewed, any proposals for systemic regulatory improvements, and any updates on changes to the processes and mechanisms referred to in paragraph 1.

Each Party should generally produce documents that include descriptions of those processes or mechanisms and that can be made available to the public.

Article 25.5: Implementation of Core Good Regulatory Practices

1. To assist in designing a measure to best achieve the Party's objective, each Party should generally encourage relevant regulatory agencies, consistent with its laws and regulations, to conduct regulatory impact assessments when developing proposed covered regulatory measures that exceed a threshold of economic impact, or other regulatory impact, where appropriate, as established by the Party. Regulatory impact assessments may encompass a range of procedures to determine possible impacts.

2. Recognising that differences in the Parties' institutional, social, cultural, legal and developmental circumstances may result in specific regulatory approaches, regulatory impact assessments conducted by a Party should, among other things:

(a) assess the need for a regulatory proposal, including a description of the nature and significance of the problem;

(b) examine feasible alternatives, including, to the extent feasible and consistent with laws and regulations, their costs and benefits, such as risks involved as well as distributive impacts, recognising that some costs and benefits are difficult to quantify and monetise;

(c) explain the grounds for concluding that the selected alternative achieves the policy objectives in an efficient manner, including, if appropriate, reference to the costs and benefits and the potential for managing risks; and

(d) rely on the best reasonably obtainable existing information including relevant scientific, technical, economic or other information, within the boundaries of the authorities, mandates and resources of the particular regulatory agency.

3. When conducting regulatory impact assessments, a Party may take into consideration the potential impact of the proposed regulation on SMEs.

4. Each Party should ensure that new covered regulatory measures are plainly written and are clear, concise, well organised and easy to understand, recognising that some measures address technical issues and that relevant expertise may be needed to understand and apply them.

5. Subject to its laws and regulations, each Party should ensure that relevant regulatory agencies provide public access to information on new covered regulatory measures and, where practicable, make this information available online.

6. Each Party should review, at intervals it deems appropriate, its covered regulatory measures to determine whether specific regulatory measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Party's regulatory regime more effective in achieving the Party's policy objectives.

7. Each Party should, in a manner it deems appropriate, and consistent with its laws and regulations, provide annual public notice of any covered regulatory measure that it reasonably expects its regulatory agencies to issue within the following 12-month period.

8. To the extent appropriate and consistent with its law, each Party should encourage its relevant regulatory agencies to consider regulatory measures in other Parties, as well as relevant developments in international, regional and other fora when planning covered regulatory measures.

Article 25.6: Committee on Regulatory Coherence

1. The Parties hereby establish a Committee on Regulatory Coherence (Committee), composed of government representatives of the Parties.

2. The Committee shall consider issues associated with the implementation and operation of this Chapter. The Committee shall also consider identifying future priorities, including potential sectoral initiatives and cooperative activities, involving issues covered by this Chapter and issues related to regulatory coherence covered by other Chapters of this Agreement.

3. In identifying future priorities, the Committee shall take into account the activities of other committees, working groups and any other subsidiary body established under this Agreement and shall coordinate with them in order to avoid duplication of activities.

4. The Committee shall ensure that its work on regulatory cooperation offers value in addition to initiatives underway in other relevant fora and avoids undermining or duplicating such efforts.

5. Each Party shall designate and notify a contact point to provide information, on request by another Party, regarding the implementation of this Chapter in accordance with Article 27.5 (Contact Points).

6. The Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

7. At least once every five years after the date of entry into force of this Agreement, the Committee shall consider developments in the area of good regulatory practices and in best practices in maintaining processes or mechanisms

referred to in Article 25.4.1 (Coordination and Review Processes or Mechanisms), as well as the Parties' experiences in implementing this Chapter with a view towards considering whether to make recommendations to the Commission for improving the provisions of this Chapter so as to further enhance the benefits of this Agreement.

Article 25.7: Cooperation

1. The Parties shall cooperate in order to facilitate the implementation of this Chapter and to maximise the benefits arising from it. Cooperation activities shall take into consideration each Party's needs, and may include:

(a) information exchanges, dialogues or meetings with other Parties;

(b) information exchanges, dialogues or meetings with interested persons, including with SMEs, of other Parties;

(c) training programmes, seminars and other relevant assistance;

(d) strengthening cooperation and other relevant activities between regulatory agencies; and

(e) other activities that Parties may agree.

2. The Parties further recognise that cooperation between Parties on regulatory matters can be enhanced through, among other things, ensuring that each Party's regulatory measures are centrally available.

Article 25.8: Engagement with Interested Persons

The Committee shall establish appropriate mechanisms to provide continuing opportunities for interested persons of the Parties to provide input on matters relevant to enhancing regulatory coherence.

Article 25.9: Notification of Implementation

1. For the purposes of transparency, and to serve as a basis for cooperation and capacity building activities under this Chapter, each Party shall submit a notification of implementation to the Committee through the contact points designated pursuant to Article 27.5 (Contact Points) within two years of the date of entry into force of this Agreement for that Party and at least once every four years thereafter.

2. In its initial notification, each Party shall describe the steps that it has taken since the date of entry into force of this Agreement for that Party, and the steps that it plans to take to implement this Chapter, including those to:

(a) establish processes or mechanisms to facilitate effective interagency coordination and review of proposed covered regulatory measures in accordance with Article 25.4 (Coordination and Review Processes or Mechanisms);

(b) encourage relevant regulatory agencies to conduct regulatory impact assessments in accordance with Article 25.5.1 (Implementation of Core Good Regulatory Practices) and Article 25.5.2;

(c) ensure that covered regulatory measures are written and made available in accordance with Article 25.5.4 (Implementation of Core Good Regulatory Practices) and Article 25.5.5;

(d) review its covered regulatory measures in accordance with Article 25.5.6 (Implementation of Core Good Regulatory Practices); and

(e) provide information to the public in its annual notice of prospective covered regulatory measures in accordance with Article 25.5.7 (Implementation of Core Regulatory Practices).

3. In subsequent notifications, each Party shall describe the steps, including those set out in paragraph 2, that it has taken since the previous notification, and those that it plans to take to implement this Chapter, and to improve its adherence to it.

4. In its consideration of issues associated with the implementation and operation of this Chapter, the Committee may review notifications made by a Party pursuant to paragraph 1. During that review, Parties may ask questions or discuss specific aspects of that Party's notification. The Committee may use its review and discussion of a notification as a basis for identifying opportunities for assistance and cooperative activities to provide assistance in accordance with Article 25.7 (Cooperation).

Article 25.10: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

Article 25.11: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 26

TRANSPARENCY AND ANTI-CORRUPTION

Section A: Definitions

Article 26.1: Definitions

For the purposes of this Chapter:

act or refrain from acting in relation to the performance of official duties includes any use of the public official's position, whether or not within the official's authorised competence;

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

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

(b) a ruling that adjudicates with respect to a particular act or practice;

foreign public official means any person holding a legislative, executive, administrative or judicial office of a foreign country, at any level of government, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; and any person exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

official of a public international organisation means an international civil servant or any person who is authorised by a public international organisation to act on its behalf; and

public official means:

(a) any person holding a legislative, executive, administrative or judicial office of a Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

(b) any other person who performs a public function for a Party, including for a public agency or public enterprise, or provides a

public service, as defined under the Party's law and as applied in the pertinent area of that Party's law; or

(c) any other person defined as a public official under a Party's law.[1]

Section B: Transparency

Article 26.2: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Agreement are promptly published or otherwise made available in a manner that enables interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

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

(b) provide interested persons and other Parties with a reasonable opportunity to comment on those proposed measures.

3. To the extent possible, when introducing or changing the laws, regulations or procedures referred to in paragraph 1, each Party shall endeavour to provide a reasonable period between the date when those laws, regulations or procedures, proposed or final in accordance with its legal system, are made publicly available and the date when they enter into force.

4. With respect to a proposed regulation[2] of general application of a Party's central level of government respecting any matter covered by this Agreement that is likely to affect trade or investment between the Parties and that is published in accordance with paragraph 2(a), each Party shall:

(a) publish the proposed regulation in an official journal, or on an official website, preferably online and consolidated into a single portal;

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[1] For the United States, the obligations in Section C shall not apply to conduct outside the jurisdiction of federal criminal law and, to the extent they involve preventive measures, shall apply only to those measures covered by federal law governing federal, state and local officials.

[2] A Party may, consistent with its legal system, comply with its obligations that relate to a proposed regulation in this Article by publishing a policy proposal, discussion document, summary of the regulation or other document that contains sufficient detail to adequately inform interested persons and other Parties about whether and how their trade or investment interests may be affected.

(b) endeavour to publish the proposed regulation:

(i) no less than 60 days in advance of the date on which comments are due; or

(ii) within another period in advance of the date on which comments are due that provides sufficient time for an interested person to evaluate the proposed regulation, and formulate and submit comments;

(c) to the extent possible, include in the publication under subparagraph (a) an explanation of the purpose of, and rationale for, the proposed regulation; and

(d) consider comments received during the comment period, and is encouraged to explain any significant modifications made to the proposed regulation, preferably on an official website or in an online journal.

5. Each Party shall, with respect to a regulation of general application adopted by its central level of government respecting any matter covered by this Agreement that is published in accordance with paragraph 1:

(a) promptly publish the regulation on a single official website or in an official journal of national circulation; and

(b) if appropriate, include with the publication an explanation of the purpose of and rationale for the regulation.

Article 26.3: Administrative Proceedings

With a view to administering in a consistent, impartial and reasonable manner all measures of general application with respect to any matter covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 26.2.1 (Publication) to a particular person, good or service of another Party in specific cases that:

(a) whenever possible, a person of another Party that is directly affected by a proceeding is provided with reasonable notice, in accordance with domestic procedures, of when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issue in question;

(b) a person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative

action, when time, the nature of the proceeding and the public interest permit; and

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

Article 26.4: Review and Appeal[3]

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction of a final administrative action with respect to any matter covered by this Agreement. Those tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, with respect to the tribunals or procedures referred to in paragraph 1, the parties to a proceeding are provided with the right to:

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

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its domestic law, that the decision referred to in paragraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 26.5: Provision of Information

1. If a Party considers that any proposed or actual measure may materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement, it shall, to the extent possible, inform that other Party of the proposed or actual measure.

2. On request of another Party, a Party shall promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of this Agreement, whether or not the requesting Party has been previously informed of that measure.

[3] For greater certainty, review need not include merits (*de novo*) review, and may take the form of common law judicial review. The correction of final administrative actions may include a referral back to the body that took that action.

3. A Party may convey any request or provide information under this Article to the other Parties through their contact points.

4. Any information provided under this Article shall be without prejudice as to whether the measure in question is consistent with this Agreement.

Section C: Anti-Corruption

Article 26.6: Scope

1. The Parties affirm their resolve to eliminate bribery and corruption in international trade and investment. Recognising the need to build integrity within both the public and private sectors and that each sector has complementary responsibilities in this regard, the Parties affirm their adherence to the *APEC Conduct Principles for Public Officials*, July 2007, and encourage observance of the *APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector*, September 2007.

2. The scope of this Section is limited to measures to eliminate bribery and corruption with respect to any matter covered by this Agreement.

3. The Parties recognise that the description of offences adopted or maintained in accordance with this Section, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Party's law, and that those offences shall be prosecuted and punished in accordance with each Party's law.

4. Each Party shall ratify or accede to the *United Nations Convention against Corruption*, done at New York on October 31, 2003 (UNCAC).

Article 26.7: Measures to Combat Corruption

1. Each Party shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international trade or investment, when committed intentionally, by any person subject to its jurisdiction:[4]

(a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in

[4] A Party that is not a party to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, including its Annex, done at Paris on November 21, 1997, may satisfy the obligations in subparagraphs (a), (b) and (c) by establishing the criminal offences described in those subparagraphs in respect of "in the exercise of his or her official duties" rather than "in relation to the performance of his or her official duties".

relation to the performance of or the exercise of his or her official duties;

(b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

(c) the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,[5] for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and

(d) the aiding or abetting, or conspiracy[6] in the commission of any of the offences described in subparagraphs (a) through (c).

2. Each Party shall make the commission of an offence described in paragraph 1 or 5 liable to sanctions that take into account the gravity of that offence.

3. Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraph 1 or 5. In particular, each Party shall ensure that legal persons held liable for offences described in paragraph 1 or 5 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

4. No Party shall allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 1.

5. In order to prevent corruption, each Party shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 1:

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[5] For greater certainty, a Party may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Parties confirm that they are not endorsing those written laws or regulations.

[6] Parties may satisfy the commitment regarding conspiracy through applicable concepts within their legal systems, including *asociación ilícita*.

(a) the establishment of off-the-books accounts;

(b) the making of off-the-books or inadequately identified transactions;

(c) the recording of non-existent expenditure;

(d) the entry of liabilities with incorrect identification of their objects;

(e) the use of false documents; and

(f) the intentional destruction of bookkeeping documents earlier than foreseen by the law.[7]

6. Each Party shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 1 or 5.

Article 26.8: Promoting Integrity among Public Officials

1. To fight corruption in matters that affect trade and investment, each Party should promote, among other things, integrity, honesty and responsibility among its public officials. To this end, each Party shall endeavour, in accordance with the fundamental principles of its legal system, to adopt or maintain:

(a) measures to provide adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, and the rotation, if appropriate, of those individuals to other positions;

(b) measures to promote transparency in the behaviour of public officials in the exercise of public functions;

(c) appropriate policies and procedures to identify and manage actual or potential conflicts of interest of public officials;

(d) measures that require senior and other appropriate public officials to make declarations to appropriate authorities regarding, among other things, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials; and

[7] For the United States, this commitment applies only to issuers that have a class of securities registered pursuant to 15 U.S.C 78l or that are otherwise required to file reports pursuant to 15 U.S.C 78o (d).

(e) measures to facilitate reporting by public officials of acts of corruption to appropriate authorities, if those acts come to their notice in the performance of their functions.

2. Each Party shall endeavour to adopt or maintain codes or standards of conduct for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against public officials who violate the codes or standards established in accordance with this paragraph.

3. Each Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence described in Article 26.7.1 (Measures to Combat Corruption) may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

4. Each Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international trade or investment. These measures may include rules with respect to the conduct of members of the judiciary.

Article 26.9: Application and Enforcement of Anti-Corruption Laws

1. In accordance with the fundamental principles of its legal system, no Party shall fail to effectively enforce its laws or other measures adopted or maintained to comply with Article 26.7.1 (Measures to Combat Corruption) through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Party, as an encouragement for trade and investment.[8]

2. In accordance with the fundamental principles of its legal system, each Party retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anti-corruption laws. Each Party retains the right to take *bona fide* decisions with regard to the allocation of its resources.

3. The Parties affirm their commitments under applicable international agreements or arrangements to cooperate with each other, consistent with their respective legal and administrative systems, to enhance the effectiveness of law

[8] For greater certainty, the Parties recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures.

enforcement actions to combat the offences described in Article 26.7.1 (Measures to Combat Corruption).

Article 26.10: Participation of Private Sector and Society

1. Each Party shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption. To this end, a Party may:

(a) undertake public information activities and public education programmes that contribute to non-tolerance of corruption;

(b) adopt or maintain measures to encourage professional associations and other non-governmental organisations, if appropriate, in their efforts to encourage and assist enterprises, in particular SMEs, in developing internal controls, ethics and compliance programmes or measures for preventing and detecting bribery and corruption in international trade and investment;

(c) adopt or maintain measures to encourage company management to make statements in their annual reports or otherwise publicly disclose their internal controls, ethics and compliance programmes or measures, including those that contribute to preventing and detecting bribery and corruption in international trade and investment; and

(d) adopt or maintain measures that respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption.

2. Each Party shall endeavour to encourage private enterprises, taking into account their structure and size, to:

(a) develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment; and

(b) ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

3. Each Party shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident

that may be considered to constitute an offence described in Article 26.7.1 (Measures to Combat Corruption).

Article 26.11: Relation to Other Agreements

Subject to Article 26.6.4 (Scope), nothing in this Agreement shall affect the rights and obligations of the Parties under UNCAC, the *United Nations Convention against Transnational Organized Crime*, done at New York on November 15, 2000, the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, with its Annex, done at Paris on November 21, 1997, or the *Inter-American Convention Against Corruption*, done at Caracas on March 29, 1996.

Article 26.12: Dispute Settlement

1. Chapter 28 (Dispute Settlement), as modified by this Article, shall apply to this Section.

2. A Party may only have recourse to the procedures set out in this Article and Chapter 28 (Dispute Settlement) if it considers that a measure of another Party is inconsistent with an obligation under this Section, or that another Party has otherwise failed to carry out an obligation under this Section, in a manner affecting trade or investment between Parties.

3. No Party shall have recourse to dispute settlement under this Article or Chapter 28 (Dispute Settlement) for any matter arising under Article 26.9 (Application and Enforcement of Anti-Corruption Laws).

4. Article 28.5 (Consultations) shall apply to consultations under this Section, with the following modifications:

(a) a Party other than a consulting Party may make a request in writing to the consulting Parties to participate in the consultations, no later than seven days after the date of circulation of the request for consultations, if it considers that its trade or investment is affected by the matter at issue. That Party shall include in its request an explanation of how its trade or investment is affected by the matter at issue. That Party may participate in consultations if the consulting Parties agree; and

(b) the consulting Parties shall involve officials of their relevant anti-corruption authorities in the consultations.

5. The consulting Parties shall make every effort to find a mutually satisfactory solution to the matter, which may include appropriate cooperative activities or a work plan.

ANNEX 26-A

TRANSPARENCY AND PROCEDURAL FAIRNESS FOR PHARMACEUTICAL PRODUCTS AND MEDICAL DEVICES[9]

Article 1: Definitions

For the purposes of this Annex:

national health care authority means, with respect to a Party listed in the Appendix to this Annex, the relevant entity or entities specified therein, and with respect to any other Party, an entity that is part of or has been established by a Party's central level of government to operate a national health care programme; and

national health care programme means a health care programme in which a national health care authority makes the determinations or recommendations regarding the listing of pharmaceutical products or medical devices for reimbursement, or regarding the setting of the amount of such reimbursement.

Article 2: Principles

The Parties are committed to facilitating high-quality health care and continued improvements in public health for their nationals, including patients and the public. In pursuing these objectives, the Parties acknowledge the importance of the following principles:

(a) the importance of protecting and promoting public health and the important role played by pharmaceutical products and medical devices[10] in delivering high-quality health care;

(b) the importance of research and development, including innovation associated with research and development, related to pharmaceutical products and medical devices;

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[9] For greater certainty, the Parties confirm that the purpose of this Annex is to ensure transparency and procedural fairness of relevant aspects of Parties' applicable systems relating to pharmaceutical products and medical devices, without prejudice to the obligations in Chapter 26 (Transparency and Anti-corruption), and not to modify a Party's system of health care in any other respects or a Party's rights to determine health expenditure priorities.

[10] For the purposes of this Annex, each Party shall define the scope of the products subject to its laws and regulations for pharmaceutical products and medical devices in its territory, and make that information publicly available.

(c) the need to promote timely and affordable access to pharmaceutical products and medical devices, through transparent, impartial, expeditious and accountable procedures, without prejudice to a Party's right to apply appropriate standards of quality, safety and efficacy; and

(d) the need to recognise the value of pharmaceutical products and medical devices through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical product or medical device.

Article 3: Procedural Fairness

To the extent that a Party's national health care authorities operate or maintain procedures for listing new pharmaceutical products or medical devices for reimbursement purposes, or setting the amount of such reimbursement, under national health care programmes operated by the national health care authorities,[11,12] the Party shall:

(a) ensure that consideration of all formal and duly formulated proposals for such listing of pharmaceutical products or medical devices for reimbursement is completed within a specified period of time[13];

(b) disclose procedural rules, methodologies, principles and guidelines used to assess such proposals;

[11] This Annex shall not apply to government procurement of pharmaceutical products and medical devices. If a public entity providing health care services engages in government procurement for pharmaceutical products or medical devices, formulary development and management with respect to that activity by the national health care authority shall be considered an aspect of such government procurement.

[12] This Annex shall not apply to procedures undertaken for the purpose of post-market subsidisation of pharmaceutical products or medical devices procured by public health care entities if the pharmaceutical products or medical devices eligible for consideration are based on the products or devices that are procured by public health care entities.

[13] In those cases in which a Party's national health care authority is unable to complete consideration of a proposal within a specified period of time, the Party shall disclose the reason for the delay to the applicant and shall provide for another specified period of time for completing consideration of the proposal.

(c) afford applicants [14] and, if appropriate, the public, timely opportunities to provide comments at relevant points in the decision-making process;

(d) provide applicants with written information sufficient to comprehend the basis for recommendations or determinations regarding the listing of new pharmaceutical products or medical devices for reimbursement by national health care authorities;

(e) make available:

(i) an independent review process; or

(ii) an internal review process, such as by the same expert or group of experts that made the recommendation or determination, provided that the review process includes, at a minimum, a substantive reconsideration of the application,[15] and

that may be invoked at the request of an applicant directly affected by a recommendation or determination by a Party's national health care authorities not to list a pharmaceutical product or a medical device for reimbursement;[16] and

(f) provide written information to the public regarding recommendations or determinations, while protecting information considered to be confidential under the Party's law.

Article 4: Dissemination of Information to Health Professionals and Consumers

As is permitted to be disseminated under the Party's laws, regulations and procedures, each Party shall permit a pharmaceutical product manufacturer to disseminate to health professionals and consumers through the manufacturer's website registered in the territory of the Party, and on other websites registered in the territory of the Party linked to that site, truthful and not misleading information regarding its pharmaceutical products that are approved for marketing

[14] For greater certainty, each Party may define the persons or entities that qualify as an "applicant" under its laws, regulations and procedures.

[15] For greater certainty, the review process described in subparagraph (e)(i) may include a review process as described in subparagraph (e)(ii) other than one by the same expert or group of experts.

[16] For greater certainty, subparagraph (e) does not require a Party to provide more than a single review for a request regarding a specific proposal or to review, in conjunction with the request, other proposals or the assessment related to those other proposals. Further, a Party may elect to provide the review specified in subparagraph (e) either with respect to a draft final recommendation or determination, or with respect to a final recommendation or determination.

in the Party's territory. A Party may require that the information includes a balance of risks and benefits and encompasses all indications for which the Party's competent regulatory authorities have approved the marketing of the pharmaceutical product.

Article 5: Consultation

1. To facilitate dialogue and mutual understanding of issues relating to this Annex, each Party shall give sympathetic consideration to and shall afford adequate opportunity for consultation regarding a written request by another Party to consult on any matter related to this Annex. The consultations shall take place within three months of the delivery of the request, except in exceptional circumstances or unless the consulting Parties agree otherwise.[17]

2. Consultations shall involve officials responsible for the oversight of the national health care authority or officials from each Party responsible for national health care programmes and other appropriate government officials.

Article 6: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Annex.

[17] Nothing in this paragraph shall be construed as requiring a Party to review or change decisions regarding specific applications.

APPENDIX TO ANNEX 26-A

PARTY-SPECIFIC DEFINITIONS

Further to the definition of national healthcare authorities in Article 1, **national health care authorities** means:

(a) For Australia, the Pharmaceutical Benefits Advisory Committee (PBAC), with respect to PBAC's role in making determinations in relation to the listing of pharmaceutical products for reimbursement under the Pharmaceutical Benefits Scheme.

(b) For Brunei Darussalam, the Ministry of Health. For greater certainty, Brunei Darussalam does not currently operate a national health care programme within the scope of this Annex.

(c) For Canada, the Federal Drug Benefits Committee. For greater certainty, Canada does not currently operate a national health care programme within the scope of this Annex.

(d) For Chile, the Undersecretary of Public Health. For greater certainty, Chile does not currently operate a national health care programme within the scope of this Annex.

(e) For Japan, the Central Social Insurance Medical Council with respect to its role in making recommendations in relation to the listing or setting of the amount of reimbursement for new pharmaceutical products.

(f) For Malaysia, the Ministry of Health. For greater certainty, Malaysia does not currently operate a national health care programme within the scope of this Annex.

(g) For New Zealand, the Pharmaceutical Management Agency (PHARMAC), with respect to PHARMAC's role in the listing of a new pharmaceutical[18] for reimbursement on the *Pharmaceutical Schedule*, in relation to formal and duly formulated applications by suppliers in accordance with the *Guidelines for Funding Applications to PHARMAC*.

[18] For the purposes of New Zealand, "pharmaceutical" means a "medicine" as defined in the *Medicines Act 1981* as at the date of signature of this Agreement on behalf of New Zealand.

(h) For Peru, the Viceministry of Public Health. For greater certainty, Peru does not currently operate a national health care programme within the scope of this Annex.

(i) For Singapore, the Drug Advisory Committee (DAC) of the Ministry of Health with respect to the DAC's role in the listing of pharmaceutical products. For greater certainty, Singapore does not currently operate a national health care programme within the scope of this Annex.

(j) For the United States, the Centers for Medicare & Medicaid Services (CMS), with respect to CMS's role in making Medicare national coverage determinations.

(k) For Viet Nam, the Ministry of Health. For greater certainty, Viet Nam does not currently operate a national health care programme within the scope of this Annex.

CHAPTER 27

ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

Article 27.1: Establishment of the Trans-Pacific Partnership Commission

The Parties hereby establish a Trans-Pacific Partnership Commission (Commission), composed of government representatives of each Party at the level of Ministers or senior officials. Each Party shall be responsible for the composition of its delegation.

Article 27.2: Functions of the Commission

1. The Commission shall:

   (a) consider any matter relating to the implementation or operation of this Agreement;

   (b) review, within three years of the date of entry into force of this Agreement and at least every five years thereafter, the economic relationship and partnership among the Parties;

   (c) consider any proposal to amend or modify this Agreement;

   (d) supervise the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

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

   (f) establish the Rules of Procedure referred to in Article 28.13 (Rules of Procedure for Panels), and, where appropriate, amend those Rules;

   (g) review the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) every three years and, when appropriate, constitute a new roster; and

   (h) determine whether this Agreement may enter into force for an original signatory notifying pursuant to Article 30.5.4 (Entry into Force).

2. The Commission may:

(a) establish, refer matters to, or consider matters raised by, any *ad hoc* or standing committee, working group or any other subsidiary body;

(b) merge or dissolve any committees, working groups or other subsidiary bodies established under this Agreement in order to improve the functioning of this Agreement;

(c) consider and adopt, subject to completion of any necessary legal procedures by each Party, a modification to this Agreement of [1]:

(i) the Schedules to Annex 2-D (Tariff Commitments), by accelerating tariff elimination;

(ii) the rules of origin established in Annex 3-D (Product-Specific Rules of Origin) and Annex 4-A (Textiles and Apparel Product-Specific Rules of Origin); or

(iii) the lists of entities, covered goods and services, and thresholds contained in each Party's Annex to Chapter 15 (Government Procurement);

(d) develop arrangements for implementing this Agreement;

(e) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Agreement;

(f) issue interpretations of the provisions of this Agreement;

(g) seek the advice of non-governmental persons or groups on any matter falling within the Commission's functions; and

(h) take any other action as the Parties may agree.

3. Pursuant to paragraph 1(b), the Commission shall review the operation of this Agreement with a view to updating and enhancing this Agreement, through negotiations, as appropriate, to ensure that the disciplines contained in this Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.

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[1] Chile shall implement the actions of the Commission through *Acuerdos de Ejecución*, in accordance with Article 54, numeral 1, fourth paragraph of the Political Constitution of the Republic of Chile (*Constitución Política de la República de Chile*).

4. In conducting a review pursuant to paragraph 3, the Commission shall take into account:

(a) the work of all committees, working groups and any other subsidiary bodies established under this Agreement;

(b) relevant developments in international fora; and

(c) as appropriate, input from non-governmental persons or groups of the Parties.

Article 27.3: Decision-Making

1. The Commission and all subsidiary bodies established under this Agreement shall take all decisions by consensus, except as otherwise provided in this Agreement, or as otherwise decided by the Parties.[2] Except as otherwise provided in this Agreement, the Commission or any subsidiary body shall be deemed to have taken a decision by consensus if no Party present at any meeting when a decision is taken objects to the proposed decision.

2. For the purposes of Article 27.2.2(f) (Functions of the Commission), a decision of the Commission shall be taken by agreement of all Parties. A decision shall be deemed to be reached if a Party which does not indicate agreement when the Commission considers the issue does not object in writing to the interpretation considered by the Commission within five days of that consideration.

Article 27.4: Rules of Procedure of the Commission

1. The Commission shall meet within one year of the date of entry into force of this Agreement and thereafter as the Parties may decide, including as necessary to fulfil its functions under Article 27.2 (Functions of the Commission). Meetings of the Commission shall be chaired successively by each Party.

2. The Party chairing a session of the Commission shall provide any necessary administrative support for such session, and shall notify the other Parties of any decision of the Commission.

3. Except as otherwise provided in this Agreement, the Commission and any subsidiary body established under this Agreement shall carry out its work through

[2] For greater certainty, any such decision on alternative decision-making by the Parties shall itself be taken by consensus.

whatever means are appropriate, which may include electronic mail or videoconferencing.

4. The Commission and any subsidiary body established under this Agreement may establish rules of procedures for the conduct of its work.

Article 27.5: Contact Points

1. Each Party shall designate an overall contact point to facilitate communications between the Parties on any matter covered by this Agreement, as well as other contact points as required by this Agreement.

2. Unless otherwise provided in this Agreement, each Party shall notify the other Parties in writing of its designated contact points no later than 60 days after the date of entry into force of this Agreement for that Party. A Party shall notify any Party for which this Agreement enters into force at a later date of its designated contact points, no later than 30 days after the date on which the other Party has notified its designated contact points.

Article 27.6: Administration of Dispute Settlement Proceedings

1. Each Party shall:

   (a) designate an office to provide administrative assistance to a panel established under Chapter 28 (Dispute Settlement) for a proceeding in which it is a disputing Party and to perform such other related functions as the Commission may direct; and

   (b) notify the other Parties of the location of its designated office.

2. Each Party shall be responsible for the operation and costs of its designated office.

Article 27.7: Reporting in relation to Party-specific Transition Periods

1. At each regular meeting of the Commission, any Party which has a Party-specific transition period for any obligation under this Agreement shall report on its plans for and progress towards implementing the obligation.

2. In addition, any such Party shall provide a written report to the Commission on its plans for and progress towards implementing each such obligation as follows:

(a) for any transition period of three years or less, the Party shall provide a written report six months before the expiration of the transition period; and

(b) for any transition period of more than three years, the Party shall provide a yearly written report on the anniversary date of entry into force of this Agreement for it, beginning on the third anniversary, and a written report six months before the expiration of the transition period.

3. Any Party may request additional information regarding another Party's progress towards implementing the obligation. The reporting Party shall promptly reply to those requests.

4. No later than the date on which a transition period expires, a Party with a Party-specific transition period shall provide written notification to the other Parties of what measures it has taken to implement the obligation for which it has a transition period.

5. If a Party fails to provide the notification referred to in paragraph 4, the matter shall be automatically placed on the agenda for the next regular meeting of the Commission. In addition, any Party may request that the Commission meet promptly to discuss that matter.

CHAPTER 28

DISPUTE SETTLEMENT

Section A: Dispute Settlement

Article 28.1: Definitions

For the purposes of this Chapter:

complaining Party means a Party that requests the establishment of a panel under Article 28.7.1 (Establishment of a Panel);

consulting Party means a Party that requests consultations under Article 28.5.1 (Consultations) or the Party to which the request for consultations is made;

disputing Party means a complaining Party or a responding Party;

panel means a panel established under Article 28.7 (Establishment of a Panel);

perishable goods means perishable agricultural and fish goods classified in HS Chapters 1 through 24;

responding Party means a Party that has been complained against under Article 28.7 (Establishment of a Panel);

Rules of Procedure means the rules referred to in Article 28.13 (Rules of Procedure for Panels) and established in accordance with Article 27.2.1(f) (Functions of the Commission); and

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 28.14 (Third Party Participation).

Article 28.2: Cooperation

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 28.3: Scope

1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement; or

(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement.

2. No later than six months after the effective date that Members of the WTO have the right to initiate non-violation nullification or impairment complaints under Article 64 of the TRIPS Agreement, the Parties shall consider whether to amend paragraph 1(c) to include Chapter 18 (Intellectual Property).

3. An instrument entered into by two or more Parties in connection with the conclusion of this Agreement:

(a) does not constitute an instrument related to this Agreement within the meaning of paragraph 2(b) of Article 31 of the *Vienna Convention on the Law of Treaties*, done at Vienna on May 23, 1969 and shall not affect the rights and obligations under this Agreement of Parties which are not party to the instrument; and

(b) may be subject to the dispute settlement procedures under this Chapter for any matter arising under the instrument if that instrument so provides.

Article 28.4: Choice of Forum

1. If a dispute regarding any matter arises under this Agreement and under another international trade agreement to which the disputing Parties are party,

including the WTO Agreement, the complaining Party may select the forum in which to settle the dispute.

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

Article 28.5: Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in Article 28.3 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure[1] or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the other Parties through the overall contact points designated under Article 27.5.1 (Contact Points).

2. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request.[2] That Party shall circulate its reply concurrently to the other Parties through the overall contact points and enter into consultations in good faith.

3. A Party other than a consulting Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing no later than seven days after the date of circulation of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than:

(a) 15 days after the date of receipt of the request for matters concerning perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. Consultations may be held in person or by any technological means

[1] The Parties shall, in the case of a proposed measure, make every effort to make the request for consultation under this provision within 60 days of the date of publication of the proposed measure, without prejudice to the right to make such request at any time.

[2] For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.

available to the consulting Parties. If the consultations are held in person, they shall be held in the capital of the Party to which the request for consultations was made, unless the consulting Parties agree otherwise.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Agreement; and

(b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

7. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

8. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

Article 28.6: Good Offices, Conciliation and Mediation

1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 28.7 (Establishment of a Panel).

Article 28.7: Establishment of a Panel

1. A Party that requested consultations under Article 28.5.1 (Consultations) may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within:

(a) a period of 60 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations);

(b) a period of 30 days after the date of receipt of the request for consultations under Article 28.5.1 (Consultations) in a matter regarding perishable goods; or

(c) any other period as the consulting Parties may agree.

2. The complaining Party shall circulate the request concurrently to all Parties through the overall contact points designated under Article 27.5.1 (Contact Points).

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

4. A panel shall be established upon delivery of the request.

5. Unless the disputing Parties agree otherwise, the panel shall be composed in a manner consistent with this Chapter and the Rules of Procedure.

6. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

7. A panel shall not be established to review a proposed measure.

Article 28.8: Terms of Reference

1. Unless the disputing Parties agree otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:

(a) examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 28.17.4 (Initial Report).

2. If, in its request for the establishment of a panel, a complaining Party claims that a measure nullifies or impairs benefits within the meaning of Article 28.3.1(c) (Scope), the terms of reference shall so indicate.

Article 28.9: Composition of Panels

1. A panel shall be composed of three members.

2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose a panel:

(a) Within a period of 20 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall each appoint a panellist and notify each other of those appointments.

(b) If the complaining Party or Parties fail to appoint a panellist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.

(c) If the responding Party fails to appoint a panellist within the period specified in subparagraph (a), the complaining Party or Parties shall select the panellist not yet appointed:

(i) from the responding Party's list established under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists);

(ii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists), from the roster of panel chairs established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists); or

(iii) if the responding Party has not established a list under Article 28.11.9 (Roster of Panel Chairs and Party Specific Lists) and no roster of panel chairs has been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), by random selection from a list of three candidates nominated by the complaining Party or Parties,

no later than 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel).

(d) For appointment of the third panellist, who shall serve as chair:

(i) the disputing Parties shall endeavour to agree on the appointment of a chair;

(ii) if the disputing Parties fail to appoint a chair under subparagraph (d)(i) by the time the second panellist is appointed or within a period of 35 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), whichever is longer, the two panellists appointed shall, by agreement, appoint the chair from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists);

(iii) if the two panellists do not agree on the appointment of the chair under subparagraph (d)(ii) within a period of 43 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel), the two panellists shall appoint the chair with the agreement of the disputing Parties;

(iv) if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, the disputing Parties shall select the chair by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) within a period of 60 days after the date of delivery of the request for the establishment of the panel;

(v) notwithstanding subparagraph (d)(iv), if the two panellists fail to appoint the chair under subparagraph (d)(iii) within a period of 55 days after the date of delivery of the request for the establishment of the panel, a disputing Party may elect to have the chair appointed from the roster established under Article 28.11(Roster of Panel Chairs and Party Specific Lists) by an independent third party, provided that the following conditions are met:

(A) any costs associated with the appointment are borne by the electing Party;

(B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third party's appointment process; and

(C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in subparagraph (d)(iv);

(vi) if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(ii) through (v) cannot apply, the complaining Party or Parties, on the one hand, and the responding Party, on the other hand, may nominate three candidates. The chair shall be randomly selected from those candidates that are nominated within a period of 60 days after the date of delivery of the request for the establishment of a panel under Article 28.7.1 (Establishment of a Panel); and

(vii) notwithstanding subparagraph (d)(vi), if a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists), and subparagraphs (d)(i) through (v) cannot apply, a disputing Party may, following the nomination of candidates under subparagraph (d)(vi), elect to have the chair appointed from those candidates by an independent third party, provided that the following conditions are met:

(A) any costs associated with such appointment are borne by the electing Party;

(B) the request to the independent third party to appoint the chair shall be made jointly by the disputing Parties. Any subsequent communication between a disputing Party and the independent third party shall be copied to the other disputing Party or Parties. No disputing Party shall attempt to influence the independent third party's appointment process; and

(C) if the independent third party is unable or unwilling to complete the appointment as requested within a period of 60 days after the date of delivery of the request for the establishment of the panel, then the chair shall be randomly selected within a further period of five days using the process set out in

subparagraph (vi).

3. Unless the disputing Parties agree otherwise, the chair shall not be a national of any of the disputing Parties or a third Party and any nationals of the disputing Parties or a third Party appointed to the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) shall be excluded from a selection process under paragraph 2(d).

4. Each disputing Party shall endeavour to select panellists who have expertise or experience relevant to the subject matter of the dispute.

5. For a dispute arising under Chapter 19 (Labour), Chapter 20 (Environment) or Chapter 26 (Transparency and Anti-corruption), each disputing Party shall select panellists in accordance with the following requirements, in addition to those set out in Article 28.10.1 (Qualifications of Panellists):

(a) in any dispute arising under Chapter 19 (Labour), panellists other than the chair shall have expertise or experience in labour law or practice;

(b) in any dispute arising under Chapter 20 (Environment), panellists other than the chair shall have expertise or experience in environmental law or practice; and

(c) in any dispute arising under section C of Chapter 26 (Transparency and Anti-corruption), panellists other than the chair shall have expertise or experience in anti-corruption law or practice.

6. If a panellist selected under paragraph 2 is unable to serve on the panel, the complaining Party, the responding Party, or the disputing Parties, as the case may be, shall, no later than seven days after learning that the panellist is unavailable, select another panellist in accordance with the same method of selection that was used to select the panellist who is unable to serve, unless the disputing Parties agree otherwise.

7. If the process for selecting the new panellist under paragraph 6 is not completed within the time frame set out in that paragraph then the disputing Parties shall select the panellist by random selection from the roster established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) no later than 15 days after learning that the original panellist is no longer able to serve.

8. If a roster has not been established under Article 28.11 (Roster of Panel Chairs and Party Specific Lists) then the disputing Parties shall select the panellist by using the method of selection set out in paragraph 2(d)(vi) no later than 15 days after learning that the original panellist is no longer able to serve.

9. If a panellist appointed under this Article resigns or becomes unable to

serve on the panel, either during the course of the proceeding or when the panel is reconvened under Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits) or Article 28.21 (Compliance Review), a replacement panellist shall be appointed within 15 days in accordance with paragraphs 6, 7 and 8. The replacement shall have all the powers and duties of the original panellist. The work of the panel shall be suspended pending the appointment of the replacement panellist, and all time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended.

10. If a disputing Party believes that a panellist is in violation of the code of conduct referred to in Article 28.10.1(d) (Qualifications of Panellists), the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.

Article 28.10: Qualifications of Panellists

1. All panellists shall:

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

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

   (c) be independent of, and not affiliated with or take instructions from, any Party; and

   (d) comply with the code of conduct in the Rules of Procedure.

2. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 28.6 (Good Offices, Conciliation and Mediation).

Article 28.11: Roster of Panel Chairs and Party Specific Lists

Roster of Panel Chairs

1. No later than 120 days after the date of entry into force of this Agreement, those Parties for which this Agreement has come into force under Article 30.5 (Entry into Force) shall establish a roster to be used for the selection of panel chairs.

2. If the Parties are unable to establish a roster within the time period specified in paragraph 1, the Commission shall immediately convene to appoint individuals to the roster. Taking into account the nominations made under paragraph 4 and the qualifications set out in Article 28.10 (Qualifications of Panellists), the Commission shall establish the roster no later than 180 days after the date of entry into force of this Agreement.

3. The roster shall consist of at least 15 individuals, unless the Parties agree otherwise.

4. Each Party may nominate up to two individuals for the roster and may include up to one national of any Party among its nominations.

5. The Parties shall appoint individuals to the roster by consensus. The roster may include up to one national of each Party.

6. Once established under paragraph 1 or 2, or if reconstituted following a review by the Parties, a roster shall remain in effect for a minimum of three years or until the Parties constitute a new roster. Members of the roster may be reappointed.

7. The Parties may appoint a replacement at any time if a roster member is no longer willing or available to serve.

8. Subject to paragraphs 4 and 5, any acceding Party may nominate up to two individuals for the roster. Either or both of those individuals may be included on the roster by consensus of the Parties.

Party Specific Indicative List

9. At any time after the date of entry into force of this Agreement, a Party may establish a list of individuals who are willing and able to serve as panellists.

10. The list referred to in paragraph 9 may include individuals who are nationals of that Party or non-nationals. Each Party may appoint any number of individuals to its list and appoint additional individuals or replace a list member at any time.

11. A Party that establishes a list in accordance with paragraph 9 shall promptly make it available to the other Parties.

Article 28.12: Function of Panels

1. A panel's function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Agreement, and to make the findings, determinations and

recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Chapter and the Rules of Procedure.

3. The panel shall consider this Agreement in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties (1969)*. With respect to any provision of the WTO Agreement that has been incorporated into this Agreement, the panel shall also consider relevant interpretations in reports of panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body. The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Agreement.

4. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

Article 28.13: Rules of Procedure for Panels

The Rules of Procedure, established under this Agreement in accordance with Article 27.2.1(f) (Functions of the Commission), shall ensure that:

(a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

(b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;

(c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each disputing Party shall:

(i) make its best efforts to release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and

(ii) if not already released, release all these documents by the time the final report of the panel is issued;

(e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views

regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(f) confidential information is protected;

(g) written submissions and oral arguments shall be made in English, unless the disputing Parties agree otherwise; and

(h) unless the disputing Parties agree otherwise, hearings shall be held in the capital of the responding Party.

Article 28.14: Third Party Participation

A Party that is not a disputing Party and that considers it has an interest in the matter before the panel shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, make written submissions, present views orally to the panel, and receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of circulation of the request for the establishment of the panel under Article 28.7.2 (Establishment of a Panel).

Article 28.15: Role of Experts

At the request of a disputing Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

Article 28.16: Suspension or Termination of Proceedings

1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

Article 28.17: Initial Report

1. The panel shall draft its report without the presence of any Party.

2. The panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the disputing Parties and any third Parties, and on any information or advice put before it under Article 28.15 (Role of Experts). At the joint request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panellist. In cases of urgency, including those related to perishable goods, the panel shall endeavour to present an initial report to the disputing Parties no later than 120 days after the date of the appointment of the last panellist.

4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the panel as to whether:

(i) the measure at issue is inconsistent with obligations in this Agreement;

(ii) a Party has otherwise failed to carry out its obligations in this Agreement; or

(iii) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope);

(c) any other determination requested in the terms of reference;

(d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.

6. Panellists may present separate opinions on matters not unanimously agreed.

7. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may agree.

8. After considering any written comments by the disputing Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

Article 28.18: Final Report

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the disputing Parties agree otherwise. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall release the final report to the public.

2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.

Article 28.19: Implementation of Final Report

1. The Parties recognise the importance of prompt compliance with determinations made by panels under Article 28.18 (Final Report) in achieving the aim of the dispute settlement procedures in this Chapter, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

(a) the measure at issue is inconsistent with a Party's obligations in this Agreement;

(b) a Party has otherwise failed to carry out its obligations in this Agreement; or

(c) the measure at issue is causing nullification or impairment within the meaning of Article 28.3.1(c) (Scope),

the responding Party shall, whenever possible, eliminate the non-conformity or the nullification or impairment.

3. Unless the disputing Parties agree otherwise, the responding Party shall have a reasonable period of time in which to eliminate the non-conformity or nullification or impairment if it is not practicable to do so immediately.

4. The disputing Parties shall endeavour to agree on the reasonable period of time. If the disputing Parties fail to agree on the reasonable period of time within a period of 45 days after the presentation of the final report under Article 28.18.1 (Final Report), any disputing Party may, no later than 60 days after the presentation of the final report under Article 28.18.1 (Final Report), refer the matter to the chair to determine the reasonable period of time through arbitration.

5. The chair shall take into consideration as a guideline that the reasonable period of time should not exceed 15 months from the presentation of the final report under Article 28.18.1 (Final Report). However, that time may be shorter or longer, depending upon the particular circumstances.

6. The chair shall determine the reasonable period of time no later than 90 days after the date of referral to the chair under paragraph 4.

7. The disputing Parties may agree to vary the procedures set out in paragraphs 4 through 6 for the determination of the reasonable period of time.

Article 28.20: Non-Implementation – Compensation and Suspension of Benefits

1. The responding Party shall, if requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

(a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity or the nullification or impairment; or

(b) following the expiry of the reasonable period of time established in accordance with Article 28.19 (Implementation of Final Report), there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity or the nullification or impairment.

2. A complaining Party may suspend benefits in accordance with paragraph 3 if that complaining Party and the responding Party have:

(a) been unable to agree on compensation within a period of 30 days after the period for developing compensation has begun; or

(b) agreed on compensation but the relevant complaining Party considers that the responding Party has failed to observe the terms of the agreement.

3. A complaining Party may, at any time after the conditions set out in paragraph 2 are met in relation to that complaining Party, provide written notice to the responding Party that it intends to suspend benefits of equivalent effect. The notice shall specify the level of benefits that the Party proposes to suspend.[3] The complaining Party may begin suspending benefits 30 days after the later of the date on which it provides notice under this paragraph or the date that the panel issues its determination under paragraph 5, as the case may be.

4. In considering what benefits to suspend under paragraph 3, the complaining Party shall apply the following principles and procedures:

(a) it should first seek to suspend benefits in the same subject matter as that in which the panel has determined non-conformity or nullification or impairment to exist;

(b) if it considers that it is not practicable or effective to suspend benefits in the same subject matter, and that the circumstances are serious enough, it may suspend benefits in a different subject matter. In the written notice referred to in paragraph 3, the complaining Party shall indicate the reasons on which its decision to suspend benefits in a different subject matter is based; and

(c) in applying the principles set out in subparagraphs (a) and (b), it shall take into account:

(i) the trade in the good, the supply of the service or other subject matter in which the panel has found the non-conformity or nullification or impairment, and the importance of that trade to the complaining Party;

(ii) that goods, all financial services covered under Chapter 11 (Financial Services), services other than such financial services, and each section in Chapter 18 (Intellectual Property), are each distinct subject matters; and

(iii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of benefits.

5. If the responding Party considers that:

[3] For greater certainty, the phrase "the level of benefits that the Party proposes to suspend" refers to the level of concessions under this Agreement, the suspension of which a complaining Party considers will have an effect equivalent to that of the non-conformity, or nullification or impairment in the sense of Article 28.3.1(c) (Scope), determined to exist by the panel in its final report issued under Article 28.18.1 (Final Report).

(a) the level of benefits proposed to be suspended is manifestly excessive or the complaining Party has failed to follow the principles and procedures set out in paragraph 4; or

(b) it has eliminated the non-conformity or the nullification or impairment that the panel has determined to exist,

it may, within 30 days of the date of delivery of the written notice provided by the complaining Party under paragraph 3, request that the panel be reconvened to consider the matter. The responding Party shall deliver its request in writing to the complaining Party. The panel shall reconvene as soon as possible after the date of delivery of the request and shall present its determination to the disputing Parties no later than 90 days after it reconvenes to review a request under subparagraph (a) or (b), or 120 days after it reconvenes for a request under both subparagraphs (a) and (b). If the panel determines that the level of benefits the complaining Party proposes to suspend is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.

6. Unless the panel has determined that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party may suspend benefits up to the level the panel has determined under paragraph 5 or, if the panel has not determined the level, the level the complaining Party has proposed to suspend under paragraph 3. If the panel determines that the complaining Party has not followed the principles and procedures set out in paragraph 4, the panel shall set out in its determination the extent to which the complaining Party may suspend benefits in which subject matter in order to ensure full compliance with the principles and procedures set out in paragraph 4. The complaining Party may suspend benefits only in a manner consistent with the panel's determination.

7. The complaining Party shall not suspend benefits if, within 30 days after it provides written notice of intent to suspend benefits or, if the panel is reconvened under paragraph 5, within 20 days after the panel provides its determination, the responding Party provides written notice to the complaining Party that it will pay a monetary assessment. The disputing Parties shall begin consultations no later than 10 days after the date on which the responding Party has given notice that it intends to pay a monetary assessment, with a view to reaching agreement on the amount of the assessment. If the disputing Parties are unable to reach an agreement within 30 days after consultations begin and are not engaged in discussions regarding the use of a fund under paragraph 8, the amount of the assessment shall be set at a level, in U.S. dollars, equal to 50 per cent of the level of the benefits the panel has determined under paragraph 5 to be of equivalent effect or, if the panel has not determined the level, 50 per cent of the level that the complaining Party has proposed to suspend under paragraph 3.

8. If a monetary assessment is to be paid to the complaining Party, then it

shall be paid in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties in equal, quarterly instalments beginning 60 days after the date on which the responding Party gives notice that it intends to pay an assessment. If the circumstances warrant, the disputing Parties may decide that the responding Party shall pay an assessment into a fund designated by the disputing Parties for appropriate initiatives to facilitate trade between the Parties, including by further reducing unreasonable trade barriers or by assisting the responding Party to carry out its obligations under this Agreement.

9. At the same time as the payment of its first quarterly instalment is due, the responding Party shall provide to the complaining Party a plan of the steps it intends to take to eliminate the non-conformity or the nullification or impairment.

10. A responding Party may pay a monetary assessment in lieu of suspension of benefits by the complaining Party for a maximum of 12 months from the date on which the responding Party has provided written notice under paragraph 7 unless the complaining Party agrees to an extension.

11. A responding Party that seeks an extension of the period for the payment under paragraph 10 shall make a written request for that extension no later than 30 days before the expiration of the 12 month period. The disputing Parties shall determine the length and terms of any extension, including the amount of the assessment.

12. The complaining Party may suspend the application to the responding Party of benefits in accordance with paragraphs 3, 4 and 6, if:

(a) the responding Party fails to make a payment under paragraph 8 or fails to make the payment under paragraph 13 after electing to do so;

(b) the responding Party fails to provide the plan as required under paragraph 9; or

(c) the monetary assessment period, including any extension, has lapsed and the responding Party has not yet eliminated the non-conformity or the nullification or impairment.

13. If the responding Party notified the complaining Party that it wished to discuss the possible use of a fund and the disputing Parties do not agree on the use of a fund within three months of the date of the responding Party's notice under paragraph 7, and this time period has not been extended by agreement of the disputing Parties, the responding Party may elect to make the monetary assessment payment equal to 50 per cent of the amount determined under paragraph 5 or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5. If this election is made, the

payment must be made within nine months of the responding Party's notice under paragraph 7 in U.S. dollars, or in an equivalent amount of the currency of the responding Party or in another currency agreed to by the disputing Parties. If the election is not made, the complaining Party may suspend the application of benefits in the amount determined under paragraph 5, or the level proposed by the complaining Party under paragraph 3 if there has been no determination under paragraph 5, at the end of the election period.

14. The complaining Party shall accord sympathetic consideration to the notice provided by the responding Party regarding the possible use of the fund referred to in paragraphs 8 and 13.

15. Compensation, suspension of benefits and the payment of a monetary assessment shall be temporary measures. None of these measures is preferred to full implementation through elimination of the non-conformity or the nullification or impairment. Compensation, suspension of benefits and the payment of a monetary assessment shall only be applied until the responding Party has eliminated the non-conformity or the nullification or impairment, or until a mutually satisfactory solution is reached.

Article 28.21: Compliance Review

1. Without prejudice to the procedures in Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits), if a responding Party considers that it has eliminated the non-conformity or the nullification or impairment found by the panel, it may refer the matter to the panel by providing a written notice to the complaining Party or Parties. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

2. If the panel determines that the responding Party has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits suspended under Article 28.20 (Non-Implementation - Compensation and Suspension of Benefits).

Section B: Domestic Proceedings and Private Commercial Dispute Settlement

Article 28.22: Private Rights

No Party shall provide for a right of action under its law against any other Party on the ground that a measure of that other Party is inconsistent with its obligations under this Agreement, or that the other Party has otherwise failed to carry out its obligations under this Agreement.

Article 28.23: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to, and is in compliance with, the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* done at New York on 10 June 1958.

CHAPTER 29

EXCEPTIONS AND GENERAL PROVISIONS

Section A: Exceptions

Article 29.1: General Exceptions

1. For the purposes of Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade) and Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.[1]

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

3. For the purposes of Chapter 10 (Cross-Border Trade in Services), Chapter 12 (Temporary Entry for Business Persons), Chapter 13 (Telecommunications), Chapter 14 (Electronic Commerce)[2] and Chapter 17 (State-Owned Enterprises and Designated Monopolies), paragraphs (a), (b) and (c) of Article XIV of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.[3] The Parties understand that the measures referred to in Article XIV(b) of GATS include environmental measures necessary to protect human, animal or plant life or health.

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[1] For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase, production or sale of goods, or affecting activities the end result of which is the production of goods.

[2] This paragraph is without prejudice to whether a digital product should be classified as a good or service.

[3] For the purposes of Chapter 17 (State-Owned Enterprises and Designated Monopolies), Article XIV of GATS (including its footnotes) is incorporated into and made part of this Agreement, *mutatis mutandis*, only with respect to measures of a Party (including the implementation of measures through the activities of a state-owned enterprise or designated monopoly) affecting the purchase or supply of services, or affecting activities the end result of which is the supply of services.

4. Nothing in this Agreement shall be construed to prevent a Party from taking action, including maintaining or increasing a customs duty, that is authorised by the Dispute Settlement Body of the WTO or is taken as a result of a decision by a dispute settlement panel under a free trade agreement to which the Party taking action and the Party against which the action is taken are party.

Article 29.2: Security Exceptions

Nothing in this Agreement shall be construed to:

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

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

Article 29.3: Temporary Safeguard Measures

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

(a) in the event of serious balance of payments and external financial difficulties or threats thereof; or

(b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

(a) not be inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment),

Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment);[4]

(b) be consistent with the *Articles of Agreement of the International Monetary Fund*;

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

(d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;

(e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Parties in writing within 30 days of the extension, unless after consultations more than one-half of the Parties advise, in writing, within 30 days of receiving the notification that they do not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), in which case the Party imposing the measure shall remove the measure, or otherwise modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Parties, within 90 days of receiving notification that more than one half of the Parties do not agree;

(f) not be inconsistent with Article 9.8 (Expropriation and Compensation);[5]

(g) in the case of restrictions on capital outflows, not interfere with investors' ability to earn a market rate of return in the territory of the restricting Party on any restricted assets;[6] and

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[4] Without prejudice to the general interpretation of Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment) and Article 11.4 (Most-Favoured-Nation Treatment).

[5] For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in Annex 9-B(3)(b) (Expropriation).

[6] The term "restricted assets" in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party.

(h) not be used to avoid necessary macroeconomic adjustment.

4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment.[7]

5. A Party shall endeavour to provide that any measures adopted or maintained under paragraph 1 or 2 be price-based, and if such measures are not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Parties of the measure.

6. In the case of trade in goods, Article XII of GATT 1994 and the *Understanding on the Balance of Payments Provisions of the GATT 1994* are incorporated into and made part of this Agreement, *mutatis mutandis*. Any measures adopted or maintained under this paragraph shall not impair the relative benefits accorded to the other Parties under this Agreement as compared to the treatment of a non-Party.

7. A Party adopting or maintaining measures under paragraph 1, 2 or 6 shall:

(a) notify, in writing, the other Parties of the measures, including any changes therein, along with the rationale for their imposition, within 30 days of their adoption;

(b) present, as soon as possible, either a time schedule or the conditions necessary for their removal;

(c) promptly publish the measures; and

(d) promptly commence consultations with the other Parties in order to review the measures adopted or maintained by it.

(i) In the case of capital movements, promptly respond to any other Party that requests consultations in relation to the measures adopted by it, provided that such consultations are not otherwise taking place outside of this Agreement.

(ii) In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a

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[7] For the purposes of this Article, "foreign direct investment" means a type of investment by an investor of a Party in the territory of another Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment.

Party, if requested, shall promptly commence consultations with any interested Party.

Article 29.4: Taxation Measures

1. For the purposes of this Article:

designated authorities means:

(a) for Australia, the Secretary to the Treasury or an authorised representative of the Secretary;

(b) for Brunei Darussalam, the Minister of Finance or the Minister's authorised representative;

(c) for Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance;

(d) for Chile, the Undersecretary of the Ministry of Finance (*Subsecretario de Hacienda*);

(e) for Japan, the Minister for Foreign Affairs and the Minister of Finance;[8]

(f) for Malaysia, the Minister of Finance or the Minister's authorised representative;

(g) for Mexico, the Minister of Finance and Public Credit (*Secretario de Hacienda y Crédito Público*);

(h) for New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;

(i) for Peru, the General Director of International Economy, Competition and Productivity Affairs (*Director General de Asuntos de Economía Internacional, Competencia y Productividad del Ministerio de Economía y Finanzas*);

(j) for Singapore, the Chief Tax Policy Officer, Ministry of Finance;

(k) for the United States, the Assistant Secretary of the Treasury (Tax Policy); and

(l) for Viet Nam, the Minister of Finance,

[8] For the purposes of consultations between the designated authorities of the relevant Parties, the contact point of Japan is the Ministry of Finance.

or any successor of these designated authorities as notified in writing to the other Parties;

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

taxes and **taxation measures** include excise duties, but do not include:

(a) a "customs duty" as defined in Article 1.3 (General Definitions); or

(b) the measures listed in subparagraphs (b) and (c) of that definition.

2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

3. 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 convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether any inconsistency exists between this Agreement and the tax convention, the issue shall be referred to the designated authorities of the Parties in question. The designated authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those designated authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Chapter 28 (Dispute Settlement) or Article 9.19 (Submission of a Claim to Arbitration) until the expiry of the six-month period, or any other period as may have been agreed by the designated authorities. A panel or tribunal established to consider a dispute related to a taxation measure shall accept as binding a determination of the designated authorities of the Parties made under this paragraph.

5. Notwithstanding paragraph 3:

(a) Article 2.3 (National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of GATT 1994; and

(b) Article 2.15 (Export Duties, Taxes or other Charges) shall apply to taxation measures.

6. Subject to paragraph 3:

(a) Article 10.3 (National Treatment) and Article 11.6.1 (Cross-Border Trade) shall apply to taxation measures on income, on capital gains, on the taxable capital of corporations, or on the value of an investment or property[9] (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular services, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage that relates to the purchase or consumption of particular services on requirements to provide the service in its territory;

(b) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 11.3 (National Treatment), Article 11.4 (Most-Favoured-Nation Treatment), Article 11.6.1 (Cross-Border Trade) and Article 14.4 (Non-Discriminatory Treatment of Digital Products) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property[9] (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers; and

(c) Article 14.4 (Non-Discriminatory Treatment of Digital Products) shall apply to taxation measures on income, on capital gains, on the taxable income of corporations, or on the value of an investment or property[9] (but not on the transfer of that investment or property), that relate to the purchase or consumption of particular digital products, except that nothing in this subparagraph shall prevent a Party from conditioning the receipt or continued receipt of an advantage relating to the purchase or consumption of particular digital products on requirements to provide the digital product in its territory,

but nothing in the Articles referred to in subparagraphs (a), (b) and (c) shall apply to:

(d) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(e) a non-conforming provision of any existing taxation measure;

(f) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

[9] This is without prejudice to the methodology used to determine the value of such investment or property under Parties' respective laws.

(g) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(h) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;[10]

(i) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund or other arrangement to provide pension, superannuation or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over that trust, plan, fund or other arrangement; or

(j) any excise duty on insurance premiums to the extent that such tax would, if levied by the other Parties, be covered by subparagraph (e), (f) or (g).

7. Subject to paragraph 3, and without prejudice to the rights and obligations of the Parties under paragraph 5, Article 9.10.2 (Performance Requirements), Article 9.10.3 and Article 9.10.5 shall apply to taxation measures.

8. Article 9.8 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 9.8 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 9.8 (Expropriation and Compensation) with respect to a taxation measure must first refer to the designated authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 9.19 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of the referral, the investor may submit its claim to arbitration under Article 9.19 (Submission of a Claim to Arbitration).

[10] The Parties understand that this subparagraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article was not restricted to services or direct taxes.

9. Nothing in this Agreement shall prevent Singapore from adopting taxation measures no more trade restrictive than necessary to address Singapore's public policy objectives arising out of its specific constraints of space.

Article 29.5: Tobacco Control Measures[11]

A Party may elect to deny the benefits of Section B of Chapter 9 (Investment) with respect to claims challenging a tobacco control measure[12] of the Party. Such a claim shall not be submitted to arbitration under Section B of Chapter 9 (Investment) if a Party has made such an election. If a Party has not elected to deny benefits with respect to such claims by the time of the submission of such a claim to arbitration under Section B of Chapter 9 (Investment), a Party may elect to deny benefits during the proceedings. For greater certainty, if a Party elects to deny benefits with respect to such claims, any such claim shall be dismissed.

Article 29.6: Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.

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[11] For greater certainty, this Article does not prejudice: (i) the operation of Article 9.15 (Denial of Benefits); or (ii) a Party's rights under Chapter 28 (Dispute Settlement) in relation to a tobacco control measure.

[12] A tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.

Section B: General Provisions

Article 29.7: Disclosure of Information

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

Article 29.8: Traditional Knowledge and Traditional Cultural Expressions

Subject to each Party's international obligations, each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.

CHAPTER 30

FINAL PROVISIONS

Article 30.1: Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 30.2: Amendments

The Parties may agree, in writing, to amend this Agreement. When so agreed by all Parties and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which all Parties have notified the Depositary in writing of the approval of the amendment in accordance with their respective applicable legal procedures, or on such other date as the Parties may agree.

Article 30.3: Amendment of the WTO Agreement

In the event of an amendment of the WTO Agreement that amends a provision that the Parties have incorporated into this Agreement, the Parties shall, unless otherwise provided for in this Agreement, consult on whether to amend this Agreement.

Article 30.4: Accession

1. This Agreement is open to accession by:

   (a) any State or separate customs territory that is a member of APEC; and

   (b) any other State or separate customs territory as the Parties may agree,

that is prepared to comply with the obligations in this Agreement, subject to such terms and conditions as may be agreed between the State or separate customs territory and the Parties, and following approval in accordance with the applicable legal procedures of each Party and acceding State or separate customs territory (accession candidate).

2. A State or separate customs territory may seek to accede to this Agreement by submitting a request in writing to the Depositary.

3. (a) Following receipt of a request under paragraph 2, the Commission shall, provided in the case of paragraph 1(b) that the Parties so agree, establish a working group to negotiate the terms and conditions for the accession. Membership in the working group shall be open to all interested Parties.

(b) After completing its work, the working group shall provide a written report to the Commission. If the working group has reached agreement with the accession candidate on proposed terms and conditions for accession, the report shall set out the terms and conditions for the accession, a recommendation to the Commission to approve them, and a proposed Commission decision inviting the accession candidate to become a Party to this Agreement.

4. For the purposes of paragraph 3:

(a) A decision of the Commission to establish a working group under paragraph 3(a) shall be deemed to have been taken only if:

(i) all Parties have agreed to the establishment of a working group; or

(ii) in the event that a Party does not indicate agreement when the Commission makes a decision to establish a working group under paragraph 3(a), that Party has not objected in writing within seven days of the date on which the Commission so decides.

(b) A decision of the working group under paragraph 3(b) shall be deemed to have been taken only if:

(i) all Parties that are members of the working group have indicated agreement; or

(ii) in the event that a Party that is a member of the working group does not indicate agreement when the working group provides its report to the Commission, that Party has not objected to the report in writing within seven days of the date on which the working group provides its report.

5. If the Commission adopts a decision approving the terms and conditions for an accession and inviting an accession candidate to become a Party, the Commission shall specify a period, which may be subject to extension by agreement of the Parties, during which the accession candidate may deposit an

instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession.

6. An accession candidate shall become a Party to this Agreement, subject to the terms and conditions for the accession approved in the Commission's decision, either on:

(a) the 60th day after the date on which the accession candidate deposits an instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession; or

(b) the date on which all Parties have notified the Depositary that they have completed their respective applicable legal procedures,

whichever is later.

Article 30.5: Entry into Force

1. This Agreement shall enter into force 60 days after the date on which all original signatories have notified the Depositary in writing of the completion of their applicable legal procedures.

2. In the event that not all original signatories have notified the Depositary in writing of the completion of their applicable legal procedures within a period of two years of the date of signature of this Agreement, it shall enter into force 60 days after the expiry of this period if at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013[1] have notified the Depositary in writing of the completion of their applicable legal procedures within this period.

3. In the event that this Agreement does not enter into force under paragraph 1 or 2, it shall enter into force 60 days after the date on which at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013, have notified the Depositary in writing of the completion of their applicable legal procedures.

4. After the date of entry into force of this Agreement under paragraph 2 or 3, an original signatory for which this Agreement has not entered into force shall notify the Parties of the completion of its applicable legal procedures and its intention to become a Party to this Agreement. The Commission shall determine within 30 days of the date of the notification by that original signatory whether this Agreement shall enter into force with respect to the notifying original signatory.

[1] For the purposes of this Article, gross domestic products shall be based on data of the International Monetary Fund using current prices (U.S. dollars).

5. Unless the Commission and the notifying original signatory referred to in paragraph 4 agree otherwise, this Agreement shall enter into force for that notifying original signatory 30 days after the date on which the Commission makes an affirmative determination.

Article 30.6: Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the overall contact points designated under Article 27.5 (Contact Points).

2. A withdrawal shall take effect six months after a Party provides written notice to the Depositary under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

Article 30.7: Depositary

1. The original English, Spanish and French texts of this Agreement shall be deposited with New Zealand, which is hereby designated as the Depositary of this Agreement.

2. The Depositary shall promptly provide certified copies of the original texts of this Agreement and of any amendments to this Agreement to each signatory State, acceding State and acceding separate customs territory.

3. The Depositary shall promptly inform each signatory and acceding State or acceding separate customs territory, and provide them with the date and a copy, of:

(a) a notification under Article 30.2 (Amendments), Article 30.4.6 (Accession) or Article 30.5 (Entry into Force);

(b) a request to accede to this Agreement under Article 30.4.2 (Accession);

(c) the deposit of an instrument of accession under Article 30.4.5 (Accession); and

(d) a notice of withdrawal provided under Article 30.6 (Withdrawal).

Article 30.8: Authentic Texts

The English, Spanish and French texts of this Agreement are equally authentic. In the event of any divergence between those texts, the English text shall prevail.