

2020 REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

Adopted on 15 November 2020

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PREAMBLE

The Parties to this Agreement,

RECALLING the *Joint Declaration on the Launch of Negotiations for the Regional Comprehensive Economic Partnership* adopted by the Heads of State or Government of the Member States of the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN” in this Agreement) and Australia, China, India, Japan, Korea, and New Zealand at Phnom Penh, Cambodia on 20 November 2012 which endorsed the *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*;

DESIRING to broaden and deepen economic integration in the region, strengthen economic growth and equitable economic development, and advance economic cooperation, through this Agreement, which will build upon existing economic linkages among the Parties;

ASPIRING to strengthen their economic partnership to create new employment opportunities, raise living standards, and improve the general welfare of their peoples;

SEEKING to establish clear and mutually advantageous rules to facilitate trade and investment, including participation in regional and global supply chains;

BUILDING upon their respective rights and obligations under the *Marrakesh Agreement Establishing the World Trade Organization* done at Marrakesh on 15 April 1994, and the existing free trade agreements between the Member States of ASEAN and their free trade partners, namely Australia, China, Japan, Korea, and New Zealand;

TAKING ACCOUNT OF the different levels of development among the Parties, the need for appropriate forms of flexibility, including provision for special and differential treatment, especially for Cambodia, Lao PDR, Myanmar, and Viet Nam as appropriate, and additional flexibility for Least Developed Country Parties;

CONSIDERING the need to facilitate the increasing participation of Least Developed Country Parties in this Agreement so that they can more effectively implement their obligations under this Agreement and take advantage of the benefits from this Agreement, including expansion of their trade and investment opportunities and participation in regional and global supply chains;

RECOGNISING that good governance and a predictable, transparent, and consistent business environment will lead to the improvement of economic efficiency and the development of trade and investment;

REAFFIRMING the right of each Party to regulate in pursuit of legitimate public welfare objectives;

RECOGNISING that the three pillars of sustainable development are interdependent and mutually reinforcing, and that economic partnership can play an important role in promoting sustainable development; and

FURTHER RECOGNISING the positive effect that regional trade agreements and arrangements can have in accelerating regional and global trade and investment liberalisation, and their role in strengthening the open, free, and rules-based multilateral trading system,

HAVE AGREED AS FOLLOWS:

CHAPTER 1 INITIAL PROVISIONS AND GENERAL DEFINITIONS

Article 1.1: Establishment of the Regional Comprehensive Economic Partnership as a Free Trade Area

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

Article 1.2: General Definitions

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

- (a) **AD Agreement** means the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;
- (b) **Agreement** means the Regional Comprehensive Economic Partnership Agreement;
- (c) **Agreement on Agriculture** means the *Agreement on Agriculture* in Annex 1A to the WTO Agreement;
- (d) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;
- (e) **days** means calendar days, including weekends and holidays;
- (f) **existing** means in effect on the date of entry into force of this Agreement;
- (g) **GATS** means the *General Agreement on Trade in Services* in Annex 1B to the WTO Agreement;
- (h) **GATT 1994** means the *General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;
- (i) **GPA** means the *Agreement on Government Procurement* in Annex 4 to the WTO Agreement;
- (j) **Harmonized System** or **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 administered by the World Customs Organization, set out in the Annex to the *International Convention on the Harmonized Commodity Description and Coding System* done at Brussels on 14 June 1983, as may be amended, adopted and implemented by the Parties in their respective laws;
- (k) **IMF** means the International Monetary Fund;

- (l) **IMF Articles of Agreement** means the *Articles of Agreement of the International Monetary Fund* adopted at Bretton Woods on 22 July 1944;
- (m) **Import Licensing Agreement** means the *Agreement on Import Licensing Procedures* in Annex 1A to the WTO Agreement;
- (n) **judicial person** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, association, or similar organisation;
- (o) **Least Developed Country** means any country designated as such by the United Nations and which has not obtained graduation from the least developed country category;
- (p) **Least Developed Country Party** means any Party that is a Least Developed Country;
- (q) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (r) **Party** means any State or separate customs territory for which this Agreement is in force;
- (s) **perishable goods** means goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions;
- (t) **person** means a natural person or a juridical person;
- (u) **personal information** means any information, including data, about an identified or identifiable individual;
- (v) **Preshipment Inspection Agreement** means the *Agreement on Preshipment Inspection* in Annex 1A to the WTO Agreement;
- (w) **RCEP** means the Regional Comprehensive Economic Partnership;
- (x) **RCEP Joint Committee** means the RCEP Joint Committee established pursuant to Article 18.2 (Establishment of the RCEP Joint Committee);
- (y) **Safeguards Agreement** means the *Agreement on Safeguards* in Annex 1A to the WTO Agreement;
- (z) **SCM Agreement** means the *Agreement on Subsidies and Countervailing Measures* in Annex 1A to the WTO Agreement;
- (aa) **small and medium enterprise** means any small and medium enterprise, including any micro enterprise, and may be further defined, where applicable, in accordance with the respective laws, regulations, or national policies of each Party;
- (bb) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement;
- (cc) **TBT Agreement** means the *Agreement on Technical Barriers to Trade* in Annex 1A to the WTO Agreement;

- (dd) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;
- (ee) **Trade Facilitation Agreement** means the *Agreement on Trade Facilitation* in Annex 1A to the WTO Agreement;
- (ff) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement;
- (gg) **Understanding on the Balance-of-Payments Provisions** means the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement;
- (hh) **WTO** means the World Trade Organization; and
- (ii) **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization* done at Marrakesh on 15 April 1994.

Article 1.3: Objectives

The objectives of this Agreement are to:

- (a) establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership framework to facilitate the expansion of regional trade and investment and contribute to global economic growth and development, taking into account the stage of development and economic needs of the Parties especially of Least Developed Country Parties;
- (b) progressively liberalise and facilitate trade in goods among the Parties through, *inter alia*, progressive elimination of tariff and non-tariff barriers on substantially all trade in goods among the Parties;
- (c) progressively liberalise trade in services among the Parties with substantial sectoral coverage to achieve substantial elimination of restrictions and discriminatory measures with respect to trade in services among the Parties; and
- (d) create a liberal, facilitative, and competitive investment environment in the region, that will enhance investment opportunities and the promotion, protection, facilitation, and liberalisation of investment among the Parties.

CHAPTER 2 TRADE IN GOODS

SECTION A GENERAL PROVISIONS AND MARKET ACCESS FOR GOODS

Article 2.1: Definitions

For the purposes of this Chapter:

- (a) **consular transactions** means any 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;
- (b) **customs duties** means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, but does not include any:
 - (i) charge equivalent to an internal tax imposed consistently with paragraph 2 of Article III of GATT 1994;
 - (ii) anti-dumping or countervailing duty applied consistently with Article VI of GATT 1994, the AD Agreement, and the SCM Agreement; or
 - (iii) fees or other charges commensurate with the cost of services rendered;
- (c) **customs value of goods** means the value of goods for the purposes of levying *ad valorem* customs duties on imported goods;
- (d) **duty-free** means free of customs duty;
- (e) **import licensing procedure** 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 the importing Party; and
- (f) **originating good** means a good that qualifies as an originating good in accordance with Chapter 3 (Rules of Origin).

Article 2.2: Scope

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

Article 2.3: National Treatment on Internal Taxation and Regulation

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

Article 2.4: Reduction or Elimination of Customs Duties

1. Except as otherwise provided in this Agreement, each Party shall reduce or eliminate its customs duties on originating goods of other Parties in accordance with its Schedule in Annex I (Schedules of Tariff Commitments).
2. For greater certainty, in accordance with the WTO Agreement, originating goods of other Parties shall be eligible, at the time of importation, for the most-favoured-nation applied rate of customs duty for those goods in a Party, where that rate is lower than the rate of customs duty provided for in that Party's Schedule in Annex I (Schedules of Tariff Commitments). Subject to its laws and regulations, each Party shall provide that an importer may apply for a refund of any excess duty paid for a good if the importer did not make a claim for the lower rate at the time of importation.
3. Further to subparagraph 1(b) of Article 4.5 (Transparency), each Party shall make publicly available any amendments to its most-favoured-nation applied rate of customs duty, and the latest customs duty to be applied in accordance with paragraph 1, as soon as practicable but not later than the date of the application.

Article 2.5: Acceleration of Tariff Commitments¹

1. Nothing in this Agreement shall preclude the Parties from amending this Agreement in accordance with Article 20.4 (Amendments), to accelerate or improve the tariff commitments set out in their Schedules in Annex I (Schedules of Tariff Commitments).
2. Two or more Parties² may, based on mutual consent, consult on the acceleration or improvement of tariff commitments set out in their Schedules in Annex I (Schedules of Tariff Commitments). An agreement to accelerate or improve the tariff commitments between these Parties shall be implemented through a modification to their Schedules in Annex I (Schedules of Tariff Commitments) in accordance with Article 20.4 (Amendments). Any such acceleration or improvement of tariff commitments shall be extended to all Parties.
3. A Party may, at any time, unilaterally accelerate or improve its tariff commitments set out in its Schedule in Annex I (Schedules of Tariff Commitments). Any such acceleration or improvement of its tariff commitment shall be extended to all Parties. Such Party shall inform the other Parties as early as practicable before the new preferential rate of customs duty takes effect.
4. For greater certainty, following a Party's unilateral acceleration or improvement of its tariff commitments referred to in paragraph 3, that Party may raise its preferential customs duty to a level not exceeding the preferential rate of customs duty set out in its Schedule in Annex I (Schedules of Tariff Commitments) for the relevant year. Such Party shall inform the other Parties of the date from which the new preferential rate of customs duty takes effect, as early as practicable before such date.

¹ For greater certainty, this Article shall apply only to tariff commitments under this Agreement.

² For the purposes of this paragraph, "two or more Parties" means some of, but not all of, the Parties.

Article 2.6 Tariff Differentials

1. All originating goods subject to tariff differentials³ shall be eligible for preferential tariff treatment applicable to the originating goods of an exporting Party pursuant to the importing Party's tariff commitments set out in its Schedule in Annex I (Schedules of Tariff Commitments) at the time of importation, provided that the exporting Party is the RCEP country of origin.
2. The RCEP country of origin for an originating good shall be the Party where the good acquired its originating status in accordance with Article 3.2 (Originating Goods). With regard to subparagraph (b) of Article 3.2 (Originating Goods), the RCEP country of origin for an originating good shall be the exporting Party, provided that the production process, other than the minimal operations set out in paragraph 5, for that originating good occurred in that exporting Party.
3. Notwithstanding paragraph 2, for an originating good identified by an importing Party in its Appendix to its Schedule in Annex I (Schedules of Tariff Commitments), the RCEP country of origin shall be the exporting Party, provided that the good meets the additional requirement specified in that Appendix.
4. In the event that the exporting Party of an originating good is not established to be the RCEP country of origin in accordance with paragraphs 2 and 3, the RCEP country of origin for that originating good shall be the Party that contributed the highest value of originating materials used in the production of that good in the exporting Party. In that case, that originating good shall be eligible for preferential tariff treatment applicable to that originating good of the RCEP country of origin.
5. For the purposes of paragraph 2, a "minimal operation" is any operation set out below:
 - (a) preserving operations to ensure that the good remains in good condition for the purposes of transport or storage;
 - (b) packaging or presenting goods for transportation or sale;
 - (c) simple⁴ processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling, or uncoiling;
 - (d) affixing or printing of marks, labels, logos, or other like distinguishing signs on goods or their packaging;
 - (e) mere dilution with water or another substance that does not materially alter the characteristics of the good;
 - (f) disassembly of products into parts;
 - (g) slaughtering⁵ of animals;
 - (h) simple painting and polishing operations;

³ The Parties understand that "tariff differentials" refers to different tariff treatment that an importing Party applies for the same originating good.

⁴ For the purposes of this paragraph, "simple" describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity.

⁵ For the purposes of this paragraph, "slaughtering" means the mere killing of animals.

- (i) simple peeling, stoning, or shelling;
 - (j) simple mixing of goods, whether or not of different kinds; or
 - (k) any combination of two or more operations referred to in subparagraphs (a) through (j).
6. Notwithstanding paragraphs 1 and 4, the importing Party shall allow an importer to make a claim for preferential tariff treatment at either:
- (a) the highest rate of customs duty that the importing Party applies to the same originating good from any of the Parties contributing originating materials used in the production of such good, provided that the importer is able to prove such a claim. For greater certainty, originating materials refer only to those originating materials taken into account in the claim for originating status of the final good; or
 - (b) the highest rate of customs duty that the importing Party applies to the same originating good from any of the Parties.
7. Notwithstanding Article 20.8 (General Review), the Parties shall commence a review of this Article within two years of the date of entry into force of this Agreement and, thereafter, every three years or as agreed among the Parties to reduce or eliminate the requirements of this Article and the number of tariff lines and conditions provided in a Party's Appendix to its Schedule in Annex I (Schedules of Tariff Commitments).
8. Notwithstanding paragraph 7, with respect to its Appendix to its Schedule in Annex I (Schedules of Tariff Commitments), a Party reserves the right to make amendments to its Appendix, including the additional requirement in this Appendix, in case of accession by another State or separate customs territory to this Agreement. Such amendments shall be subject to the agreement of all Parties and shall enter into force in accordance with Article 20.4 (Amendments) and Article 20.9 (Accession).

Article 2.7: Classification of Goods

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

Article 2.8: Customs Valuation

For the purposes of determining the customs value of goods traded among the Parties, Article VII of GATT 1994, and Part I and the Interpretative Notes of Annex I of the Customs Valuation Agreement shall apply, *mutatis mutandis*.

Article 2.9: Goods in Transit

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

Article 2.10: Temporary Admission of Goods

1. Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:
 - (a) are brought into its customs territory for a specific purpose;
 - (b) are intended for re-exportation within a specific period; and
 - (c) have not undergone any change, except normal depreciation and wastage due to the use made of them.
2. Each Party shall, on request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission provided for in paragraph 1 beyond the period initially fixed.
3. No Party shall condition the duty-free temporary admission of a good provided for in paragraph 1, other than to require that the good:
 - (a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;
 - (b) not be sold or leased while in its territory;
 - (c) be accompanied by a security or guarantee in an amount no greater than the customs duties, taxes, fees, and charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;
 - (d) be capable of identification when imported and exported;
 - (e) be exported on the departure of the person referred to in subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish, unless extended;
 - (f) be admitted in no greater quantity than is reasonable for its intended use; and
 - (g) be otherwise admissible into the Party's territory under its laws and regulations.
4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good, in addition to any other charges or penalties provided for in its laws and regulations.
5. Each Party shall permit a good temporarily admitted under this Article to be re-exported through a customs port⁶ other than that through which it was admitted.

⁶ For Lao PDR, "customs port" means an international customs port.

Article 2.11: Temporary Admission for Containers and Pallets

1. Each Party, as provided for in its laws and regulations, or the provisions of the related international agreements to which it is party, shall grant duty-free temporary admission for containers and pallets, regardless of their origin, in use or to be used in the shipment of goods in international traffic.
 - (a) For the purposes of this Article, “container” means an article of transport equipment (lift-van, movable tank, or other similar structure):
 - (i) fully or partially enclosed to constitute a compartment intended for containing goods;
 - (ii) of a permanent character and accordingly strong enough to be suitable for repeated use;
 - (iii) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
 - (iv) designed for ready handling, particularly when being transferred from one mode of transport to another;
 - (v) designed to be easy to fill and to empty; and
 - (vi) having an internal volume of one cubic metre or more.

“Container” shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. “Container” shall not include vehicles, accessories or spare parts of vehicles, or packaging or pallets.

“Demountable bodies” shall be regarded as containers.
 - (b) For the purposes of this paragraph, “pallet” means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transporting it, or of handling or stacking it with the assistance of mechanical appliances. This device is made up of two decks separated by bearers, or of a single deck supported by feet; its overall height is reduced to the minimum compatible with handling by fork lift trucks or pallet trucks; it may or may not have a superstructure.
2. Subject to Chapter 8 (Trade in Services) and Chapter 10 (Investment), in respect of containers granted temporary admission pursuant to paragraph 1:
 - (a) each Party shall allow a 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 economic and prompt departure of such container;⁸

⁷ For greater certainty, nothing in this paragraph shall affect the right of a Party to adopt or maintain measures in accordance with Article 17.12 (General Exceptions) or Article 17.13 (Security Exceptions).

⁸ For greater certainty, nothing in this subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway safety or security measures of general application, or from preventing a container from entering or exiting its territory in a location where the Party does not maintain a customs port. A Party may provide the other Parties with a list of ports available for exit of containers in accordance with its laws and regulations.

- (b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;
- (c) no Party shall condition the release of any security that it imposes in respect of the entry of a container into its territory on the container's exit through any particular port of departure; and
- (d) no Party shall require that the carrier bringing a container from the territory of another Party into its territory be the same carrier that takes the container to the territory of another Party.

Article 2.12: Duty-Free Entry of Samples of No Commercial Value

Each Party shall grant duty-free entry to samples of no commercial value, imported from the territory of another Party, subject to its laws and regulations, regardless of their origin.

Article 2.13: Agricultural Export Subsidies

1. The Parties reaffirm their commitments made in the *Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN(15)/45, WT/L/980)*, adopted in Nairobi on 19 December 2015, including elimination of scheduled export subsidy entitlements for agricultural goods.
2. The Parties share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together to prevent their reintroduction in any form.

Article 2.14: Transposition of Schedules of Tariff Commitments

Each Party shall ensure that the transposition of its Schedule in Annex I (Schedules of Tariff Commitments), undertaken in order to implement Annex I (Schedules of Tariff Commitments) in the nomenclature of the revised HS following periodic amendments to the HS, is carried out without impairing the tariff commitments set out in Annex I (Schedules of Tariff Commitments).

Article 2.15: Modification of Concessions

In exceptional circumstances, where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may, with the agreement of all other interested Parties, and with the decision of the RCEP Joint Committee, modify or withdraw a concession contained in its Schedule in Annex I (Schedules of Tariff Commitments). In order to seek to reach such agreement, the Party proposing to modify or withdraw its concession shall inform the RCEP Joint Committee and engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concession shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall be reflected in Annex I (Schedules of Tariff Commitments) in accordance with Article 20.4 (Amendments).

SECTION B NON-TARIFF MEASURES

Article 2.16: Application of Non-Tariff Measures

1. A Party shall not adopt or maintain any non-tariff measure on the importation of any good of another Party or on the exportation of any good destined for the territory of another Party, except in accordance with its rights and obligations under the WTO Agreement or this Agreement.
2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 and shall ensure that any such measures are not prepared, adopted, or applied with the view to or with the effect of creating unnecessary obstacles to trade among the Parties.

Article 2.17: General Elimination of Quantitative Restrictions

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction other than duties, taxes, or other charges, whether made effective through quotas, import or export licences, or other measures, on the importation of any good of another Party or on the exportation of any good destined for the territory of another Party, except in accordance with its rights and obligations under the relevant provisions of the WTO Agreement. To this end, Article XI of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Where a Party adopts an export prohibition or restriction in accordance with subparagraph 2(a) of Article XI of GATT 1994, that Party shall, upon request:
 - (a) inform another Party or Parties of such prohibition or restriction and its reasons together with its nature and expected duration, or publish such prohibition or restriction; and
 - (b) provide another Party or Parties that may be seriously affected with a reasonable opportunity for consultation with respect to matters related to such prohibition or restriction.

Article 2.18: Technical Consultations on Non-Tariff Measures

1. A Party may request technical consultations with another Party on a measure it considers to be adversely affecting its trade. The request shall be in writing and shall clearly identify the measure and the concerns as to how the measure adversely affects trade between the Party requesting technical consultations (hereinafter referred to as “the requesting Party” in this Article) and the Party to which a request has been made (hereinafter referred to as “the requested Party” in this Article).
2. Where the measure is covered by another Chapter, any consultation mechanism provided in that Chapter shall be used, unless otherwise agreed between the requesting Party and the requested Party (hereinafter collectively referred to as “the consulting Parties” in this Article).
3. Except as provided in paragraph 2, the requested Party shall respond to the requesting Party and enter into technical consultations within 60 days of the receipt of the written request referred to in paragraph 1, unless otherwise determined by the consulting Parties, with a view to reaching a mutually satisfactory solution within 180 days of the request. Technical consultations may be conducted via any means mutually agreed by the consulting Parties.

4. Except as provided in paragraph 2, the request for technical consultations shall be circulated to all the other Parties. Other Parties may request to join the technical consultations on the basis of interests set out in their requests. The participation of any other Party is subject to the consent of the consulting Parties. The consulting Parties shall give full consideration to such requests.
5. If the requesting Party considers that a matter is urgent or involves perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under paragraph 3.
6. Except as provided in paragraph 2, each Party shall submit an annual notification to the Committee on Goods regarding any use of technical consultations under this Article, whether as the requesting Party or the requested Party. This notification shall contain a summary of the progress and outcomes of the consultations.
7. For greater certainty, technical consultations under this Article shall be without prejudice to a Party's rights and obligations pertaining to dispute settlement proceedings under Chapter 19 (Dispute Settlement) and the WTO Agreement.

Article 2.19: Import Licensing Procedures

1. Each Party shall ensure that all automatic and non-automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Import Licensing Agreement. No Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.
2. Each Party shall, promptly after the date of entry into force of this Agreement for that Party, notify the other Parties of its existing import licensing procedures. The notification shall include the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this paragraph if:
 - (a) it has notified the procedures to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement (hereinafter referred to as "WTO Committee on Import Licensing" in this Chapter), together with the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement; and
 - (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 paragraph 3 of Article 7 of the Import Licensing Agreement, it has provided, with respect to those existing import licensing procedures, the information requested in that questionnaire.
3. Each Party shall notify the other Parties of any new import licensing procedure and any modification it makes to its existing import licensing procedures, to the extent possible 30 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. A notification provided under this paragraph shall include the information specified in Article 5 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this paragraph 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 paragraph 1, 2, or 3 of Article 5 of the Import Licensing Agreement.

4. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.
5. The notification required under paragraphs 2 and 3 is without prejudice to whether the import licensing procedure is consistent with this Agreement.
6. A notification made under paragraph 3 shall state if, under any procedure that is a subject of the notification:
 - (a) the terms of an import licence for any product limit the permissible end users of the product; or
 - (b) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:
 - (i) membership in an industry association;
 - (ii) approval by an industry association of the request for an import licence;
 - (iii) a history of importing the product, or similar products;
 - (iv) a minimum importer or end user production capacity;
 - (v) minimum importer or end user registered capital; or
 - (vi) a contractual or other relationship between the importer and distributor in the Party's territory.
7. Each Party shall, to the extent possible, answer within 60 days all reasonable enquiries from another Party regarding the criteria employed by its respective licensing authorities in granting or denying import licences. The importing Party shall publish sufficient information for the other Parties and traders to know the basis for granting or allocating import licences.
8. No application for an import licence shall be refused for minor documentation errors that do not alter the basic data contained therein. Minor documentation errors may include formatting errors, such as the width of a margin or the font used, and spelling errors which are obviously made without fraudulent intent or gross negligence.
9. 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 an explanation of the reason for the denial.

Article 2.20: Fees and Formalities Connected with Importation and Exportation

1. Each Party shall ensure, in accordance with paragraph 1 of Article VIII of GATT 1994, that all fees and charges of whatever character (other than import or export duties, charges equivalent to an internal tax or other internal charge applied consistently with paragraph 2 of Article III of GATT 1994, and anti-dumping 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. Each Party shall promptly publish details of the fees and charges that it imposes in connection with importation or exportation and shall make such information available on the internet.
3. No Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Party. No Party shall require that any customs documentation supplied in connection with the importation of any good of another Party be endorsed, certified, or otherwise sighted or approved by the importing Party's overseas representatives, or entities with authority to act on the importing Party's behalf, nor impose any related fees or charges

Article 2.21: Sectoral Initiatives

1. The Parties may decide to initiate a work programme on sector-specific issues. Should the Parties decide to initiate such a work programme, it shall be established and overseen by the Committee on Goods. The Parties shall endeavour to finalise such a work programme no later than two years after the initiation of the work programme.
2. The Parties shall agree on the sectors to be included in such a work programme, taking into consideration the interests of all the Parties, including those sectors proposed by Parties during the course of the negotiation of this Agreement or other sectors as may be identified by a Party.
3. Any work programme initiated under this Article should be conducted to:
 - (a) enhance the Parties' understanding of the issue;
 - (b) facilitate input from business and other relevant stakeholders; and
 - (c) explore the possible actions by the Parties that would facilitate trade.
4. Based on the outcome of any work programme initiated under this Article, the Committee on Goods may make recommendations to the RCEP Joint Committee.

CHAPTER 3 RULES OF ORIGIN

SECTION A RULES OF ORIGIN

Article 3.1: Definitions

For the purposes of this Chapter:

- (a) **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, and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;
- (b) **CIF value** means the value of the imported good, inclusive of the cost of insurance and freight up to the port or place of entry into the country of importation;
- (c) **competent authority** means the government authority or authorities designated by a Party and notified to the other Parties;
- (d) **customs authority** means a customs authority as defined in subparagraph (a) of Article 4.1 (Definitions);
- (e) **FOB value** means the value of the good free on board, inclusive of the cost of transport (regardless of the mode of transport) to the port or site of final shipment abroad;
- (f) **fungible goods or materials** means goods or materials that are interchangeable for commercial purposes, whose properties are essentially identical;
- (g) **Generally Accepted Accounting Principles** means those principles recognised by consensus or with substantial authoritative support in a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;
- (h) **good** means any merchandise, product, article, or material;
- (i) **issuing body** means an entity designated or authorised by a Party to issue a Certificate of Origin and notified to the other Parties in accordance with this Chapter;
- (j) **material** means a good that is used in the production of another good;
- (k) **non-originating good** or **non-originating material** means a good or material which does not qualify as originating in accordance with this Chapter;
- (l) **originating good** or **originating material** means a good or material which qualifies as originating in accordance with this Chapter;
- (m) **producer** means a person who engages in the production of goods; and

- (n) **production** means methods of obtaining goods including growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, aquaculture, trapping, hunting, manufacturing, producing, processing, or assembling.

Article 3.2: Originating Goods

For the purposes of this Agreement, a good shall be treated as an originating good if it is:

- (a) wholly obtained or produced in a Party as provided in Article 3.3 (Goods Wholly Obtained or Produced);
- (b) produced in a Party exclusively from originating materials from one or more of the Parties; or
- (c) produced in a Party using non-originating materials, provided the good satisfies the applicable requirements set out in Annex 3A (Product-Specific Rules), and meets all other applicable requirements of this Chapter.

Article 3.3: Goods Wholly Obtained or Produced

For the purposes of Article 3.2 (Originating Goods), the following goods shall be considered as wholly obtained or produced in a Party:

- (a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi, and live plants, grown and harvested, picked, or gathered there;
- (b) live animals born and raised there;
- (c) goods obtained from live animals raised there;
- (d) goods obtained by hunting, trapping, fishing, farming, aquaculture, gathering, or capturing conducted there;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from its soil, waters, seabed, or subsoil beneath the seabed;
- (f) goods of sea-fishing and other marine life taken by vessels of that Party¹, and other goods taken by that Party or a person of that Party, from the waters, seabed, or subsoil beneath the seabed outside the territorial sea of the Parties and non-Parties, in accordance with international law, provided that, in case of goods of sea-fishing and other marine life taken from the exclusive economic zone of any Party or non-Party, that Party or person of that Party has the rights to

¹ For the purposes of this Article, “factory ships of that Party” or “vessels of that Party” respectively, means factory ships or vessels:

- (a) which are registered in that Party; and
- (b) which are entitled to fly the flag of that Party.

Notwithstanding the preceding sentence, any factory ship or vessel operating within the exclusive economic zone of Australia that meets the definition of “Australian boat” under the *Fisheries Management Act 1991* (Commonwealth), as amended from time to time, or any successor legislation, shall be considered to be a factory ship or vessel of Australia respectively. For greater certainty, when such a factory ship or vessel is operating outside of the exclusive economic zone of Australia, the requirements of subparagraphs (a) and (b) of this footnote shall apply.

exploit² such exclusive economic zone, and in case of other goods, that Party or person of that Party has rights to exploit such seabed and subsoil beneath the seabed, in accordance with international law;

- (g) goods of sea-fishing and other marine life taken by vessels of that Party from the high seas in accordance with international law;
- (h) goods processed or made on board any factory ships of that Party, exclusively from the goods referred to in subparagraph (f) or (g);
- (i) goods which are:
 - (i) waste and scrap derived from production or consumption there, provided that such goods are fit only for disposal, for the recovery of raw materials, or for recycling purposes; or
 - (ii) used goods collected there, provided that such goods are fit only for disposal, for the recovery of raw materials, or for recycling purposes; and
- (j) goods obtained or produced there solely from goods referred to in subparagraphs (a) through (i), or from their derivatives.

Article 3.4: Cumulation

1. Unless otherwise provided in this Agreement, goods and materials which comply with the origin requirements provided in Article 3.2 (Originating Goods), and which are used in another Party as materials in the production of another good or material, shall be considered as originating in the Party where working or processing of the finished good or material has taken place.
2. The Parties shall commence a review of this Article on the date of entry into force of this Agreement for all signatory States. This review will consider the extension of the application of cumulation in paragraph 1 to all production undertaken and value added to a good within the Parties. The Parties shall conclude the review within five years of the date of its commencement, unless the Parties agree otherwise.

Article 3.5: Calculation of Regional Value Content

1. The regional value content of a good, specified in Annex 3A (Product-Specific Rules), shall be calculated by using either of the following formulas:

² For the purposes of determining the origin of goods of sea-fishing and other marine life, "rights to exploit" in this subparagraph include those rights of access to the fisheries resources of a coastal State, as accruing from any agreements or arrangements between a Party and the coastal State.

(a) Indirect/Build-Down Formula

$$\text{RVC} = \frac{\text{FOB} - \text{VNM}}{\text{FOB}} \times 100$$

or

(b) Direct/Build-Up Formula

$$\text{RVC} = \frac{\text{VOM} + \text{Direct Labour Cost} + \text{Direct Overhead Cost} + \text{Profit} + \text{Other Cost}}{\text{FOB}} \times 100$$

where:

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

FOB is the FOB value as defined in subparagraph (e) of Article 3.1 (Definitions);

VOM is the value of originating materials, parts, or produce acquired or self-produced, and used in the production of the good;

VNM is the value of non-originating materials used in the production of the good;

Direct Labour Cost includes wages, remuneration, and other employee benefits; and

Direct Overhead Cost is the total overhead expense.

2. The value of goods under this Chapter shall be calculated, *mutatis mutandis*, in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. All costs shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the Party where the goods are produced.
3. The value of non-originating materials shall be:
 - (a) for imported materials, the CIF value of the materials at the time of importation; and
 - (b) for materials obtained within a Party, the earliest ascertainable price paid or payable.
4. A material of undetermined origin shall be treated as a non-originating material.

5. The following expenses may be deducted from the value of non-originating materials or materials of undetermined origin:
- (a) the costs of freight, insurance, packing, and other transport-related costs incurred in transporting the goods to the producer;
 - (b) duties, taxes, and customs brokerage fees, other than duties that are waived, refunded, or otherwise recovered; and
 - (c) costs of waste and spillage, less the value of any renewable scrap or by-products.

Where the expenses listed in subparagraphs (a) through (c) are unknown or evidence is not available, then no deduction is allowed for those expenses.

Article 3.6: Minimal Operations and Processes

Notwithstanding any provisions of this Chapter, the following operations when undertaken on non-originating materials to produce a good shall be considered as insufficient working or processing to confer on that good the status of an originating good:

- (a) preserving operations to ensure that the good remains in good condition for the purposes of transport or storage;
- (b) packaging or presenting goods for transportation or sale;
- (c) simple³ processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling, or uncoiling;
- (d) affixing or printing of marks, labels, logos, or other like distinguishing signs on goods or their packaging;
- (e) mere dilution with water or another substance that does not materially alter the characteristics of the good;
- (f) disassembly of products into parts;
- (g) slaughtering⁴ of animals;
- (h) simple painting and polishing operations;
- (i) simple peeling, stoning, or shelling;
- (j) simple mixing of goods, whether or not of different kinds; or
- (k) any combination of two or more operations referred to in subparagraphs (a) through (j).

³ For the purposes of this Article, “simple” describes an activity which does not need special skills, or machines, apparatus, or equipment especially produced or installed for carrying out the activity.

⁴ For the purposes of this Article, “slaughtering” means the mere killing of animals.

Article 3.7: De Minimis

1. A good that does not satisfy a change in tariff classification pursuant to Annex 3A (Product-Specific Rules) is nonetheless an originating good if the good meets all of the other applicable requirements in this Chapter and:
 - (a) for a good classified in Chapters 01 through 97 of the HS Code, the value of non-originating materials that have been used in the production of the good and did not undergo the applicable change in tariff classification does not exceed 10 per cent of the FOB value of that good. The value of those non-originating materials shall be determined pursuant to paragraph 3 of Article 3.5 (Calculation of Regional Value Content); or
 - (b) for a good classified in Chapters 50 through 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good.
2. The value of non-originating materials referred to in paragraph 1 shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

Article 3.8: Treatment of Packing and Packaging Materials and Containers

1. Packing materials and containers for the transportation and shipment of a good shall not be taken into account in determining the originating status of any good.
2. Packaging materials and containers in which a good is packaged for retail sale, which are classified together with the good, shall not be taken into account in determining the originating status of the good, provided that:
 - (a) the good is wholly obtained or produced in a Party in accordance with subparagraph (a) of Article 3.2 (Originating Goods);

the good is produced in a Party exclusively from originating materials from one or more of the Parties, in accordance with subparagraph (b) of Article 3.2 (Originating Goods);
or
 - (b) the good is subject to a change in tariff classification or a specific manufacturing or processing operation requirement provided in Annex 3A (Product-Specific Rules).
3. 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 shall be taken into account as originating materials or non-originating materials of the good, as the case may be, in calculating the regional value content of the good.

Article 3.9: Accessories, Spare Parts, and Tools

1. For the purposes of determining the originating status of a good, accessories, spare parts, tools, and instructional or other information materials presented with the good shall be considered as part of the good and shall be disregarded in determining whether all the non-originating materials used in the production of the good have undergone the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 3A (Product-Specific Rules), provided that:
 - (a) the accessories, spare parts, tools, and instructional or other information materials presented with the good are not invoiced separately from the good; and
 - (b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the good are customary for the good.

2. Notwithstanding paragraph 1, if a good is subject to a regional value content requirement, the value of the accessories, spare parts, tools, and instructional or other information materials presented with the good shall be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good, provided that:
 - (a) the accessories, spare parts, tools, and instructional or other information materials presented with the good are not invoiced separately from the good; and
 - (b) the quantities and value of the accessories, spare parts, tools, and instructional or other information materials presented with the good are customary for the good.

Article 3.10: Indirect Materials

1. An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in accordance with the Generally Accepted Accounting Principles in the records of the producer of the good.

2. For the purposes of this Article, “indirect material” means a good used in the production, testing, or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
 - (a) fuel and energy;
 - (b) tools, dies, and moulds;
 - (c) spare parts and goods used in the maintenance of equipment and buildings;
 - (d) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
 - (e) gloves, glasses, footwear, clothing, and safety equipment and supplies;
 - (f) equipment, devices, and supplies used for testing or inspecting goods;
 - (g) catalysts and solvents; and

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

Article 3.11: Fungible Goods or Materials

The determination of whether fungible goods or materials are originating shall be made either by physical segregation of each of the fungible goods or materials or, where commingled, by the use of an inventory management method which is recognised in the Generally Accepted Accounting Principles of the exporting Party, and should be used throughout the fiscal year.

Article 3.12: Materials Used in Production

If a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material shall be 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.

Article 3.13: Unit of Qualification

1. The unit of qualification for the application of this Chapter shall be the particular good which is considered as the basic unit when determining classification under the Harmonized System.
2. When a consignment consists of a number of identical goods classified under a single tariff line, each good shall be individually taken into account in determining whether it qualifies as an originating good.

Article 3.14: Treatment for Certain Goods

The Parties and signatory States shall enter into discussions on the treatment for certain goods under this Chapter upon the request of a Party and conclude such discussions within three years from the start of the discussions. The treatment for certain goods under this Chapter shall be subject to agreement of all the Parties and signatory States by consensus.

Article 3.15: Direct Consignment

1. An originating good shall retain its originating status as determined under Article 3.2 (Originating Goods) if the following conditions have been met:
 - (a) the good has been transported directly from an exporting Party to an importing Party;
or
 - (b) the good has been transported through one or more Parties other than the exporting Party and the importing Party (hereinafter referred to as "intermediate Parties" in this Article), or non-Parties, provided that the good:

- (i) has not undergone any further processing in the intermediate Parties or the non-Parties, except for logistics activities such as unloading, reloading, storing, or any other operations necessary to preserve it in good condition or to transport it to the importing Party; and
 - (ii) remains under the control of the customs authorities in the intermediate Parties or the non-Parties.
- 2. Compliance with subparagraph 1(b) shall be evidenced by presenting the customs authorities of the importing Party either with customs documents of the intermediate Parties or the non-Parties, or with any other appropriate documentation on request of the customs authorities of the importing Party.
- 3. Appropriate documentation referred to in paragraph 2 may include commercial shipping or freight documents such as airway bills, bills of lading, multimodal or combined transport documents, a copy of the original commercial invoice in respect of the good, financial records, a non-manipulation certificate, or other relevant supporting documents, as may be requested by the customs authorities of the importing Party.

SECTION B OPERATIONAL CERTIFICATION PROCEDURES

Article 3.16: Proof of Origin

- 1. Any of the following shall be considered as a Proof of Origin:
 - (a) a Certificate of Origin issued by an issuing body in accordance with Article 3.17 (Certificate of Origin);
 - (b) a Declaration of Origin by an approved exporter in accordance with subparagraph 1(a) of Article 3.18 (Declaration of Origin); or
 - (c) a Declaration of Origin by an exporter or producer in accordance with subparagraph 1(b) of Article 3.18 (Declaration of Origin), and subject to paragraphs 2 and 3, based on information available that the good is originating.
- 2. Australia, Brunei Darussalam, China, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, and Viet Nam shall implement subparagraph 1(c) no later than 10 years after their respective dates of entry into force of this Agreement. Cambodia, Lao PDR, and Myanmar shall implement subparagraph 1(c) no later than 20 years after their respective dates of entry into force of this Agreement.
- 3. Notwithstanding paragraph 2, a Party may elect to seek a longer extension period, up to a maximum of 10 years, in which to implement subparagraph 1(c), by notifying the Committee on Goods of that decision.

4. The Parties shall commence a review of this Article on the date of entry into force of this Agreement for all signatory States. This review will consider the introduction of Declaration of Origin by an importer as a Proof of Origin. The Parties shall conclude the review within five years of the date of its commencement, unless the Parties agree otherwise.⁵
5. A Proof of Origin shall:
 - (a) be in writing, or any other medium, including electronic format as notified by an importing Party;
 - (b) specify that the good is originating and meets the requirements of this Chapter; and
 - (c) contain information which meets the minimum information requirements as set out in Annex 3B (Minimum Information Requirements).
6. Each Party shall provide that a Proof of Origin remains valid for one year from the date on which it is issued or completed.

Article 3.17: Certificate of Origin

1. A Certificate of Origin shall be issued by the issuing body of an exporting Party upon an application by an exporter, a producer, or their authorised representative.
2. The exporter, producer, or their authorised representative shall apply in writing or by electronic means for a Certificate of Origin, to the issuing body of the exporting Party in accordance with the exporting Party's laws, regulations, and procedures.
3. A Certificate of Origin shall:
 - (a) be in a format to be determined by the Parties;
 - (b) bear a unique Certificate of Origin number;
 - (c) be in the English language; and
 - (d) bear an authorised signature and official seal of the issuing body of the exporting Party. The signature and seal shall be applied manually or electronically.
4. A Certificate of Origin may:
 - (a) indicate two or more invoices issued for single shipment; or
 - (b) contain multiple goods, provided that each good qualifies as an originating good separately in its own right.
5. In circumstances where a Certificate of Origin contains incorrect information, the issuing body

⁵ Notwithstanding this paragraph, Japan may, from the date of the entry into force of this Agreement for it, consider a Declaration of Origin by an importer as a Proof of Origin in the same manner as Proof of Origin under paragraph 1. In that case, Japan shall not conduct a verification process by means referred to in subparagraphs 1(b) through (d) of Article 3.24 (Verification) regarding the Declaration of Origin by the importer. The Declaration of Origin shall only be completed by the importer where that importer has sufficient information to prove that the good qualifies as an originating good.

of the exporting Party may:

- (a) issue a new Certificate of Origin and invalidate the original Certificate of Origin; or
 - (b) make modifications to the original Certificate of Origin by striking out errors and making any additions or corrections. Any changes shall be certified by the authorised signature and official seal of the issuing body of the exporting Party.
6. Each Party shall provide the names, addresses, specimen signatures, and impressions of official seals of its issuing body to the other Parties. Such information shall be submitted electronically through the RCEP Secretariat established pursuant to subparagraph 1(i) of Article 18.3 (Functions of the RCEP Joint Committee) (hereinafter referred to as “RCEP Secretariat” in this Chapter), for dissemination to the other Parties. Any subsequent changes shall be promptly submitted to the RCEP Secretariat in the same manner for dissemination to the other Parties. The Parties shall endeavour to establish a secured website to display such information from the last three years, and such website shall be accessible to the Parties.
7. Notwithstanding paragraph 6, a Party shall not be required to provide the specimen signatures of its issuing body to the RCEP Secretariat for dissemination to the other Parties if it has established its own secured website, containing relevant information of the Certificates of Origin it issues, including their Certificate of Origin numbers, HS Codes, descriptions of goods, quantities, dates of issuance, and names of the exporters, that is accessible to the Parties. The Parties shall review the requirement to provide specimen signatures of the issuing bodies three years after the date of entry into force of this Agreement for all signatory States.
8. Where a Certificate of Origin has not been issued at the time of shipment due to involuntary errors, omissions, or other valid causes, or in the circumstances referred to in subparagraph 5(a), a Certificate of Origin may be issued retrospectively but no later than one year after the date of shipment. In that case, the Certificate of Origin shall bear the words “ISSUED RETROACTIVELY”.
9. In the event of theft, loss, or destruction of an original Certificate of Origin, the exporter, producer, or their authorised representative may apply in writing to the issuing body of the exporting Party for a certified true copy of the original Certificate of Origin. The copy shall:
 - (a) be issued no later than one year after the date of issuance of the original Certificate of Origin;
 - (b) be based on the application for the original Certificate of Origin;
 - (c) contain the same Certificate of Origin number and date as the original Certificate of Origin; and
 - (d) be endorsed with the words “CERTIFIED TRUE COPY”.

Article 3.18: Declaration of Origin

1. A Declaration of Origin referred to in Article 3.16 (Proof of Origin) may be completed by:
 - (a) an approved exporter within the meaning of Article 3.21 (Approved Exporter); or

- (b) an exporter or a producer of the good, subject to paragraphs 2 and 3 of Article 3.16 (Proof of Origin).
2. A Declaration of Origin shall:
- (a) be completed in accordance with Annex 3B (Minimum Information Requirements);
 - (b) be in the English language;
 - (c) bear the name and signature of the certifying person; and
 - (d) bear the date on which the Declaration of Origin was completed.

Article 3.19: Back-to-Back Proof of Origin

1. Subject to Article 3.16 (Proof of Origin), an issuing body, approved exporter, or exporter of an intermediate Party may issue a back-to-back Proof of Origin provided that:
- (a) a valid original Proof of Origin or its certified true copy is presented;
 - (b) the period of validity of the back-to-back Proof of Origin does not exceed the period of validity of the original Proof of Origin;
 - (c) the back-to-back Proof of Origin contains relevant information from the original Proof of Origin in accordance with Annex 3B (Minimum Information Requirements);
 - (d) the consignment which is to be re-exported using the back-to-back Proof of Origin does not undergo any further processing in the intermediate Party, except for repacking or logistics activities such as unloading, reloading, storing, splitting up of the consignment, or labelling only as required by the laws, regulations, procedures, administrative decisions, and policies of the importing Party, or any other operations necessary to preserve a good in good condition or to transport a good to the importing Party;
 - (e) for partial export shipments, the partial export quantity shall be shown instead of the full quantity of the original Proof of Origin, and the total quantity re-exported under the partial shipment shall not exceed the total quantity of the original Proof of Origin; and
 - (f) information on the back-to-back Proof of Origin includes the date of issuance and reference number of the original Proof of Origin.
2. The verification procedures referred to in Article 3.24 (Verification) shall also apply to the back-to-back Proof of Origin.

Article 3.20: Third-Party Invoicing

An importing Party shall not deny a claim for preferential tariff treatment for the sole reason that an invoice was not issued by the exporter or producer of a good provided that the good meets the requirements in this Chapter.

Article 3.21: Approved Exporter

1. Each Party shall provide for the authorisation of an exporter who exports goods under this Agreement as an approved exporter, in accordance with its laws and regulations. An exporter seeking such authorisation must apply in writing or electronically and must offer to the satisfaction of the competent authority of the exporting Party all guarantees necessary to verify the originating status of the good for which a Declaration of Origin is completed. The competent authority of an exporting Party may grant the status of approved exporter subject to any conditions which it considers appropriate, including the following:
 - (a) that the exporter is duly registered in accordance with the laws and regulations of the exporting Party;
 - (b) that the exporter knows and understands the rules of origin as set out in this Chapter;
 - (c) that the exporter has a satisfactory level of experience in export in accordance with the laws and regulations of the exporting Party;
 - (d) that the exporter has a record of good compliance, measured by risk management of the competent authority of the exporting Party;
 - (e) that the exporter, in the case of a trader, is able to obtain a declaration by the producer confirming the originating status of the good for which the Declaration of Origin is completed by an approved exporter and the readiness of the producer to cooperate in verification in accordance with Article 3.24 (Verification) and meet all requirements of this Chapter; and
 - (f) that the exporter has a well-maintained bookkeeping and record-keeping system, in accordance with the laws and regulations of the exporting Party.
2. The competent authority of an exporting Party shall:
 - (a) make its approved exporter procedures and requirements public and easily available;
 - (b) grant the approved exporter authorisation in writing or electronically;
 - (c) provide the approved exporter an authorisation code which must be included in the Declaration of Origin; and
 - (d) promptly include the information on the authorisation granted in the approved exporter database referred to in paragraph 6.
3. An approved exporter shall have the following obligations:
 - (a) to allow the competent authority of an exporting Party access to records and premises for the purposes of monitoring the use of authorisation, in accordance with Article 3.27 (Record-Keeping Requirement);
 - (b) to complete Declarations of Origin only for goods for which the approved exporter has been allowed to do so by the competent authority of an exporting Party and for which it has all appropriate documents proving the originating status of the goods concerned at the time of completing the declaration;

- (c) to take full responsibility for all Declarations of Origin completed, including any misuse; and
 - (d) to promptly inform the competent authority of an exporting Party of any changes related to the information referred to in subparagraph (b).
4. Each Party shall promptly include the following information of its approved exporters in the approved exporter database:
- (a) the legal name and address of the exporter;
 - (b) the approved exporter authorisation code;
 - (c) the issuance date and, if applicable, the expiry date of its approved exporter authorisation; and
 - (d) a list of goods subject to the authorisation, at least at the HS Chapter level.
- Any change in the items referred to in subparagraphs (a) through (d), or withdrawals or suspensions of authorisations, shall be promptly included in the approved exporter database.
5. Notwithstanding paragraph 4, no Party shall be required to provide the information referred to in that paragraph to the approved exporter database if it has established its own secured website, containing the above information, that is accessible to the Parties.
6. The RCEP Joint Committee may designate the custodian of the approved exporter database, which shall be accessible online by the Parties.
7. The competent authority of the exporting Party shall monitor the use of the authorisation, including verification of the Declarations of Origin by an approved exporter, and withdraw the authorisation where the conditions referred to in paragraph 1 are not met.
8. An approved exporter shall be prepared to submit at any time, on request of the customs authorities of the importing Party, all appropriate documents proving the originating status of the goods concerned, including statements from the suppliers or producers in accordance with the laws and regulations of the importing Party as well as the fulfilment of the other requirements of this Chapter.

Article 3.22: Claim for Preferential Tariff Treatment

1. An importing Party shall grant preferential tariff treatment in accordance with this Agreement to an originating good on the basis of a Proof of Origin.
2. Unless otherwise provided in this Chapter, an importing Party shall provide that, for the purposes of claiming preferential tariff treatment, the importer shall:
- (a) make a declaration in its customs declaration that the good qualifies as an originating good;

- (b) have a valid Proof of Origin in its possession at the time the declaration referred to in subparagraph (a) is made; and
 - (c) provide an original or a certified true copy of the Proof of Origin to the importing Party if required by the importing Party.
3. Notwithstanding paragraphs 1 and 2, the importing Party may not require a Proof of Origin if:
- (a) the customs value of the importation does not exceed US\$ 200 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,
- 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 and regulations governing claims for preferential tariff treatment under this Agreement.
4. The customs authority of the importing Party may require, where appropriate, the importer to submit supporting evidence that a good qualifies as an originating good, in accordance with the requirements of this Chapter.
5. The importer shall demonstrate that the requirements referred to in Article 3.15 (Direct Consignment) have been met and provide such evidence on request of the customs authority of the importing Party.
6. Where a Proof of Origin is submitted to the customs authority of an importing Party after the expiration of the period of time for its submission, such Proof of Origin may still be accepted, subject to the importing Party's laws, regulations, or administrative practices, when failure to observe the period of time results from *force majeure* or other valid causes beyond the control of the importer or exporter.

Article 3.23: Post-Importation Claims for Preferential Tariff

1. Each Party, subject to its laws and regulations, shall provide that where a good would have qualified as an originating good when it was imported into that Party, the importer of the good may, within a period specified by its laws and regulations, and after the date on which the good was imported, apply for a refund of any excess duties, deposit, or guarantee paid as the result of the good not having been granted preferential tariff treatment, on presentation of the following to the customs authority of that Party:
- (a) a Proof of Origin and other evidence that the good qualifies as an originating good; and
 - (b) such other documentation in relation to the importation as the customs authority may require to satisfactorily evidence the preferential tariff treatment claimed.
2. Notwithstanding paragraph 1, each Party may require, in accordance with its laws and regulations, that the importer notify the customs authority of that Party of its intention to claim preferential tariff treatment at the time of importation.

Article 3.24: Verification⁶

1. For the purposes of determining whether a good imported into one Party from another Party qualifies as an originating good under this Chapter, the competent authority of the importing Party may conduct a verification process by means of:
 - (a) a written request for additional information from the importer;
 - (b) a written request for additional information from the exporter or producer;
 - (c) a written request for additional information to the issuing body or competent authority of the exporting Party;
 - (d) a verification visit to the premises of the exporter or producer in the exporting Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting files;⁷ or
 - (e) any other procedures to which the concerned Parties may agree.
2. The importing Party shall:
 - (a) for the purposes of subparagraph 1(b), send a written request with a copy of the Proof of Origin and the reasons for the request to the exporter or producer of the good, and the competent authority of the exporting Party;
 - (b) for the purposes of subparagraph 1(c), send a written request with a copy of the Proof of Origin and the reasons for the request to the issuing body or competent authority of the exporting Party; and
 - (c) for the purposes of subparagraph 1(d), request the written consent of the exporter or producer whose premises are going to be visited, and the competent authority of the exporting Party and state the proposed date and location for the visit and its specific purpose.
3. On request of the importing Party, a verification visit to the premises of the exporter or producer may be conducted with the consent and assistance of the exporting Party, according to the procedures agreed between the importing Party and exporting Party.
4. For a verification under subparagraphs 1(a) through (d), the importing Party shall:
 - (a) allow the importer, exporter, producer, or the issuing body or competent authority of the exporting Party between 30 and 90 days from the date of receipt of the written request for information under subparagraphs 1(a) through (c) to respond;
 - (b) allow the exporter, producer, or the competent authority to consent or refuse the request within 30 days of the date of its receipt of the written request for a verification visit under subparagraph 1(d); and

⁶ For the purposes of this Article, a Party may designate one of its contact points designated pursuant to Article 3.33 (Contact Points) as a single contact point for the verification of its exported goods with a view to facilitating the verification.

⁷ A verification visit under this subparagraph shall only be undertaken after a verification process in accordance with subparagraph (c) has been conducted.

- (c) endeavour to make a determination following a verification within 90 and 180 days of the date of its receipt of the information necessary to make the determination.
5. For the purposes of paragraph 1, the importing Party shall provide a written notification of the result of verification with the reasons for that result to the importer, exporter, or producer of the good, or the issuing body or competent authority of the exporting Party that received the verification request.
 6. The customs authority of the importing Party may suspend the application of preferential tariff treatment while waiting for the result of verification. The importing Party shall permit the release of the good, but may require that such release be subject to lodgment of a security in accordance with its laws and regulations.

Article 3.25: Denial of Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment where:
 - (a) the good does not meet the requirements of this Chapter;
 - or
 - (b) the importer, exporter, or producer of the good fails or has failed to comply with any of the relevant requirements of this Chapter for obtaining preferential tariff treatment.
2. If the customs authority of the importing Party denies a claim for preferential tariff treatment, it shall provide the decision in writing to the importer that includes the reasons for the decision.
3. The customs authority of the importing Party may determine that a good does not qualify as an originating good and may deny preferential tariff treatment where:
 - (a) the customs authority of the importing Party has not received sufficient information to determine that the good is originating;
 - (b) the exporter, producer, or the competent authority of the exporting Party fails to respond to a written request for information in accordance with Article 3.24 (Verification); or
 - (c) the request for a verification visit in accordance with Article 3.24 (Verification) is refused.

Article 3.26: Minor Discrepancies or Errors

The customs authority of an importing Party shall disregard minor discrepancies or errors, such as slight discrepancies between documents, omissions of information, typing errors, or protrusions from the designated field, provided that these minor discrepancies or errors do not create doubt as to the originating status of the good.

Article 3.27: Record-Keeping Requirement

1. Each Party shall require that:

- (a) its exporters, producers, issuing bodies, or competent authorities retain, for at least a period of three years from the date of issuance of the Proof of Origin, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which the Proof of Origin was issued was originating; and
 - (b) its importers retain, for at least a period of three years from the date of importation of the good, or a longer period in accordance with its relevant laws and regulations, all records necessary to prove that the good for which preferential tariff treatment was claimed was originating.
2. The records referred to in paragraph 1 may be maintained in any medium that allows for prompt retrieval, including in digital, electronic, optical, magnetic, or written form, in accordance with the Party's laws and regulations.

Article 3.28: Consultations

The Parties shall consult when necessary to ensure that this Chapter is administered effectively, uniformly, and consistently in order to achieve the spirit and objectives of this Agreement.

Article 3.29: Electronic System for Origin Information Exchange

The Parties may develop an electronic system for origin information exchange to ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the relevant Parties.

Article 3.30: Transitional Provisions for Goods in Transit

A Party shall grant preferential tariff treatment to an originating good that, on the date of entry into force of this Agreement for that Party:

- (a) was being transported to that Party in accordance with Article 3.15 (Direct Consignment); or
- (b) had not been imported into that Party,

if a valid claim under Article 3.22 (Claim for Preferential Tariff Treatment) for preferential tariff treatment is made within 180 days of the date of entry into force of this Agreement for that Party.

Article 3.31: Penalties

Each Party shall adopt or maintain appropriate penalties or other measures against violations of its laws and regulations relating to this Chapter.

Article 3.32: Communication Language

Communications between the importing Party and the exporting Party shall be conducted in the English language.

Article 3.33: Contact Points

Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points for the implementation of this Chapter and notify the other Parties of the contact details of that contact point or those contact points. Each Party shall promptly notify the other Parties of any change to those contact details.

Article 3.34: Transposition of Product-Specific Rules

1. Prior to the entry into force of any amended version of the Harmonized System, the Parties shall consult to prepare updates to this Chapter and Annex 3A (Product-Specific Rules) that are necessary to reflect changes to the Harmonized System.
2. The Parties shall ensure that the transposition of Annex 3A (Product-Specific Rules) is carried out without impairing the Product-Specific Rules and is completed in a timely manner.
3. The transposition of Annex 3A (Product-Specific Rules) that is in the nomenclature of any revised Harmonized System following periodic amendments to the Harmonized System, shall be adopted by the RCEP Joint Committee, upon recommendation of the Committee on Goods. The Parties shall promptly publish the adopted transposition of Annex 3A (Product-Specific Rules) in the nomenclature of the revised Harmonized System.
4. For the purposes of this Article, “transposition” means the measures necessary to support the effective implementation of the Product-Specific Rules set out in Annex 3A (Product-Specific Rules), to reflect the periodic updates of the Harmonized System nomenclature.

Article 3.35: Amendments to Annexes

Amendments relating only to Annex 3A (Product-Specific Rules) and Annex 3B (Minimum Information Requirements) may be endorsed by the RCEP Joint Committee by consensus. The amendment shall enter into force in accordance with Article 20.4 (Amendments).⁸

⁸ For Japan, for the purposes of this Article, “the completion of their respective applicable legal procedures” referred to in Article 20.4 (Amendments) shall be read as “the completion of internal procedures within the Government of Japan”.

CHAPTER 4 CUSTOMS PROCEDURES AND TRADE FACILITATION

Article 4.1: Definitions

For the purposes of this Chapter:

- (a) **customs authority** means any authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;
- (b) **customs laws and regulations** means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to a customs authority, and any regulations made by a customs authority, under its statutory powers;
- (c) **customs procedure** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to its customs laws and regulations;
- (d) **express consignment** means all goods imported by or through an enterprise that operates a consignment service for the expeditious cross-border movement of goods and assumes liability to the customs authority for those goods; and
- (e) **means of transport** means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods, or articles.

Article 4.2: Objectives

The objectives of this Chapter are to:

- (a) ensure predictability, consistency, and transparency in the application of customs laws and regulations of each Party;
- (b) promote efficient administration of customs procedures of each Party, and the expeditious clearance of goods;
- (c) simplify customs procedures of each Party and harmonise them to the extent possible with relevant international standards;
- (d) promote cooperation among the customs authorities of the Parties; and
- (e) facilitate trade among the Parties, including through a strengthened environment for global and regional supply chains.

Article 4.3: Scope

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

Article 4.4: Consistency

1. Each Party shall ensure that its customs laws and regulations are consistently implemented and applied throughout its customs territory. For greater certainty, this does not prevent the exercise of discretion granted to the customs authority of a Party where such discretion is granted by that Party's customs laws and regulations, provided that the discretion is exercised consistently throughout that Party's customs territory and in accordance with its customs laws and regulations.
2. In fulfilling the obligation in paragraph 1, each Party shall endeavour to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which assures consistent application of the customs laws and regulations of that Party among its regional customs offices.
3. Each Party is encouraged to share with the other Parties its practices and experiences relating to the administrative mechanism referred to in paragraph 2 with a view to improving the operations thereof.
4. If a Party fails to comply with the obligations in paragraphs 1 and 2, another Party may consult with that Party on the matter in accordance with the consultation procedures under Article 4.20 (Consultations and Contact Points).

Article 4.5: Transparency

1. Each Party shall promptly publish, on the internet to the extent possible, the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested persons to become acquainted with them:
 - (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
 - (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
 - (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation, or transit;
 - (d) rules for the classification or valuation of products for customs purposes;
 - (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
 - (f) import, export, or transit restrictions or prohibitions;
 - (g) penalty provisions for breaches of import, export, or transit formalities;
 - (h) procedures for appeal or review;
 - (i) agreements to which it is party, or parts thereof with any country or countries relating to importation, exportation, or transit; and

- (j) procedures relating to the administration of tariff quotas.
2. In particular, each Party shall make available, and update to the extent possible and as appropriate, the following through the internet:
 - (a) a description¹ of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested persons of the practical steps needed for importation, exportation, and transit;
 - (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
 - (c) contact information for the enquiry points as well as information on how to make enquiries on customs matters as provided for in Article 4.6 (Enquiry Points).
 3. To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed customs laws and regulations, unless such advance notice is precluded.
 4. Each Party shall, to the extent practicable and in a manner consistent with its laws and regulations and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them is otherwise made publicly available, as early as possible before the date of their entry into force, in order to enable traders and other interested persons to become acquainted with them.
 5. Nothing in this Article shall be construed as requiring the publication or provision of information other than in the language of the Party.

Article 4.6: Enquiry Points

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

Article 4.7: Customs Procedures

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, and transparent, and facilitate trade, including through the expeditious clearance of goods.
2. Each Party shall ensure that its customs procedures, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization.

¹ Each Party has the discretion to state on its website the legal limitations of this description.

3. The customs authority of each Party shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

Article 4.8: Preshipment Inspection

1. Each Party shall not require the use of preshipment inspections in relation to tariff classification and customs valuation.
2. Without prejudice to the rights of any Party to use other types of preshipment inspection not covered by paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.
3. Paragraph 2 refers to preshipment inspections covered by the Preshipment Inspection Agreement, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

Article 4.9: Pre-arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in paragraph 1 in electronic format for pre-arrival processing of such documents.

Article 4.10: Advance Rulings

1. Each Party shall, prior to the importation of a good from a Party into its territory, issue a written advance ruling to an importer, exporter, or any person with a justifiable cause, or a representative thereof, who has submitted a written request containing all necessary information, with regard to:
 - (a) tariff classification;
 - (b) whether the good is an originating good in accordance with Chapter 3 (Rules of Origin);
 - (c) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts, in accordance with the Customs Valuation Agreement; and
 - (d) such other matters as the Parties may agree.

2. A Party may require that an applicant have legal representation or registration in that Party. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.^{2, 3}
3. Each Party shall adopt or maintain procedures for issuing advance rulings which:
 - (a) specify the information required to apply for an advance ruling;
 - (b) provide that each Party may at any time during the course of an evaluation of an application for an advance ruling, request that the applicant provide additional information, which may include a sample of the goods, necessary to evaluate the application;
 - (c) ensure that an advance ruling be based on the facts and circumstances presented by the applicant and any other relevant information in the possession of the decision-maker; and
 - (d) ensure that the advance ruling includes the relevant facts and the basis for its decision.
4. Each Party shall issue an advance ruling in the official language of the issuing Party or in the language it decides. The advance ruling shall be issued in a reasonable, specified, and time-bound manner, and to the extent possible within 90 days, to the applicant on the receipt of all necessary information. Each Party shall specify and make public such time period for the issuance of an advance ruling prior to such an application. Should the customs authority have reasonable grounds to issue the advance ruling later than the specified period after the receipt of the application, it shall notify the applicant of the grounds for such a delay prior to the end of the specified period.
5. A Party may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances, and the basis for its decision to decline to issue the advance ruling.
6. A Party may reject a request for an advance ruling where the additional information requested, in writing, in accordance with subparagraph 3(b) is not provided within a reasonable, specified period, which is determined at the time of the request for additional information and the Party requests the additional information from the applicant in writing.
7. Each Party shall provide that an advance ruling shall be valid from the date it is issued, or another date specified in the ruling, provided that the laws, regulations, and administrative rules, and facts and circumstances, on which the ruling is based remain unchanged. Subject to paragraph 8, an advance ruling shall remain valid for at least three years.
8. Where a Party revokes, modifies, or invalidates an advance ruling, it shall promptly provide written notice to the applicant setting out the relevant facts and the basis for its decision, where:

² On request of a Party, the Parties may review the requirements of this paragraph in terms of their contribution towards the trade facilitation through the Committee on Goods.

³ Each Party shall ensure that its registration process is transparent, applications are considered in a timely manner, and the decision made on an application, and the reasons for it, are promptly advised to the applicant in writing.

- (a) there is a change in its laws, regulations, or administrative rules;
 - (b) incorrect information was provided or relevant information was withheld;
 - (c) there is a change in a material fact or circumstances on which the advance ruling was based; or
 - (d) the advance ruling was in error.
9. Where a Party revokes, modifies, or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.
10. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.
11. Each Party shall publish, at a minimum:
- (a) the requirements for an application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which an advance ruling is valid.
12. Each Party may make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

Article 4.11: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade among the Parties. For greater certainty, 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 allow goods to be cleared from customs within a period no longer than that required to ensure compliance with its customs laws and regulations and, to the extent possible, within 48 hours of the arrival of goods and lodgment of all the necessary information for customs clearance.
3. If any goods are selected for further examination, such an examination shall be limited to what is reasonable and necessary, and undertaken and completed without undue delay.
4. Each Party shall adopt or maintain procedures allowing the release of goods, prior to the final determination of customs duties, taxes, fees, and charges if such determination is not done prior to, or upon arrival or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, a Party may require a guarantee in accordance with its laws and regulations that does not exceed the amount the Party requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

5. Nothing in this Article shall affect the right of a Party to examine, detain, seize or confiscate or deal with the goods in any manner consistent with its laws and regulations.
6. With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Party shall provide for the release of perishable goods from customs control:
 - (a) under normal circumstances in the shortest possible time, and to the extent possible in less than six hours after the arrival of the goods and submission of the information required for release; and
 - (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.
7. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.
8. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. Each Party shall, where practicable and consistent with domestic legislation, on the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

Article 4.12: Application of Information Technology

1. Each Party shall, to the extent possible, apply information technology to support customs operations based on internationally accepted standards for expeditious customs clearance and release of goods.
2. Each Party shall, to the extent possible, use information technology that expedites customs procedures for the release of goods, including the submission of data before the arrival of the shipment of those goods, as well as electronic or automated systems for risk management targeting.
3. Each Party shall endeavour to make its trade administration documents available to the public in electronic versions.
4. Each Party shall endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of these documents.
5. In developing initiatives that provide for the use of paperless trade administration, each Party is encouraged to take into account international standards or methods made under the auspices of international organisations.
6. Each Party shall cooperate with other Parties and in international fora to enhance the acceptance of trade administration documents submitted electronically.

Article 4.13: Trade Facilitation Measures for Authorised Operators

1. Each Party shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 3, to operators who meet specified criteria, (hereinafter referred to as “authorised operators” in this Chapter). Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.
2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party’s laws, regulations, or procedures.
 - (a) Such criteria, which shall be published, may include:
 - (i) an appropriate record of compliance with customs and other related laws and regulations;
 - (ii) a system of managing records to allow for necessary internal controls;
 - (iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and
 - (iv) supply chain security.
 - (b) Such criteria shall not:
 - (i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
 - (ii) to the extent possible, restrict the participation of small and medium enterprises.
3. The trade facilitation measures provided pursuant to paragraph 1 shall include at least three of the following measures:⁴
 - (a) low documentary and data requirements, as appropriate;
 - (b) low rate of physical inspections and examinations, as appropriate;
 - (c) rapid release time, as appropriate;
 - (d) deferred payment of duties, taxes, fees, and charges;
 - (e) use of comprehensive guarantees or reduced guarantees;
 - (f) a single customs declaration for all imports or exports in a given period; and
 - (g) clearance of goods at the premises of the authorised operator or another place authorised by a customs authority.

⁴ Measures listed in subparagraphs (a) through (g) will be deemed to be provided to authorised operators if it is generally available to all operators.

4. Each Party is encouraged to develop authorised operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.
5. In order to enhance the trade facilitation measures provided to operators, each Party shall afford to other Parties the possibility of negotiating mutual recognition of authorised operator schemes.
6. The Parties are encouraged to cooperate, where appropriate, in developing their respective authorised operator schemes using the contact points designated pursuant to Article 4.20 (Consultations and Contact Points) and the Committee on Goods through the following:
 - (a) exchanging information on such schemes and on initiatives to introduce new schemes;
 - (b) sharing perspectives on business views and experiences, and best practices in business outreach;
 - (c) sharing information on approaches to mutual recognition of such schemes; and
 - (d) considering ways to enhance the benefits of such schemes to promote trade, and, in the first instance, to designate customs officers as coordinators for authorised operators to resolve customs issues.

Article 4.14: Risk Management

1. Each Party shall adopt or maintain a risk management system for customs control.
2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions on international trade.
3. Each Party shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.
4. Each Party shall base risk management on the assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Article 4.15: Express Consignments

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and selection,⁵ by:
 - (a) providing for pre-arrival processing of information related to express consignments;

⁵ In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedures.

- (b) permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;
 - (c) minimising the documentation required for the release of express consignments;
 - (d) providing for express consignment to be released under normal circumstances as rapidly as possible, and within six hours when possible, after the arrival of the goods and submission of the information required for release;
 - (e) endeavouring to apply the treatment in subparagraphs (a) through (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided that the treatment is not limited to low value goods such as documents; and
 - (f) providing, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994, shall not be subject to this provision.
2. Nothing in paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

Article 4.16: Post-clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other related laws and regulations.
2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record was audited of the:
- (a) results;
 - (b) reasons for the results; and
 - (c) person's rights and obligations.
3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.
4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Article 4.17: Time Release Studies

1. Each Party is encouraged to measure the time required for the release of goods by its customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the *Guide to Measure the Time Required for the Release of Goods* issued by the World Customs Organization with a view to:
 - (a) assessing its trade facilitation measures; and
 - (b) considering opportunities for further improvement of the time required for the release of goods.
2. Each Party is encouraged to share with the other Parties its experiences in the time release studies referred to in paragraph 1, including methodologies used and bottlenecks identified.

Article 4.18: Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision⁶ has the right, within its territory, to:
 - (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and
 - (b) a judicial appeal or review of the decision.⁷
2. The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.
3. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.
4. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:
 - (a) within set periods as specified in its laws or regulations; or
 - (b) without undue delay,

the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.⁸

⁶ For the purposes of this Article, “administrative decision” means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision referred to in this Article covers an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a Party’s laws and regulations and legal system. For addressing such failure, a Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

⁷ Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

⁸ Nothing in this paragraph shall prevent a Party from recognising administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

5. Each Party shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.
6. Each Party shall ensure that the person referred to in paragraph 1 is not treated unfavourably merely because that person seeks review of an administrative decision or omission referred to in paragraph 1.
7. Each Party is encouraged to make this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.
8. The decision, and the reasons for the decision, of an administrative or judicial review or appeal shall be provided in writing.

Article 4.19: Customs Cooperation

1. The customs authority of each Party may, as deemed appropriate, assist the customs authorities of other Parties, in relation to:
 - (a) the implementation and operation of this Chapter;
 - (b) developing and implementing customs best practice and risk management techniques;
 - (c) simplifying and harmonising customs procedures;
 - (d) advancing technical skills and the use of technology;
 - (e) application of the Customs Valuation Agreement; and
 - (f) such other customs issues as the Parties may mutually determine.
2. Each Party shall, to the extent possible, provide the other Parties with timely notice of any significant administrative change, modification of a law or regulation, or similar measure related to its laws or regulations that govern importations or exportations, that is likely to substantially affect the operation of this Chapter. The notice can be made in the English language or the Party's language and will be provided to the contact point designated pursuant to Article 4.20 (Consultations and Contact Points).
3. The customs authority of a Party may, as deemed appropriate, share with other Parties, information and experiences on development of customs administration.
4. Each Party shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Parties with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade.

Article 4.20: Consultations and Contact Points

1. A Party may at any time request consultations with another Party regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultations shall be conducted through the respective contact points designated pursuant to paragraph 3 and shall commence within 30 days following the date of the receipt of the request, unless the relevant Parties determine otherwise.
2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Goods.
3. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points for the purposes of this Chapter and notify the other Parties of the contact details and other relevant information, if any. Each Party shall promptly notify the other Parties of any change to those contact details.

Article 4.21: Implementation Arrangement

Recognising the different levels of readiness of Parties in implementing some of the commitments under this Chapter, Parties shall be given a period of time as identified in Annex 4A (Period of Time to Implement the Commitments) during which the full implementation of specified commitments shall commence.

CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES

Article 5.1: Definitions

For the purposes of this Chapter:

- (a) the definitions provided in Annex A of the SPS Agreement shall apply;
- (b) relevant definitions developed by Codex Alimentarius Commission, the World Organisation for Animal Health, and the International Plant Protection Convention shall be taken into account;
- (c) **competent authorities** means those authorities within each Party recognised by the national government as responsible for developing and administering the sanitary and phytosanitary measures within that Party; and
- (d) **emergency measure** means a sanitary or phytosanitary measure that is applied by an importing Party to a relevant exporting 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.

Article 5.2: Objectives

The objectives of this Chapter are to:

- (a) protect human, animal or plant life or health in the Parties through the development, adoption, and application of sanitary and phytosanitary measures, while facilitating trade by minimising the negative effects on trade among the Parties;
- (b) enhance the practical implementation of the SPS Agreement;
- (c) enhance the transparency and understanding of the development and application of sanitary and phytosanitary measures of the Parties;
- (d) strengthen cooperation, communication, and consultation among the Parties in the field of sanitary and phytosanitary measures; and
- (e) encourage the Parties' participation in the development and adoption of international standards, guidelines, and recommendations.

Article 5.3: Scope

This Chapter shall apply to all sanitary and phytosanitary measures of the Parties, which may, directly or indirectly, affect trade among the Parties.

Article 5.4: General Provision

Each Party affirms its rights and obligations with respect to each other Party under the SPS Agreement.

Article 5.5: Equivalence

1. The Parties shall strengthen cooperation on equivalence in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO Committee on Sanitary and Phytosanitary Measures (hereinafter referred to as “WTO SPS Committee” in this Chapter) and international standards, guidelines, and recommendations.
2. An importing Party shall recognise the equivalence of a sanitary or phytosanitary measure if an exporting Party objectively demonstrates to the importing Party that the exporting Party’s measure achieves the same level of protection as the importing Party’s measure, or that the exporting Party’s measure has the same effect in achieving the objective as the importing Party’s measure.
3. In determining the equivalence of a sanitary or phytosanitary measure, the importing Party shall take into account available knowledge, information, and experience, as well as the regulatory competence, of the exporting Party.
4. A Party shall, upon request, enter into consultation with the aim of achieving bilateral recognition arrangements on the equivalence of specified sanitary or phytosanitary measures. The recognition of equivalence under such bilateral recognition arrangements may be with respect to a single measure, a group of measures, or on a systems-wide basis. For this purpose, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.
5. As part of the consultation for equivalence recognition, on request of the exporting Party, the importing Party shall explain and provide:
 - (a) the rationale and objective of its measures; and
 - (b) the specific risks its measures are intended to address.
6. The exporting Party shall provide necessary information in order for the importing Party to commence an equivalence assessment. Once the assessment commences, the importing Party shall, upon request, and without undue delay, explain the process and plan for making an equivalence determination.
7. The consideration by a Party of a request from another Party for recognition of the equivalence of its measures with regard to a specific product, or group of products, shall not be in itself a reason to disrupt or suspend ongoing imports from the Party of the product or products in question.
8. When an importing Party 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 decision in writing to the exporting Party and implement the measure within a reasonable period of time. The rationale shall be provided in writing by the importing Party in the event that the decision is negative.
9. The Parties involved in a positive determination of equivalence are encouraged, where mutually agreed, to share information and experiences at the Committee on Goods.

Article 5.6: Adaptation to Regional Conditions, including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. The Parties recognise the concepts of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. The Parties may cooperate on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for such recognition.
3. On request of an exporting Party, an importing Party shall, without undue delay, explain its process and plan for making a determination of regional conditions.
4. When an importing Party has received a request for a determination of regional conditions from an exporting Party and has determined that the information provided by the exporting Party is sufficient, it shall initiate the assessment within a reasonable period of time.
5. For such an assessment, reasonable access shall be given by the exporting Party, upon request, to the importing Party for inspection, testing, and other relevant procedures.
6. On request of the exporting Party, the importing Party shall inform the exporting Party of the status of the assessment.
7. When an importing Party recognises specific regional conditions of an exporting Party, the importing Party shall communicate that decision to the exporting Party in writing and implement the measures within a reasonable period of time.
8. If the evaluation of the evidence provided by the exporting Party does not result in a decision by the importing Party to recognise the regional conditions, the importing Party shall provide the exporting Party with the rationale for its decision in writing within a reasonable period of time.
9. The Parties involved in a determination recognising regional conditions are encouraged, where mutually agreed, to report the outcome to the Committee on Goods.

Article 5.7: Risk Analysis

1. The Parties shall strengthen their cooperation on risk analysis in accordance with the SPS Agreement while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. When conducting a risk analysis, an importing Party shall:
 - (a) ensure that the risk analysis is documented and that it provides the relevant exporting Party or Parties with an opportunity to comment, in a manner to be determined by the importing Party;

- (b) consider risk management options that are not more trade restrictive than required¹ to achieve its appropriate level of sanitary or phytosanitary protection; and
 - (c) select a risk management option that is not more trade restrictive than required to achieve its appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.
3. On request of an exporting Party, an 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.
 4. Without prejudice to 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 a sanitary or phytosanitary measure, if the importing Party permitted importation of the good of the other Party at the time of the initiation of the review.

Article 5.8: Audit²

1. In undertaking an audit, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. An audit shall be systems-based and conducted to assess the effectiveness of the regulatory controls of the competent authorities of the exporting Party to provide the required assurances and meet the sanitary and phytosanitary measures of the importing Party.³
3. Prior to the commencement of an audit, the importing Party and exporting Party involved shall exchange information on the objectives and scope of the audit and other matters related specifically to the commencement of an audit.
4. The importing Party shall provide the exporting Party with an opportunity to comment on the finding of an audit and take any such comments into account before making its conclusions and taking any action. The importing Party shall provide a report or its summary, setting out its conclusions in writing to the exporting Party within a reasonable period of time. The importing Party shall inform the exporting Party if a request is required to provide such report or summary.

Article 5.9: Certification

1. In applying certification requirements, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.

¹ For the purpose 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.

² For greater certainty, without affecting the implementation of this Article, nothing in this Article prevents a Party from adopting or maintaining halal requirements for food and food products in accordance with Islamic law.

³ For greater certainty, nothing in this paragraph 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.

2. An exporting Party shall ensure that the documents, including certificates, that are required by an importing Party and provided by the competent authorities of the exporting Party, to demonstrate the fulfilment of the sanitary and phytosanitary requirements of the importing Party, are in the English language, unless the importing Party and exporting Party agree otherwise.⁴ When the importing Party requires such documents, the importing Party shall endeavour to provide the requirements for such documents in the English language. Upon request, the importing Party shall provide a summary or explanation of such requirements.
3. The Parties recognise that an importing Party may, as appropriate, allow assurances with respect to sanitary or phytosanitary requirements to be provided through means other than certificates, and that different systems may be capable of meeting the same sanitary and phytosanitary objectives.
4. Where certification is required for trade in a good, the importing Party shall ensure that such certification requirements are applied only to the extent necessary to protect human, animal or plant life or health.
5. Without prejudice to each Party's right to import controls, the importing Party shall accept certificates issued by the competent authorities of the exporting Party that are in compliance with the regulatory requirements of the importing Party.

Article 5.10: Import Checks

1. In applying import checks, each Party shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
2. Import checks, conducted in accordance with the importing Party's laws, regulations, and sanitary and phytosanitary requirements, shall be based on the sanitary and phytosanitary risk associated with importations. In the event that import checks reveal a non-compliance, the final decision or action taken by the importing Party shall be appropriate to the sanitary and phytosanitary risk associated with the importation of the non-compliant product.
3. If an importing Party prohibits or restricts the importation of a good of an exporting Party on the basis of non-compliance of that good found during an import check, the importing Party shall notify the importer or its representatives and, if the importing Party considers necessary, the exporting Party of such non-compliance.
4. When significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments is identified by the importing Party, the Parties concerned shall, on request of either Party, discuss the non-compliance to ensure that appropriate remedial actions are taken to reduce such non-compliance.

⁴ For greater certainty, this provision does not prevent the Parties from including information for certification in other languages in addition to the English language.

Article 5.11: Emergency Measures

1. If a Party adopts an emergency measure that is necessary for the protection of human, animal or plant life or health and that may have an effect on trade, that Party shall immediately notify the relevant exporting Parties in writing through the contact point or contact points designated under Article 5.15 (Contact Points and Competent Authorities) or already established communication channels of the Parties.
2. The relevant exporting Parties may request discussions with the Party adopting an emergency measure referred to in paragraph 1. Such discussions shall be held as soon as practicable. Each Party participating in the discussions shall endeavour to provide relevant information, and shall take due account of any information provided through the discussions.
3. If a Party adopts an emergency measure, it shall review that measure within a reasonable period of time or on request of the exporting Party. The importing Party may, if necessary, request relevant information and the exporting Party shall endeavour to provide the relevant information to assist the importing Party in its review of the adopted emergency measure. The importing Party shall provide the result of the review to the exporting Party upon request. If the emergency measure is maintained after the review, the importing Party should review the measure periodically based on the most recent available information, and upon request, shall explain the reason for the continuation of the emergency measure.

Article 5.12: Transparency

1. The Parties recognise the importance of transparency as set out in Annex B of the SPS Agreement.
2. The Parties recognise the importance of the exchange of information on the development, adoption, and application of sanitary and phytosanitary measures that may have significant effects on trade among the Parties.
3. In implementing this Article, the Parties shall take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations.
4. Each Party shall notify proposed measures or changes to sanitary or phytosanitary measures that may have a significant effect on the trade of other Parties through the online WTO Sanitary and Phytosanitary Measures Notification Submission System, the contact points designated under Article 5.15 (Contact Points and Competent Authorities), or already established communication channels of the Parties.
5. Unless urgent problems of health protection arise or threaten to arise, or the measure is of a trade facilitating nature, a Party shall normally allow a period of at least 60 days for other Parties to provide written comments after it makes a notification pursuant to paragraph 4. A Party shall consider reasonable requests from another Party to extend the comment period.
6. As part of the comment period referred to in paragraph 5, on request of another Party and if appropriate and feasible, the notifying Party shall consider any scientific or trade concerns and the availability of alternatives that the other Party may raise regarding the proposed measure.

7. Upon request, a Party shall, within 30 days of the request, provide the requesting Party with the documents or a summary of the documents describing the requirements of draft sanitary or phytosanitary measures notified to the WTO pursuant to paragraph 4, in the English language.
8. Following the notification of sanitary or phytosanitary measures to the WTO, upon request, a Party shall provide the requesting Party with the documents or a summary of the documents describing the requirements of the adopted sanitary or phytosanitary measures, within a reasonable period of time as agreed by the relevant Parties, in the English language.
9. A Party, on reasonable request of another Party, shall provide relevant information and clarification regarding any sanitary or phytosanitary measure to the requesting Party, within a reasonable period of time, including:
 - (a) the sanitary or phytosanitary requirements that apply to the import of specific products;
 - (b) the status of the requesting Party's application; and
 - (c) procedures for authorising the import of specific products.
10. An exporting Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.15 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is a significant change in animal or plant health status or food safety issues in that exporting Party that may affect trade.
11. An importing Party shall provide timely and appropriate information to relevant Parties through the contact points designated under Article 5.15 (Contact Points and Competent Authorities) or already established communication channels of the Parties, where there is:
 - (a) significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party; or
 - (b) a sanitary or phytosanitary measure adopted provisionally against or affecting the export of another Party considered necessary to protect human, animal or plant life or health within the importing Party.
12. An exporting Party shall, to the extent possible and as promptly as possible, provide information to the importing Party if the exporting Party identifies that an export consignment that may be associated with a significant sanitary or phytosanitary risk has been exported.

Article 5.13: Cooperation and Capacity Building

1. The Parties shall explore opportunities for further cooperation among the Parties, including capacity building, technical assistance, collaboration, and information exchange, on sanitary and phytosanitary matters of mutual interest, consistent with this Chapter, subject to the availability of appropriate resources.
2. Any two or more Parties may cooperate on any matter, including sector specific proposals, of mutual interest under this Chapter.

3. In undertaking cooperation activities, the Parties shall endeavour to coordinate with bilateral, regional, or multilateral work programmes, with the objective of avoiding unnecessary duplication and maximising the use of resources.
4. The Parties are encouraged to share information and the experiences of their cooperation activities with other Parties at the Committee on Goods.

Article 5.14: Technical Consultation

1. Where a Party considers that a sanitary or phytosanitary measure is affecting its trade with another Party, it may, through the contact points designated under Article 5.15 (Contact Points and Competent Authorities) or already established communication channels, request a detailed explanation of the sanitary or phytosanitary measure. The other Party shall respond promptly to any request for such explanation.
2. A Party may request to hold technical consultations with another Party in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The requested Party shall respond promptly to any reasonable request for such consultation. The consulting Parties shall make every effort to reach a mutually satisfactory resolution.
3. Where a Party requests technical consultations, these shall take place within 30 days of the receipt of the request, unless otherwise agreed. Such consultation should aim to resolve the matter within 180 days of the date of the request, or a time frame agreed by the consulting Parties.
4. The technical consultations may be conducted via teleconference, videoconference, or through any other means agreed by the consulting Parties.

Article 5.15: Contact Points and Competent Authorities

1. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party:
 - (a) designate one or more contact points to facilitate communication on matters covered under this Chapter;
 - (b) notify the other Parties of the contact details of that contact point or those contact points; and
 - (c) when more than one contact point is designated, specify a contact point that serves as the focal point to respond to enquiries from another Party on the appropriate contact point with which to communicate.
2. Each Party shall provide the other Parties, through the contact points, a description of its competent authorities and the division of their functions and responsibilities.
3. Each Party shall notify the other Parties of any change to the contact points and significant changes in the structure, organisation, and division of responsibility within its competent authorities. Each Party shall keep this information up to date.

4. The Parties recognise the importance of the competent authorities in the implementation of this Chapter. Accordingly, the competent authorities of the Parties may cooperate with each other on matters covered by this Chapter in a manner to be agreed. The Parties are encouraged to share information and experiences of such cooperation of their competent authorities with the Committee on Goods where the Parties agree to do so.

Article 5.16: Implementation

The Parties may, where mutually agreed, develop bilateral or plurilateral arrangements to set out mutually determined understandings and details for applying this Chapter. The Parties that have adopted such arrangements under this Chapter are encouraged, where mutually agreed, to report such arrangements to the Committee on Goods.

Article 5.17: Dispute Settlement

1. Chapter 19 (Dispute Settlement) shall not apply to this Chapter at the entry into force of this Agreement.
2. The non-application of Chapter 19 (Dispute Settlement) shall be subject to review two years after the date of entry into force of this Agreement. In the course of the review, Parties shall give due consideration to the application of Chapter 19 (Dispute Settlement) to either the whole or parts of this Chapter. Such a review shall be completed within three years from the date of entry into force of this Agreement. After which those Parties that are ready shall proceed to apply Chapter 19 (Dispute Settlement) to this Chapter as between one another. A Party that is not ready will consult other Parties and may apply Chapter 19 (Dispute Settlement) to this Chapter when it becomes party to any future free trade agreement or economic agreement in which it takes on a similar obligation.

CHAPTER 6 STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES

Article 6.1: Definitions

For the purposes of this Chapter, the terms and their definitions provided in Annex 1 of the TBT Agreement shall apply.

Article 6.2: Objectives

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) enhancing the implementation of the TBT Agreement;
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;
- (d) strengthening information exchange and cooperation among the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies;
- (e) addressing the issues that may arise under this Chapter; and
- (f) providing a framework to realise these objectives.

Article 6.3: Scope

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods among the Parties. This Chapter shall not apply to
 - (a) any sanitary or phytosanitary measure, which is covered by Chapter 5 (Sanitary and Phytosanitary Measures); and
 - (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.
3. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

Article 6.4: Affirmation and Incorporation of the TBT Agreement

1. Each Party affirms its rights and obligations under the TBT Agreement and the following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:
 - (a) Article 2, except paragraphs 4, 7, 8, and 12;
 - (b) paragraph 2 of Article 4;
 - (c) Article 5, except paragraph 4;
 - (d) paragraph 3 of Article 6;
 - (e) paragraph 1 of Article 9; and
 - (f) Annex 3, except paragraph A.
2. In the event of any inconsistency between any provision of the TBT Agreement incorporated under paragraph 1 and other provisions of this Chapter, the latter shall prevail.
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any dispute that exclusively alleges a violation of the provisions of the TBT Agreement incorporated under paragraph 1.

Article 6.5: International Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in the harmonisation of technical regulations, conformity assessment procedures, and national standards, and in reducing unnecessary barriers to trade.
2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party takes into account the principles set out in the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement* (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as “WTO TBT Committee” in this Chapter).
3. The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on international standards and related issues in other international fora, such as the WTO TBT Committee.

Article 6.6: Standards

1. With respect to the preparation, adoption, and application of standards, each Party shall ensure that its standardising body or bodies that prepare, adopt, and apply national standards accept and comply with Annex 3 of the TBT Agreement.

2. Where modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall, on request of another Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.
3. Further to paragraph 2, each Party shall ensure that its standardising body or bodies ensure that the modifications of the contents and structure of international standards are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
4. Each Party shall encourage cooperation between the relevant standardising body or bodies in its territory and the standardising body or bodies of other Parties, in areas such as:
 - (a) exchange of information on standards;
 - (b) exchange of information relating to standard setting procedures; and
 - (c) international standardising activities in areas of mutual interest.

Article 6.7: Technical Regulations

1. Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations, it shall, on request of another Party, explain the reasons therefor.
2. In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.
3. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.
4. Where a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.
5. In implementing paragraph 8 of Article 2 of the TBT Agreement, when a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall, on request of another Party, provide its reason therefor.
6. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in exporting Parties to adapt their products or methods of production to the requirements of importing Parties. For the purposes of this paragraph, "reasonable interval" shall be understood to mean 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.

7. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of another Party, the requested Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.
8. Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its whole territory. For greater certainty, nothing in this paragraph shall be construed to prevent local government bodies from preparing, adopting, and applying additional technical regulations in a manner consistent with the provisions of the TBT Agreement.

Article 6.8: Conformity Assessment Procedures

1. Further to paragraph 4 of Article 5 of the TBT Agreement, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.
2. Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in another Party with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.
3. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in another Party are accepted, even when those procedures differ from its own, unless those procedures do not offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
4. A Party shall, on request of another Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.
5. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party. Such mechanisms may include:
 - (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties concerned;
 - (b) cooperative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the Parties concerned;
 - (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by other Parties;
 - (d) the designation of conformity assessment bodies in another Party;

- (e) unilateral recognition by a Party of results of conformity assessment procedures conducted in another Party; and
 - (f) manufacturer's or supplier's declaration of conformity.
6. Upon reasonable request, the Parties concerned shall exchange information or share experiences on the mechanisms referred to in paragraph 5, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.
 7. The Parties recognise the important role that relevant international, including regional, organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.
 8. The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between Parties.
 9. Each Party shall, whenever possible, permit the participation of conformity assessment bodies in another Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in the Party.
 10. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in another Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

Article 6.9: Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures, consistent with the objectives of this Chapter.
2. Each Party shall, on request of another Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.
3. Such cooperation, which shall be on mutually determined terms and conditions, may include:
 - (a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations, and conformity assessment procedures
 - (b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, on matters of mutual interest;
 - (c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;
 - (d) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and

- (e) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.
4. Each Party shall, on request of another Party, give consideration to sector specific proposals for mutual benefit for cooperation under this Chapter.

Article 6.10: Technical Discussions

1. When a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may make a written request for technical discussions. The requested Party shall respond as early as possible to such a request.
2. The requested Party shall enter into technical discussions with the requesting Party within 60 days, unless otherwise mutually determined by the Parties concerned, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means agreed by the Parties concerned.

Article 6.11: Transparency

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 (G/TBT/1/Rev.13)*, as may be revised, issued by the WTO TBT Committee.
2. Upon written request, a Party shall provide to the requesting Party, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language. If unavailable, the Party shall provide to the requesting Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties concerned and, if possible, within 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the requested Party.
3. Each Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Party has adopted or is proposing to adopt.
4. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Parties to provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. Each Party shall take the comments of another Party into account and shall endeavour to provide responses to those comments upon request.
5. Each Party shall allow persons of another Party to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons.

6. When a Party detains an imported consignment, at the point of entry due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.
7. Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed by the Parties concerned and, if possible, within 60 days. Upon request, the requested Party shall provide such information or explanation in the language or languages agreed by the Parties concerned or, whenever possible, in the English language.

Article 6.12: Contact Points

1. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points responsible for coordinating the implementation of this Chapter, and notify the other Parties of the contact details of the relevant official or officials in that contact point, including the telephone number, facsimile number, email address, and any other relevant details. Each Party shall promptly notify the other Parties of any change to those contact details.
2. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from another Party.

Article 6.13: Implementing Arrangements

The Parties may develop bilateral or plurilateral arrangements to set out areas of cooperation of mutual interest for applying this Chapter. The Parties that have adopted such arrangements under this Chapter are encouraged, where mutually agreed, to report such arrangements to the Committee on Goods.

Article 6.14: Dispute Settlement

Chapter 19 (Dispute Settlement) shall not apply to any matter arising under this Chapter at the entry into force of this Agreement, and this non-application shall be subject to a review by the Parties two years after the date of entry into force of this Agreement. In the course of the review, Parties shall give positive consideration to the application of Chapter 19 (Dispute Settlement) to either the whole or parts of this Chapter. Such review shall be completed within three years from the date of entry into force of this Agreement.

CHAPTER 7 TRADE REMEDIES

SECTION A RCEP SAFEGUARD MEASURES

Article 7.1: Definitions

For the purposes of this Chapter:

- (a) **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);
- (b) **customs duty** means customs duties as defined in subparagraph (b) of Article 2.1 (Definitions);
- (c) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within the territory of a Party, or those producers whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of that good;
- (d) **originating good** means an originating good as defined in subparagraph (l) of Article 3.1 (Definitions);
- (e) **provisional RCEP safeguard measure** means a safeguard measure described in paragraph 1 of Article 7.8 (Provisional RCEP Safeguard Measures);
- (f) **serious injury** means a significant overall impairment in the position of a domestic industry;
- (g) **threat of serious injury** means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent;
- (h) **transitional RCEP safeguard measure** means a safeguard measure described in Article 7.2 (Application of Transitional RCEP Safeguard Measures); and
- (i) **transitional safeguard period** means, in relation to a particular good, the period from the date of entry into force of this Agreement until eight years after the date on which the elimination or reduction of the customs duty on that good is completed, in accordance with a Party's Schedule of tariff commitments in Annex I (Schedules of Tariff Commitments).

Article 7.2: Application of Transitional RCEP Safeguard Measures

1. If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of another Party or Parties collectively is being imported into the territory of a Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to its domestic industry producing a like or directly competitive good, the importing Party may, to the extent necessary to prevent or remedy the serious injury to its domestic industry and to facilitate its domestic industry's adjustment:

- (a) suspend the further reduction of any rate of customs duty provided for in this Agreement on the originating good; or
 - (b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:
 - (i) the most-favoured-nation applied rate of customs duty in effect on the day when the transitional RCEP safeguard measure is applied; or
 - (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.
2. The Parties understand that neither tariff rate quotas nor quantitative restrictions are permissible forms of transitional RCEP safeguard measures.
3. On request of any Party, the Committee on Goods may, no later than three years before the end of the transitional safeguard period, discuss and review the implementation and operation, including the duration, of the transitional RCEP safeguard measures.

Article 7.3: Notification and Consultation

1. A Party shall immediately deliver a written notice to the other Parties upon:
- (a) initiating an investigation referred to in Article 7.4 (Investigation Procedures) relating to serious injury or threat of serious injury and the reasons for it;
 - (b) making a finding of serious injury or threat of serious injury caused by increased imports;
 - (c) applying or extending the imposition of a transitional RCEP safeguard measure; and
 - (d) taking a decision to modify, including to progressively liberalise, a transitional RCEP safeguard measure.
2. A written notice referred to in subparagraph 1(a) shall include:
- (a) a precise description of the originating good subject to the investigation including its heading and subheading under the Harmonized System and the national nomenclature of the Party;
 - (b) a summary of the reason for the initiation of the investigation; and
 - (c) the date of the initiation of the investigation and the period of investigation.
3. A Party shall provide to the other Parties a copy or the Uniform Resource Locator of the public version of the report by its competent authorities that is required under paragraph 1 of Article 7.4 (Investigation Procedures). The provided report may be in the language originally used in the report by its competent authorities.
4. A written notice referred to in subparagraphs 1(b) through (d) shall include:

- (a) a precise description of the originating good subject to the transitional RCEP safeguard measure including its heading and subheading under the Harmonized System and the national nomenclature of the Party;
 - (b) evidence of the serious injury or threat of serious injury caused by increased imports of the originating good of another Party or Parties as a result of the reduction or elimination of a customs duty pursuant to this Agreement;
 - (c) a precise description of the proposed transitional RCEP safeguard measure;
 - (d) the proposed date of the introduction of the transitional RCEP safeguard measure, its expected duration, and, if applicable, a timetable for the progressive liberalisation of the transitional RCEP safeguard measure referred to in paragraph 3 of Article 7.5 (Scope and Duration of Transitional RCEP Safeguard Measures); and
 - (e) in the case of an extension of the transitional RCEP safeguard measure, evidence that the domestic industry concerned is adjusting.
5. A Party proposing to apply or extend a transitional RCEP safeguard measure shall provide adequate opportunity for prior consultations with the Parties that have a substantial interest as exporters of the good concerned, with a view to, *inter alia*, reviewing the information provided under paragraphs 2 and 4 that has arisen from the investigation referred to in Article 7.4 (Investigation Procedures), exchanging views on the transitional RCEP safeguard measure, and reaching an understanding on ways to achieve the objective set out in Article 7.7 (Compensation).

Article 7.4: Investigation Procedures

1. A Party shall apply a transitional RCEP safeguard measure only following an investigation by its competent authorities in accordance with the same procedures as those provided for in Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement. To this end, Article 3 and paragraph 2 of Article 4 of the Safeguards Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Each Party shall ensure that its competent authorities complete the investigation referred to in paragraph 1 within one year following its date of initiation.

Article 7.5: Scope and Duration of Transitional RCEP Safeguard Measures

1. No Party shall apply a transitional RCEP safeguard measure:
 - (a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

- (b) for a period exceeding three years, except that in exceptional circumstances, the period may be extended by up to one year if the competent authorities of the Party that applies the transitional RCEP safeguard measure determines, in conformity with the procedures specified in this Article, that the transitional RCEP safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the domestic industry concerned is adjusting, provided that the total period of application of a provisional and transitional RCEP safeguard measure, including the period of initial application and any extension thereof, shall not exceed four years. Notwithstanding this provision, a Least Developed Country Party may extend its transitional RCEP safeguard measure for an additional period of one year; or
 - (c) beyond the expiration of the transitional safeguard period.
- 2. No transitional RCEP safeguard measure shall be applied to the import of an originating good for a period of one year from the date on which the first tariff reduction or tariff elimination takes effect for that originating good as committed under this Agreement.
- 3. In order to facilitate adjustment in a situation where the expected duration of a transitional RCEP safeguard measure exceeds one year, the Party applying the transitional RCEP safeguard measure shall progressively liberalise the transitional RCEP safeguard measure at regular intervals during its period of application.
- 4. When a Party terminates a transitional RCEP safeguard measure, the rate of customs duty for the originating good subject to that transitional RCEP safeguard measure shall be the rate that, according to that Party's Schedule in Annex I (Schedules of Tariff Commitments), would have been in effect but for that transitional RCEP safeguard measure.
- 5. No transitional RCEP safeguard measure shall be applied again to the import of a particular originating good that has been subject to a transitional RCEP safeguard measure, for a period of time equal to the duration of the previous transitional RCEP safeguard measure or one year since the expiry of such measure, whichever is longer.

Article 7.6: *De Minimis* Imports and Special Treatment

- 1. A provisional or transitional RCEP safeguard measure shall not be applied to an originating good of a Party, as long as that Party's share of imports of the good concerned in the importing Party does not exceed three per cent of the total imports of that good from all the Parties, provided that those Parties with less than three per cent import share collectively account for not more than nine per cent.
- 2. A provisional or transitional RCEP safeguard measure shall not be applied to an originating good of any Least Developed Country Party.

Article 7.7: Compensation

1. A Party proposing to apply or extend a transitional RCEP safeguard measure shall, in consultation with the exporting Parties that would be affected by such a measure, provide to those exporting Parties mutually agreed, adequate means of trade compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional customs duties expected to result from the measure. The Party applying a transitional RCEP safeguard measure shall provide those exporting Parties that would be affected by such a measure with the opportunity to consult within 30 days of the date on which the transitional RCEP safeguard measure was applied.
2. If the consultations referred to in paragraph 1 do not result in an agreement on trade compensation within 30 days of the commencement of such consultations, any Party against whose good the transitional RCEP safeguard measure is applied may suspend the application of substantially equivalent concessions to the trade in goods of the Party applying the transitional RCEP safeguard measure.
3. A Party against whose good a transitional RCEP safeguard measure is applied shall deliver a written notice to the Party applying the transitional RCEP safeguard measure at least 30 days before it suspends the application of concessions in accordance with paragraph 2.
4. The obligation to provide compensation under paragraph 1 and the right to suspend the application of concessions in accordance with paragraph 2 shall cease on the termination of the transitional RCEP safeguard measure.
5. The right to suspend the application of concessions in accordance with paragraph 2 shall not be exercised for the first three years during which the transitional RCEP safeguard measure is in effect, provided that the transitional RCEP safeguard measure has been applied as a result of an absolute increase in imports and that it conforms to this Agreement.
6. A Least Developed Country Party that applies or extends a transitional RCEP safeguard measure shall not be requested for any compensation by the affected Parties.

Article 7.8: Provisional RCEP Safeguard Measures

1. In critical circumstances where delay would cause damage that would be difficult to repair, an importing Party may apply a provisional RCEP safeguard measure, which shall take the form of the measures set out in subparagraph 1(a) or (b) of Article 7.2 (Application of Transitional RCEP Safeguard Measures), pursuant to a preliminary determination by its competent authorities that there is clear evidence that imports of an originating good from another Party or Parties have increased as the result of the reduction or elimination of a customs duty under this Agreement, and such increased imports have caused or are threatening to cause serious injury to a domestic industry of the importing Party.
2. A Party shall deliver a written notice to the other Parties prior to applying a provisional RCEP safeguard measure. Consultations with the Parties that have a substantial interest as exporters of the good concerned on the application of the provisional RCEP safeguard measure shall be initiated immediately after the provisional RCEP safeguard measure is applied.

3. The duration of any provisional RCEP safeguard measure shall not exceed 200 days, during which period the Party applying that provisional RCEP safeguard measure shall comply with the requirements of paragraph 1 of Article 7.4 (Investigation Procedures). If the investigation referred to in paragraph 1 of Article 7.4 (Investigation Procedures) does not result in a finding that the requirements of Article 7.2 (Application of Transitional RCEP Safeguard Measures) are met, the Party applying the provisional RCEP safeguard measure shall promptly refund any additional customs duties collected as a result of the provisional RCEP safeguard measure. For greater certainty, the duration of any provisional RCEP safeguard measure shall be counted as part of the total period prescribed by subparagraph 1(b) of Article 7.4 (Scope and Duration of Transitional RCEP Safeguard Measures).
4. Paragraph 2 of Article 7.2 (Application of Transitional RCEP Safeguard Measures), paragraph 4 of Article 7.5 (Scope and Duration of Transitional RCEP Safeguard Measures), and paragraphs 1 and 2 of Article 7.10 (Other Provisions) shall apply, *mutatis mutandis*, to a provisional RCEP safeguard measure.

Article 7.9: Global Safeguard Measures

1. Nothing in this Agreement shall affect the rights and obligations of the Parties under Article XIX of GATT 1994 and the Safeguards Agreement.¹
2. Unless otherwise 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.²
3. On request of another Party, a Party intending to take safeguard measures pursuant to Article XIX of GATT 1994 and the Safeguards Agreement shall immediately provide written notice or Uniform Resource Locator of all pertinent information required under paragraphs 1, 2, and 4 of Article 12 of the Safeguards Agreement on the initiation of a safeguard investigation, the preliminary determination, and the final finding of the investigation. A Party shall be deemed to be in compliance with this paragraph if it has notified the measure to the WTO Committee on Safeguards in accordance with Article 12 of the Safeguards Agreement.
4. No Party shall apply, with respect to the same good, at the same time:
 - (a) a provisional or transitional RCEP safeguard measure; and
 - (b) a measure under Article XIX of GATT 1994 and the Safeguards Agreement.

Article 7.10: Other Provisions

1. Each Party shall ensure the consistent, impartial, and reasonable administration of its laws and regulations relating to transitional RCEP safeguard measures.
2. Each Party shall adopt or maintain equitable, timely, transparent, and effective procedures relating to transitional RCEP safeguard measures.

¹ For greater certainty, each Party retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 20.2 (Relation to Other Agreements).

² For greater certainty, each Party retains its rights and obligations under Article 5 of the Agreement on Agriculture in view of Article 20.2 (Relation to Other Agreements).

3. A written notice referred to in paragraph 1 of Article 7.3 (Notification and Consultation), paragraph 3 of Article 7.7 (Compensation), and paragraph 2 of Article 7.8 (Provisional RCEP Safeguard Measures) shall be in the English language.

SECTION B ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 7.11: General Provisions

1. The Parties retain their rights and obligations under Article VI of GATT 1994, the AD Agreement, and the SCM Agreement. This Section affirms and builds on those rights and obligations.
2. In any proceeding in which the investigating authorities of a Party determine to conduct an on-the-spot investigation to verify information provided by a respondent³ and pertinent to the calculation of anti-dumping duty margins or the level of a countervailable subsidy, the investigating authorities shall promptly notify that respondent of their intent, and:
 - (a) shall endeavour to provide to the respondent at least seven days advance notice of the date on which investigating authorities intend to conduct any such on-the-spot investigation to verify the information; and
 - (b) shall endeavour to, at least seven days prior to any such on-the-spot investigation to verify the information, provide to the respondent a document that sets forth the topics the respondent should be prepared to address during the verification and that describes the types of supporting documentation the respondent is to make available for review,provided that the implementation of subparagraphs (a) and (b) does not unnecessarily delay the conduct of the investigation.
3. A Party's investigating authorities shall maintain a non-confidential file for each investigation and review containing:
 - (a) all non-confidential documents which are part of the record of the investigation or review; and
 - (b) to the extent feasible without revealing confidential information, non-confidential summaries of confidential information contained in the record of each investigation or review.
4. During an investigation or review, a Party's investigating authorities shall make the non-confidential file of the investigation or review available to interested parties either:
 - (a) physically for inspection and copying during the investigation authorities' normal business hours; or
 - (b) electronically.

³ 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 anti-dumping or countervailing duty questionnaire.

Article 7.12: Notification and Consultations

1. On receipt by a Party's competent authorities of a properly documented anti-dumping application with respect to imports from another Party, the Party shall endeavour to provide written notice to the other Party of its receipt of the application at least seven days before initiating such an anti-dumping investigation.
2. On receipt by a Party's competent authorities of a properly documented countervailing duty application with respect to imports from another Party, and before initiating an investigation, the Party shall endeavour to provide written notice to the other Party of its receipt of the application at least 20 days in advance of the date of initiation of a countervailing investigation and invite the other Party for consultations on the application. The Parties concerned will endeavour to hold consultations within that period.
3. In view of the consultations referred to in paragraph 2, the Party intending to initiate the investigation referred to in paragraph 2 shall, before the initiation of the investigation, on request of the other Party, provide the non-confidential version of the complaint to the other Party. The Party intending to initiate the investigation shall endeavour to provide adequate opportunity to the other Party to comment and submit additional information or documents, as appropriate and in conformity with the procedural rules provided for in the laws and regulations of the former Party.

Article 7.13: Prohibition of Zeroing

When margins of dumping are established, assessed, or reviewed under Article 2, paragraphs 3 and 5 of Article 9, and Article 11 of the AD Agreement, all individual margins, whether positive or negative, shall be counted for weighted average-to-weighted average and transaction-to-transaction comparison. Nothing in this Article shall prejudice or affect a Party's rights and obligations under the second sentence of subparagraph 4.2 of Article 2 of the AD Agreement in relation to weighted average-to-transaction comparison.

Article 7.14: Disclosure of the Essential Facts

Each Party shall ensure, to the extent possible at least 10 days before the final determination, full and meaningful disclosure of all essential facts under consideration which form the basis for the decision to apply measures, without prejudice to paragraph 5 of Article 6 of the AD Agreement and paragraph 4 of Article 12 of the SCM Agreement. Disclosures shall be made in writing, and allow interested parties sufficient time to provide their comments. The investigating authorities of a Party should, in their final determination, take into account such comments, if the comments have been received in the time frames established by that Party's laws and regulations or by its investigating authorities.

Article 7.15: Treatment of Confidential Information

The investigating authorities of a Party shall require interested parties providing confidential information to furnish non-confidential summaries of such information, as referred to in subparagraph 5.1 of Article 6 of the AD Agreement. The non-confidential summaries referred to in subparagraph 5.1 of Article 6 of the AD Agreement shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence in order to allow other interested parties in the investigation an opportunity to respond and defend their interests, consistent with paragraph 2 of Article 6 of the AD Agreement.

Article 7.16: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Section or Annex 7A (Practices Relating to Anti-Dumping and Countervailing Duty Proceedings). The applicability of dispute settlement to this Section will be subject to review in accordance with Article 20.8 (General Review).

CHAPTER 8 TRADE IN SERVICES

Article 8.1: Definitions

For the purposes of this Chapter:

- (a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (b) **commercial presence** means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition, or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office,within the territory of a Party for the purpose of supplying a service;
- (c) **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;
- (d) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;
- (e) **juridical person of a Party** means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of that Party; or
 - (B) juridical persons of that Party identified under subparagraph (e)(i);
- (f) For Thailand and Viet Nam, a juridical person is:
 - (i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;

- (g) **measures by a Party affecting trade in services** includes measures in respect of:
- (i) the purchase or use of, or payment for, a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally; and
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (h) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;
- (i) **natural person of a Party** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:
- (i) is a national of that Party; or
 - (ii) has the right of permanent residence¹ in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;
- (j) **sector** of a service means:
- (i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex II (Schedules of Specific Commitments for Services) or Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); and
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (k) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising, and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (l) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (m) **service consumer** means any person that receives or uses a service;

¹ Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex II (Schedules of Specific Commitments for Services), Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), or Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), that reservation shall not prejudice that Party's rights and obligations in GATS.

- (n) **service of another Party** means a service which is supplied:
- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (o) **service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (p) **service supplier** means a person that supplies a service;^{2, 3}
- (q) **supply of a service** includes the production, distribution, marketing, sale, and delivery of a service;
- (r) **trade in services** means the supply of a service:
- (i) from the territory of one Party into the territory of any other Party;
 - (ii) in the territory of one Party to the service consumer of any other Party;
 - (iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;
 - (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and
- (s) **traffic rights** means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo, and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged, and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

Article 8.2: Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
 - (a) central, regional, or local governments and authorities of that Party; and

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

³ The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

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

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

3. This Chapter shall not apply to:

- (a) government procurement;
- (b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers, or service suppliers;
- (c) services supplied in the exercise of governmental authority;
- (d) cabotage in maritime transport services; and
- (e) air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:⁴
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services;
 - (iv) specialty air services;
 - (v) ground handling services; and
 - (vi) airport operation services.

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

5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications Services), and Annex 8C (Professional Services) are an integral part of this Chapter.

⁴ Notwithstanding subparagraphs (iv) through (vi), this Chapter shall apply to measures affecting specialty air services, ground handling services, and airport operation services only for a Party that opts to make commitments in relation to such services in accordance with Article 8.3 (Scheduling of Commitments).

Article 8.3: Scheduling of Commitments

1. Each Party shall make commitments under Article 8.4 (National Treatment) and Article 8.5 (Market Access) in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment) and Article 8.5 (Market Access), and shall also make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).
3. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence). A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) may also make commitments under Article 8.9 (Additional Commitments).
4. Notwithstanding paragraph 2, Least Developed Country Parties which are Member States of ASEAN making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) are not obliged to make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). These Parties may, however, do so on a voluntary basis.

Article 8.4: National Treatment

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.⁵
2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).⁶
3. A Party may meet the requirement under paragraph 1 or 2 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

⁵ Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

⁶ Nothing in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

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

Article 8.5: Market Access

1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations, and conditions agreed and specified in its Schedule in Annex II (Schedules of Specific Commitments for Services).⁷
2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), are defined as:
- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁸
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

⁷ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

⁸ This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

Article 8.6: Most-Favoured-Nation Treatment

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments on Most-Favoured-Nation Treatment shall:
 - (a) in respect of the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an “MFN”;
 - (b) in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services); or
 - (c) in respect of the sectors and subsectors that are not contained in its Most-Favoured-Nation Treatment Sectoral Exemption List Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services),

and subject to any conditions and qualifications set out therein, accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party.

2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or of any non-Party.
3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.
4. Notwithstanding paragraphs 1 and 2, each Party which is a Member State of ASEAN reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is a Member State of ASEAN taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the Parties which are Member States of ASEAN.
5. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 8.7: Schedules of Specific Commitments

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex II (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.9 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex II (Schedules of Specific Commitments for Services) shall specify:
 - (a) terms, limitations, and conditions on market access;

- (b) conditions and qualifications on national treatment;
 - (c) undertakings relating to additional commitments; and
 - (d) where appropriate, the time frame for implementation of such commitments.
2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Article 8.5 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.
 3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex II (Schedules of Specific Commitments for Services) sectors or subsectors for future liberalisation with "FL". In these sectors and subsectors, any applicable terms, limitations, conditions, and qualifications, referred to in subparagraphs 1(a) and (b) shall be limited to existing measures of that Party.
 4. If a Party amends a measure referred to in paragraph 3 in a manner that reduces or eliminates the inconsistency of that measure with Article 8.4 (National Treatment) or Article 8.5 (Market Access), as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure's inconsistency with Article 8.4 (National Treatment) or Article 8.5 (Market Access).
 5. Notwithstanding paragraph 3, Least Developed Country Parties which are Member States of ASEAN are not obliged to identify sectors or subsectors for future liberalisation. These Parties may, however, do so on a voluntary basis.

Article 8.8: Schedules of Non-Conforming Measures

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by that Party at:
 - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
 - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and

- (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 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence).
2. Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

Article 8.9: Additional Commitments

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:
- (a) Article 8.4 (National Treatment) or Article 8.5 (Market Access) for those Parties making commitments in accordance with Article 8.7 (Schedules of Specific Commitments); or
 - (b) Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence) for those Parties making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services).
3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

Article 8.10: Transparency List

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments under this Article shall prepare, forward to the other Parties, and make publicly available on the internet, a non-binding transparency list of its existing measures maintained at the central government level which are inconsistent with Article 8.4 (National Treatment) or Article 8.5 (Market Access) (hereinafter referred to as "Transparency List" in this Chapter). Such a Transparency List shall cover the sectors in which the Party has undertaken specific commitments in this Chapter.
2. A Party's Transparency List is made solely for the purposes of transparency, and shall be accurate at the time of submission and shall not affect the rights and obligations of that Party under this Chapter. Nothing in this Article shall prevent a Party from amending its measures referred to in paragraph 1. If there are any discrepancies between a Party's Transparency List and its Schedule in Annex II (Schedules of Specific Commitments for Services), the latter shall prevail.

3. Each Transparency List shall include the following elements:
 - (a) the sector and subsector or activity;
 - (b) the type of inconsistency (National Treatment or Market Access);
 - (c) the legal source or authority of the measure; and
 - (d) a succinct description of the measure.
4. A Party shall update, as necessary, its Transparency List to ensure it is complete and accurate by:
 - (a) adding any new or amended inconsistent measure; or
 - (b) removing any measure that has ceased to exist, or any sector, subsector, or activity for which it no longer maintains an inconsistent measure.
5. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any dispute or matter of interpretation arising out of a Transparency List.

Article 8.11: Local Presence

A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall not require a service supplier of another Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in subparagraph (r)(i), (ii), or (iv) of Article 8.1 (Definitions), subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).

Article 8.12: Transition

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as a “transitioning Party” in this Article) shall submit a proposed Schedule of Non-Conforming Measures (hereinafter referred to as a “Proposed Schedule” in this Article) that accords with Article 8.8 (Schedules of Non-Conforming Measures)⁹ to the Committee on Services and Investment for circulation to the other Parties, no later than three years, or for Cambodia, Lao PDR, and Myanmar, no later than 12 years, after the date of entry into force of this Agreement.
2. The commitments contained in each transitioning Party’s Proposed Schedule shall provide an equivalent or a greater level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party’s commitments, made in accordance with paragraph 2 of Article 8.3 (Scheduling of Commitments).

⁹ For the purposes of a Proposed Schedule referred to in this paragraph and an Adopted Schedule referred to in paragraph 4, the references to “existing” in subparagraph 1(a) of Article 8.8 (Schedules of Non-Conforming Measures) shall be deemed to mean “in effect on the date of entry into force of the Party’s Adopted Schedule”.

3. The Parties shall consider the Proposed Schedule for the purposes of verification and clarification, and shall have the opportunity to make comments to ensure that the Proposed Schedule meets the requirements specified in paragraph 2. The verification and clarification process shall not entitle the Parties to negotiate specific new commitments.¹⁰ The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its Proposed Schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its Proposed Schedule.
4. Upon completion of the verification and clarification process referred to in paragraph 3, the Committee on Services and Investment may adopt, by consensus, the transitioning Party's Proposed Schedule, which shall replace the transitioning Party's Schedule in Annex II (Schedules of Specific Commitments for Services) subject to paragraph 5 (hereinafter referred to as an "Adopted Schedule" in this Article). The transitioning Party shall then submit its Adopted Schedule to the Depository and notify it in writing of the completion of any applicable domestic processes.¹¹
5. Notwithstanding Article 20.4 (Amendments), once a transitioning Party has submitted its Adopted Schedule to the Depository and notified it in writing of the completion of any applicable domestic processes, the transitioning Party's Adopted Schedule shall enter into force between the transitioning Party and each other Party 60 days after the date of the transitioning Party's notification to the Depository. However, if a Party notifies the Depository in writing within 60 days of the date of the transitioning Party's notification to the Depository that the Adopted Schedule will not enter into force for that Party within 60 days of the transitioning Party's notification to the Depository, the Adopted Schedule shall enter into force between the transitioning Party and that Party on the date on which that Party notifies the Depository in writing of the completion of its applicable domestic processes, or on such other date as the transitioning Party and that Party may decide.
6. For greater certainty, a transitioning Party's Schedule in Annex II (Schedules of Specific Commitments for Services) under Article 8.7 (Schedules of Specific Commitments) shall remain in force between the transitioning Party and each other Party until the transitioning Party's Adopted Schedule has entered into force for that other Party.
7. The process referred to in paragraphs 1 through 4 shall be completed no later than six years, or for Cambodia, Lao PDR, and Myanmar, no later than 15 years, after the date of entry into force of this Agreement.

Article 8.13: Modification of Schedules

1. A Party that has made commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as a "modifying Party" in this Article) may modify or withdraw any commitment in its Schedule in Annex II (Schedules of Specific Commitments for Services), other than commitments in sectors or subsectors indicated with an "FL", at any time after three years from the date on which that commitment has entered into force, provided that it complies with this Article and that:

¹⁰ For greater certainty, nothing in this Article requires a Party to make commitments under Article 8.6 (Most-Favoured-Nation Treatment) in respect of a specific sector or subsector.

¹¹ For greater certainty, this paragraph does not exclude the possibility of a transitioning Party, when undertaking its applicable domestic processes, requesting consultations among the Parties regarding potential revisions to its Adopted Schedule, and requesting the Committee on Services and Investment to adopt, by consensus, a revised Adopted Schedule for submission by the transitioning Party to the Depository in accordance with this paragraph.

- (a) it notifies the Committee on Services and Investment of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and
 - (b) it enters into negotiations with any requesting Party, with a view to reaching agreement on any necessary compensatory adjustment.
2. In achieving a compensatory adjustment through the negotiations referred to in subparagraph 1(b), the Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments no less favourable to trade than that provided for in the modifying Party's Schedule in Annex II (Schedules of Specific Commitments for Services) prior to such negotiations.
3. Any compensatory adjustment made pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.
4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment within three months following the last date on which a request under subparagraph 1(b) has been made, or another period agreed by the modifying Party and each requesting Party, a requesting Party may refer the matter to arbitration. Any Party that wishes to enforce a right that it may have to compensation must participate in the arbitration. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.
5. Arbitrations undertaken pursuant to paragraph 4 shall be conducted in accordance with the procedures set out in paragraphs 7 through 19 of *Procedures for the Implementation of Article XXI of the General Agreement on Trade in Services adopted on 19 July 1999 (S/L/80)*, as may be amended, (hereinafter referred to as "the GATS Article XXI Procedures" in this Chapter), which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10 or unless the parties to the arbitration agree otherwise.
6. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Such a modification or withdrawal may be implemented solely with respect to the modifying Party.
7. If no Party has requested:
 - (a) negotiations under subparagraph 1(b) within 45 days of the date of a notification made pursuant to subparagraph 1(a); or
 - (b) arbitration pursuant to paragraph 4,the modifying Party shall be free to implement its proposed modification or withdrawal, notwithstanding Article 20.4 (Amendments), in accordance with the procedures set out in paragraphs 20 through 22 of the GATS Article XXI Procedures, which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10.
8. For the avoidance of doubt, for the purposes of paragraphs 5 and 7, references in the GATS Article XXI Procedures to:

- (a) “the Secretariat” and “the Council for Trade in Services” shall be read as references to the Committee on Services and Investment;
 - (b) “Article XXI” shall be read as references to Article 8.13 (Modification of Schedules); and
 - (c) “Members of the WTO” shall be read as references to the Parties.
9. In the event of any inconsistency between this Agreement and the GATS Article XXI Procedures, this Agreement shall prevail to the extent of the inconsistency.
10. The Committee on Services and Investment may establish or amend procedures for the modification or withdrawal of a Party’s commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services) or the conduct of arbitration, under this Article. Any Party that seeks to modify or withdraw its commitments under this Article shall do so in accordance with any such procedures.

Article 8.14: Transparency

1. The Parties recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other’s markets. Each Party shall promote regulatory transparency in trade in services.
2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:
- (a) all relevant measures of general application affecting trade in services; and
 - (b) all international agreements pertaining to or affecting trade in services to which a Party is a signatory.
3. To the extent possible, each Party shall make the measures and international agreements referred to in paragraph 2 publicly available on the internet and, to the extent provided under its legal framework, in the English language.
4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information¹² shall be made otherwise publicly available.
5. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. On request of another Party, the contact point shall:
- (a) identify the office or official responsible for the relevant matter; and
 - (b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.
6. Each Party shall respond promptly to any request by any other Party for specific information on:
- (a) any measures referred to in subparagraph 2(a) or international agreements referred to in subparagraph 2(b); and

¹² For greater certainty, such information may be published in each Party’s chosen language.

- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

Article 8.15: Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. Nothing in paragraph 2 shall be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. If the results of the negotiations related to paragraph 4 of Article VI of GATS enter into effect, the Parties shall review the results of such negotiations and shall amend this Article as appropriate, after consultation among the Parties to bring the results of such negotiations into effect under this Chapter.
5. 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;
 - (b) not more burdensome than necessary to ensure the quality of the service; and
 - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
6. In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations¹³ applied by that Party shall be taken into account.
7. Where a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

¹³ "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

- (a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;
 - (b) 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;
 - (c) to the extent practicable, establish an indicative time frame for processing of an application;
 - (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
 - (e) in the case of an incomplete application and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;
 - (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;
 - (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
 - (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
 - (i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.
8. Each Party shall provide adequate procedures to verify the competence of professionals of another Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, 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.
9. Each Party shall, subject to its laws and regulations, permit service suppliers of another Party to use, without undue restrictions, the business names under which they trade in the territory of that other Party.
10. Paragraphs 1 through 9 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 8.4 (National Treatment) or Article 8.5 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).

Article 8.16: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned, or may be accorded autonomously.
2. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Parties, upon request, to negotiate their accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.
3. Nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require any Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in another Party.
4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between other 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. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.
6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

Article 8.17: Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 8.4 (National Treatment) and Article 8.5 (Market Access).
2. Where a Party's monopoly supplier of a service competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request that other Party establishing, maintaining, or authorising such a supplier to provide specific information concerning the relevant operations.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and
 - (b) substantially prevents competition among those suppliers in its territory.

Article 8.18: Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.17 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, on request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 8.19: Payments and Transfers

1. Except under the circumstances envisaged in Article 17.15 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.
2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 17.15 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

Article 8.20: Denial of Benefits

1. A Party may deny the benefits of this Chapter:
 - (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
 - (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party;
 - (c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws and regulations of a non-Party; and

- (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.
- 2. A Party may deny the benefit of this Chapter to a service supplier of another Party, if the service supplier is a juridical person 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 juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

Article 8.21: Safeguard Measures

- 1. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.
- 2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Parties to address such difficulties.

Article 8.22: Subsidies

- 1. Notwithstanding paragraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.
- 2. A Party which considers that it is adversely affected by a subsidy of another Party related to trade in services may request consultations with that other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.
- 3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

Article 8.23: Increasing Participation of Least Developed Country Parties which are Member States of ASEAN

To increase the participation of Least Developed Country Parties which are Member States of ASEAN, this Chapter shall facilitate:

- (a) strengthening their domestic services capacity and their efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;
- (b) improving their access to distribution channels and information networks; and
- (c) the liberalisation of market access in sectors and modes of supply of export interest to them, and the provision of market access in sectors beneficial to them.

Article 8.24: Review of Commitments

The Parties shall review the commitments on trade in services as necessary, but no later than the general review of this Agreement under Article 20.8 (General Review), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

Article 8.25: Cooperation

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

CHAPTER 9 TEMPORARY MOVEMENT OF NATURAL PERSONS

Article 9.1: Definitions

For the purposes of this Chapter:

- (a) **immigration formality** means a visa, permit, pass, or other document, or electronic authority, granting temporary entry;
- (b) **natural person of a Party** means a natural person of a Party as defined in subparagraph (i) of Article 8.1 (Definitions); and
- (c) **temporary entry** means entry by a natural person of a Party as covered by this Chapter without the intent to establish permanent residence.

Article 9.2: Scope

1. This Chapter shall apply, as set out in each Party's Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), to measures by that Party affecting the temporary entry of natural persons of another Party into the territory of the Party, where such persons are engaged in trade in goods, the supply of services, or the conduct of investment. Such persons shall include one or more of the following:
 - (a) business visitors;
 - (b) intra-corporate transferees; or
 - (c) other categories as may be specified in each Party's Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons).
2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.
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 natural 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 9.3: Spouses and Dependants

Each Party may make commitments on spouses or dependants in its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

Article 9.4: Grant of Temporary Entry

1. Each Party shall, in accordance with its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), grant temporary entry or extension of temporary stay in accordance with this Chapter to natural persons of another Party, provided that those natural persons:
 - (a) follow prescribed application procedures for the immigration formality sought; and
 - (b) meet all relevant eligibility requirements for temporary entry into, or extension of temporary stay in, the granting Party.
2. In accordance with its laws and regulations, any fees imposed by a Party in respect of the processing of an immigration formality shall be reasonable in that they do not, in themselves, represent an unjustifiable impediment to the movement of natural persons of another Party under this Chapter.
3. A Party may deny temporary entry or extension of temporary stay to any natural person of another Party who does not comply with subparagraph 1(a) or (b).
4. The sole fact that a Party grants temporary entry to a natural person of another Party pursuant to this Chapter shall not be construed to exempt that natural 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.

Article 9.5: Schedules of Specific Commitments on Temporary Movement of Natural Persons

Each Party shall set out in its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons) its commitments for the temporary entry into and temporary stay in its territory of natural persons of another Party covered by Article 9.2 (Scope). These Schedules shall specify the conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included therein.¹

Article 9.6: Processing of Applications

1. Where an application for an immigration formality is required by a Party, that Party shall process, as expeditiously as possible, complete applications for immigration formalities or extensions thereof received from natural persons of another Party covered by Article 9.2 (Scope).
2. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person of another Party covered by Article 9.2 (Scope), notify the applicant of:
 - (a) the receipt of the application; and
 - (b) the decision concerning the application including, if approved, the period of stay and other conditions.

¹ For the purposes of this Article, conditions and limitations include any economic needs testing requirement, which no Party may impose unless specified in its Schedule in Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons).

3. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person of another Party covered by Article 9.2 (Scope), endeavour to notify the applicant of the status of the application.
4. To the extent permissible under its laws and regulations, each Party shall endeavour to accept applications for immigration formalities in electronic format under the equivalent conditions of authenticity as paper submissions.
5. Where appropriate, each Party shall accept copies of documents authenticated in accordance with its laws and regulations in place of original documents, to the extent its laws and regulations permit.

Article 9.7: Transparency

1. Each Party shall:
 - (a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;
 - (b) publish or otherwise make publicly available in its territory and to the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of the other Parties to become acquainted with those requirements;
 - (c) upon modifying or amending any immigration measure that affects temporary entry of natural persons of another Party, ensure that the information published or otherwise made publicly available pursuant to subparagraph (b) is updated as soon as possible; and
 - (d) maintain mechanisms to respond to enquiries from interested persons regarding its laws and regulations affecting the temporary entry and temporary stay of natural persons.
2. Each Party shall endeavour to publish, to the extent practicable, the information referred to in paragraph 1 in the English language.

Article 9.8: Cooperation

The Parties may discuss mutually agreed areas of cooperation to further facilitate the temporary entry and temporary stay of natural persons of the other Parties, which shall take into consideration areas proposed by the Parties during the course of negotiations or other areas as may be identified by the Parties.

Article 9.9: Dispute Settlement

1. Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) regarding a refusal to grant temporary entry unless:
 - (a) the matter involves a pattern of practice; and
 - (b) the natural persons affected have exhausted all available administrative remedies regarding the particular matter.

3. For the purposes of subparagraph 2(b), the administrative remedies 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 institution of the 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 natural persons concerned.

CHAPTER 10 INVESTMENT

Article 10.1: Definitions

For the purposes of this Chapter:

- (a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter, and which, where applicable, has been admitted^{1, 2} by the host Party, subject to its relevant laws, regulations, and policies;³
- (b) **freely usable currency** means a freely usable currency as determined by the IMF under the IMF Articles of Agreement as may be amended;
- (c) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. Forms that an investment may take include:
- (i) shares, stocks, and other forms of equity participation in a juridical person, including rights derived therefrom;
 - (ii) bonds, debentures, loans,⁴ and other debt instruments of a juridical person and rights derived therefrom;⁵
 - (iii) rights under contracts, including turnkey, construction, management, production, or revenue-sharing contracts;
 - (iv) intellectual property rights and goodwill, which are recognised pursuant to the laws and regulations of the host Party;
 - (v) claims to money or to any contractual performance related to a business and having financial value;⁶
 - (vi) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licences, authorisations, and permits, including those for the exploration and exploitation of natural resources; and

¹ For Malaysia and Thailand, protection under this Chapter shall be accorded to covered investments which, where applicable, have been specifically approved in writing for protection by their respective competent authorities in accordance with their respective laws, regulations, and policies.

² For Cambodia, Indonesia, and Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

³ For the purposes of this definition, "policies" means those policies affecting an investment that are endorsed and announced by the government of a Party in a written form and made publicly available in a written form.

⁴ A loan issued by a Party to another Party is not an investment.

⁵ 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.

⁶ For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for the sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

- (vii) movable and immovable property, and other property rights, such as leases, mortgages, liens, or pledges.⁷

The term “investment” does not include an order or judgment entered in a judicial or administrative action or an arbitral proceeding.

For the purposes of the definition of investment in this subparagraph, returns that are invested shall be treated as an investment and any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment;

- (d) **investor of a non-Party** means, with respect to a Party, an investor that seeks to make,⁸ is making, or has made an investment in the territory of that Party, that is not an investor of a Party;
- (e) **investor of a Party** means a natural person of a Party or a juridical person of a Party that seeks to make,⁹ is making, or has made an investment in the territory of another Party;
- (f) **juridical person** means any entity constituted or organised under applicable law, whether or not for profit, and whether private or governmental, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation, and a branch of a juridical person;^{10, 11, 12}
- (g) **juridical person of a Party** means a juridical person constituted or organised under the law of that Party, and a branch located in the territory of that Party and carrying out business activities there;^{13, 14, 15}
- (h) **measure by a Party** means any measure adopted or maintained by:
- (i) central, regional, or local governments and authorities of that Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party; and
- (i) **natural person of a Party** means, for the purposes of subparagraph (e), a natural person who under the law of that Party:

⁷ For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

⁸ For greater certainty, the Parties understand that an investor “seeks to make” an investment when that investor has taken concrete action or actions to make an investment. Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor that has initiated such notification or approval process.

⁹ For greater certainty, the Parties understand that an investor “seeks to make” an investment when that investor has taken concrete action or actions to make an investment. Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor that has initiated such notification or approval process.

¹⁰ For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

¹¹ For greater certainty, the inclusion of a “branch” in the definition of “juridical person” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

¹² A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

¹³ For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

¹⁴ For greater certainty, the inclusion of a “branch” in the definition of “juridical person of a Party” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

¹⁵ A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

- (i) is a national or citizen of that Party; or
- (ii) has the right of permanent residence in that Party, where both that Party and another Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.

Article 10.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of another Party; and
 - (b) covered investments.
2. This Chapter shall not apply to:
 - (a) government procurement;
 - (b) subsidies or grants provided by a Party;
 - (c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, “service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
 - (d) measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services); and
 - (e) measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Temporary Movement of Natural Persons).

For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

3. Notwithstanding subparagraph 2(d), Article 10.5 (Treatment of Investment), Article 10.7 (Senior Management and Board of Directors),¹⁶ Article 10.9 (Transfers), Article 10.11 (Compensation for Losses), Article 10.12 (Subrogation), and Article 10.13 (Expropriation) shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of any other Party within the meaning of Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

¹⁶ Article 10.7 (Senior Management and Board of Directors) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures).

Article 10.3: National Treatment¹⁷

1. Each Party shall accord to investors of another Party, and to covered investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that government to investors, and to the investments of investors, of the Party of which it forms a part.

Article 10.4: Most-Favoured-Nation Treatment^{18, 19}

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 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 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 paragraphs 1 and 2 does not encompass any international dispute resolution procedures or mechanisms under other existing or future international agreements.

Article 10.5: Treatment of Investment²⁰

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with the customary international law minimum standard of treatment of aliens.
2. For greater certainty:
 - (a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
 - (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment; and

¹⁷ For greater certainty, whether the treatment is accorded in "like circumstances" under this Article 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.

¹⁸ This Article shall not apply to Cambodia, Lao PDR, Myanmar, and Viet Nam. The treatment under this Article shall not be accorded to investors of Cambodia, Lao PDR, Myanmar, and Viet Nam, and to covered investments of such investors.

¹⁹ For greater certainty, whether the treatment is accorded in "like circumstances" under this Article 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.

²⁰ This Article shall be interpreted in accordance with Annex 10A (Customary International Law).

- (c) the concepts of fair and equitable treatment and full protection and security do not require treatment to be accorded to covered investments in addition to or beyond that which is required under the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights.
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.

Article 10.6: Prohibition of Performance Requirements

1. No Party shall impose or enforce, as a condition for establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of any other Party, any of the following requirements:²¹
- (a) to export a given level or percentage of goods;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
 - (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
 - (e) to restrict sales of goods in its territory that such investments produce by relating such sales 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 such investments produce to a specific regional market or to the world market; or
 - (h) to adopt a given rate or amount of royalty under a licence contract, in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any future licence contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party.²² For greater certainty, this subparagraph does not apply when the licence contract is concluded between the investor and a Party.

Notwithstanding this Article, subparagraphs (f) and (h) shall not apply to Cambodia, Lao PDR, and Myanmar.

²¹ For greater certainty, each Party may maintain existing measures or adopt new or more restrictive measures that do not conform with obligations under this Article, as set out in List A and List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

²² For the purposes of this subparagraph, a "licence contract" means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

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 in its territory of an investor of any other Party on compliance with any of the following requirements:
- (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
 - (c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or
 - (d) to restrict sales of goods in its territory that such investments produce by relating such sales 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 in its territory of an investor of any other Party, 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) Subparagraphs 1(f) and (h) shall not apply:
 - (i) if a Party authorises use of an intellectual property right in accordance with Article 31 or Article 31 *bis* of the TRIPS Agreement,²³ 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 enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws and regulations.
 - (c) Subparagraph 1(h) shall not apply if the requirement is imposed or enforced by a tribunal or competent authority as equitable remuneration under the Party's copyright laws and regulations.
 - (d) Subparagraphs 1(a) through (c), 2(a), and 2(b) shall not apply to qualification requirements for goods with respect to export promotion and foreign aid programmes.
 - (e) Subparagraphs 2(a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than those set out in those paragraphs.

²³ This includes any amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2)* adopted at Doha on 14 November 2001.

Article 10.7: Senior Management and Board of Directors

1. No Party shall require that a juridical person 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 a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.8: Reservations and Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board 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 List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
 - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
 - (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:
 - (i) for Cambodia, Indonesia, Lao PDR, Myanmar, and the Philippines, as it existed at the date of entry into force of this Agreement; and
 - (ii) for Australia, Brunei, China, Japan, Korea, Malaysia, New Zealand, Singapore, Thailand, and Viet Nam, as it existed immediately before the amendment,with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors).
2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board 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 List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

3. Notwithstanding subparagraph 1(c)(ii), for five years after the date of entry into force of this Agreement, Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors) shall not apply to an amendment to any non-conforming measure referred to in subparagraph 1(a) 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 with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors).
4. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.
5. Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 11.7 (National Treatment), or imposed by Article 3 or 4 of the TRIPS Agreement.

Article 10.9: Transfers

1. Each Party shall allow 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, including the initial contribution;
 - (b) profits, capital gains, dividends, interest, royalty payments, technical assistance and technical and management fees, licence fees, and other current income accruing from the covered investment;
 - (c) proceeds from the sale or liquidation of all or any part of the covered investment;
 - (d) payments made under a contract, including a loan agreement;
 - (e) payments made pursuant to Article 10.11 (Compensation for Losses) and Article 10.13 (Expropriation);
 - (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration, or the agreement of the parties to the dispute; and
 - (g) earnings and other remuneration of personnel engaged from abroad in connection with the covered investment.
2. Each Party shall allow such transfers relating to a covered investment to be made in any freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:
 - (a) bankruptcy, insolvency, or the protection of the rights of creditors including employees;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offences and the recovery of the proceeds of crime;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - (e) ensuring compliance with awards or orders or judgments in judicial or administrative proceedings;
 - (f) taxation;²⁴
 - (g) social security, public retirement, superannuation, compulsory savings schemes, or other arrangements to provide pension or similar retirement benefits;
 - (h) severance entitlement of employees; and
 - (i) requirements to register and satisfy other formalities imposed by the central bank and other relevant authorities of that Party.

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 17.15 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

Article 10.10: Special Formalities and Disclosure of Information

1. Nothing in Article 10.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by that Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 10.3 (National Treatment) and Article 10.4 (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, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice the legitimate commercial interests or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.

²⁴ For greater certainty, this also includes the adoption or enforcement of any 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 or incorporation.

Article 10.11: Compensation for Losses

Each Party shall accord to investors of another Party, and their covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife, or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

- (a) its own investors and their investments; and
- (b) investors of any other Party or non-Party, and their investments.

Article 10.12: Subrogation

1. If a Party, or an agency designated by a Party, makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity that it has granted in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any right or claim in respect of such covered investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party or an agency designated by a Party has made a payment to an investor of that Party and has taken over any right or claim of the investor, that investor shall not pursue that right or claim against the other Party in whose territory the covered investment was made, unless that investor is authorised to act on behalf of the Party making the payment or the agency designated by that Party.
3. In the exercise of subrogated or transferred right or claim, a Party or an agency designated by a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors to the relevant Party.

Article 10.13: Expropriation²⁵

1. No Party shall expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation” in this Chapter), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of compensation in accordance with paragraphs 2 and 3; and
 - (d) in accordance with due process of law.
2. The compensation referred to in subparagraph 1(c) shall:
 - (a) be paid without delay;²⁶

²⁵ This Article shall be interpreted in accordance with Annex 10B (Expropriation).

²⁶ The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

- (b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced,²⁷ or when the expropriation occurred, whichever is earlier (hereinafter referred to as the “date of expropriation” in this Chapter);^{28, 29, 30}
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be effectively realisable and freely transferable.
3. In the event of delay, the compensation shall include an appropriate interest in accordance with the expropriating Party’s laws, regulations, and policies provided that such laws, regulations, and policies are applied on a non-discriminatory basis.
4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 11 (Intellectual Property) and the TRIPS Agreement.³¹
5. Notwithstanding paragraphs 1 through 3, any measure of expropriation relating to land shall be as defined in the existing laws and regulations of the expropriating Party, and shall be, for the purposes of and on payment of compensation, in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

Article 10.14: Denial of Benefits³²

1. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if the juridical person:
- (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.

²⁷ For the Philippines, the time when the expropriation was publicly announced for the purpose of calculating the fair market value of the expropriated investment refers to the date of filing of the Petition for Expropriation.

²⁸ For Australia, Brunei Darussalam, Korea, Malaysia, New Zealand, and Singapore, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date immediately before the expropriation occurs.

²⁹ For Cambodia, Lao PDR, Myanmar, and Viet Nam, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation decision is issued by the competent authority.

³⁰ For Thailand, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation occurs.

³¹ For greater certainty, the Parties recognise that, for the purposes of this Article, the “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the “limitation” of intellectual property rights includes exceptions to such rights.

³² A Party’s right to deny the benefits of this Chapter as provided for in this Article may be exercised at any time.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non-Party own or control the juridical person 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 juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.
3. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non-Party own or control the juridical person and the denying Party does not maintain diplomatic relations with the non-Party.
4. Notwithstanding paragraph 1, Thailand may, under its applicable laws and regulations, deny the benefits of this Chapter relating to the admission, establishment, acquisition, and expansion of investments to an investor of another Party that is a juridical person of such Party and to investments of such an investor where Thailand establishes that the juridical person is owned or controlled by natural persons or juridical persons of a non-Party or of Thailand.
5. For the purposes of this Article, for Thailand, a juridical person is:
 - (a) “owned” by natural persons or juridical persons of a Party or of a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons; and
 - (b) “controlled” by natural persons or juridical persons of a Party or of a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.
6. The Philippines may deny the benefits of this Chapter to investors of another Party and to investments of that investor where it establishes that such investor has made an investment in breach of the provisions of *Commonwealth Act No. 108*, entitled *An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges*, as amended by *Presidential Decree No. 715*, otherwise known as *The Anti-Dummy Law*, as may be amended.
7. A Party may deny the benefits of this Chapter to an investor of another Party or of a non-Party and to investments of that investor where such an investor has made an investment in breach of the provisions of the denying Party’s laws and regulations that implement the Financial Action Task Force Recommendations.

Article 10.15: Security Exceptions

Notwithstanding Article 17.13 (Security Exceptions), nothing in this Chapter 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:
 - (i) the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security; or

- (ii) the protection of its own essential security interests.

Article 10.16: Promotion of Investment

The Parties shall endeavour to promote and increase awareness of the region as an investment area including through:

- (a) encouraging investments among the Parties;
- (b) organising joint investment promotion activities between or among Parties;
- (c) promoting business matching events;
- (d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations, and policies; and
- (e) conducting information exchanges on other issues of mutual concern relating to investment promotion.

Article 10.17: Facilitation of Investment

1. Subject to its laws and regulations, each Party shall endeavour to facilitate investments among the Parties, including through:
 - (a) creating the necessary environment for all forms of investment;
 - (b) simplifying its procedures for investment applications and approvals;
 - (c) promoting the dissemination of investment information, including investment rules, laws, regulations, policies, and procedures; and
 - (d) establishing or maintaining contact points, one-stop investment centres, focal points, or other entities in the respective Party to provide assistance and advisory services to investors, including the facilitation of operating licences and permits.
2. Subject to its laws and regulations, a Party's activities under subparagraph 1(d) may include, to the extent possible, assisting investors of any other Party and covered investments to amicably resolve complaints or grievances with government bodies which have arisen during their investment activities by:
 - (a) receiving and, where appropriate, considering referring or giving due consideration to complaints raised by investors relating to government activities impacting their covered investment; and
 - (b) providing assistance, to the extent possible, in resolving difficulties experienced by the investors in relation to their covered investments.

3. Subject to its laws and regulations, each Party may, to the extent possible, consider establishing mechanisms to make recommendations to its relevant government bodies addressing recurrent issues affecting investors of another Party.
4. The Parties shall endeavour to facilitate meetings between their respective competent authorities aimed at exchanging knowledge and approaches to better facilitate investment.
5. Nothing in this Article shall be subject to, or otherwise affect, any dispute resolution proceedings under this Agreement.

Article 10.18: Work Programme

1. The Parties shall, without prejudice to their respective positions, enter into discussions on:
 - (a) the settlement of investment disputes between a Party and an investor of another Party;
and
 - (b) the application of Article 10.13 (Expropriation) to taxation measures that constitute expropriation,

no later than two years after the date of entry into force of this Agreement, the outcomes of which are subject to agreement by all Parties.
2. The Parties shall conclude the discussions referred to in paragraph 1 within three years from the date of commencement of the discussions.

CHAPTER 11 INTELLECTUAL PROPERTY

SECTION A GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 11.1: Objectives

1. The objective of this Chapter is to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through the effective and adequate creation, utilisation, protection, and enforcement of intellectual property rights, while recognising:
 - (a) the Parties' different levels of economic development and capacity, and differences in national legal systems;
 - (b) the need to promote innovation and creativity;
 - (c) the need to maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;
 - (d) the importance of facilitating the diffusion of information, knowledge, content, culture, and the arts; and
 - (e) that establishing and maintaining a transparent intellectual property system and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide confidence to right holders and users.

2. 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 11.2: Scope of Intellectual Property

For the purposes of this Chapter, "intellectual property" means copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, protection of plant varieties, and protection of undisclosed information, as referred to in Sections 1 through 7 of Part II of the TRIPS Agreement.

Article 11.3: Relation to Other Agreements¹

In relation to intellectual property, in the event of any inconsistency between a provision of this Chapter and a provision of the TRIPS Agreement, the latter shall prevail to the extent of such inconsistency.

¹ For the purposes of the application of this Article, the Parties agree that the fact that this Chapter provides for more extensive protection of intellectual property than is required by the TRIPS Agreement does not mean there is an inconsistency within the meaning of this Article and paragraph 2 of Article 20.2 (Relation to Other Agreements).

Article 11.4: 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 its socio-economic and technological development, provided that such measures are consistent with this Chapter.
2. Appropriate measures, provided that they are consistent with 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.²
3. Further to paragraph 2, the Parties recognise the need to foster competition.

Article 11.5: Obligations

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

Article 11.6: Exhaustion of Intellectual Property Rights

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights.

Article 11.7: National Treatment

1. Each Party shall accord to the nationals³ of other Parties treatment no less favourable than that it accords to its own nationals with regard to the protection⁴ of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in the multilateral agreements administered by the World Intellectual Property Organization (hereinafter referred to as “WIPO” in this Chapter), to which that Party is party.
2. A Party may avail itself of the exceptions referred to in 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, only where such exceptions are:
 - (a) necessary to secure compliance with its laws and regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.

² The Parties recognise that intellectual property rights by themselves do not necessarily confer market dominance.

³ For the purposes of this paragraph, a “national” of a Party shall include, in respect of the relevant right, any person as defined in subparagraph (t) of Article 1.2 (General Definitions) of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 11.9 (Multilateral Agreements) and the TRIPS Agreement.

Further, for the purposes of this paragraph, “protection” also includes the provisions concerning:

- (a) effective technological measures set out in Article 11.14 (Circumvention of Effective Technological Measures); and
- (b) rights management information set out in Article 11.15 (Protection for Electronic Rights Management Information).

3. The obligations under paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 11.8: The TRIPS Agreement and Public Health

1. The Parties reaffirm the *Doha Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001. In particular, the Parties have reached the following understandings regarding this Chapter:
 - (a) the Parties affirm the right to fully use the flexibilities as duly recognised in the *Doha Declaration on the TRIPS Agreement and Public Health*;
 - (b) the Parties agree that this Chapter does not and should not prevent a Party from taking measures to protect public health; and
 - (c) 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.
2. In recognition of the Parties' commitment to access to medicines and public health, this Chapter does not and should not prevent the effective utilisation of Article 31 *bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.
3. The Parties recognise the importance of contributing to the international efforts to implement Article 31 *bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

Article 11.9: Multilateral Agreements

1. Each Party shall ratify or accede to the following multilateral agreements to which it is not yet party:
 - (a) the *Paris Convention for the Protection of Industrial Property* done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 and amended on 28 September 1979 (hereinafter referred to as the "Paris Convention" in this Chapter);
 - (b) the *Berne Convention for the Protection of Literary and Artistic Works* done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979 (hereinafter referred to as the "Berne Convention" in this Chapter);
 - (c) the *Patent Cooperation Treaty* done at Washington on 19 June 1970, as amended on 28 September 1979 and modified on 3 February 1984 and 3 October 2001 (hereinafter referred to as the "PCT" in this Chapter);
 - (d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* adopted at Madrid on 27 June 1989, as amended on 3 October 2006 and 12 November 2007 (hereinafter referred to as the "Madrid Protocol" in this Chapter);
 - (e) the *WIPO Copyright Treaty* adopted in Geneva on 20 December 1996 (hereinafter referred to as the "WCT" in this Chapter);

- (f) the *WIPO Performances and Phonograms Treaty* adopted in Geneva on 20 December 1996 (hereinafter referred to as the “WPPT” in this Chapter); and
 - (g) the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or Otherwise Print Disabled* adopted in Marrakesh on 27 June 2013 (hereinafter referred to as the “Marrakesh Treaty” in this Chapter).
2. Each Party shall endeavour to ratify or accede to the following multilateral agreement to which it is not yet party: the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure* done at Budapest on 28 April 1977, as amended on 26 September 1980.
3. If any Party intends to ratify or accede to any of the following multilateral agreements, it may seek to cooperate with other Parties to support its ratification or accession to and its implementation of that multilateral agreement:
- (a) the *1991 Act of International Convention for the Protection of New Varieties of Plants* as revised at Geneva on 19 March 1991;
 - (b) the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs* done at Geneva on 2 July 1999;
 - (c) the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations* done at Rome on 26 October 1961 (hereinafter referred to as the “Rome Convention” in this Chapter); and
 - (d) the *Singapore Treaty on the Law of Trademarks* done at Singapore on 27 March 2006.

SECTION B COPYRIGHT AND RELATED RIGHTS

Article 11.10: Exclusive Rights of Authors, Performers, and Producers of Phonograms

1. Each Party shall provide to authors of works the exclusive right to authorise any 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.
2. Each Party shall provide to performers and producers of phonograms⁴ the exclusive right to authorise the making available to the public of their performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.
3. Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorise or prohibit the reproduction of their works, performances fixed in phonograms, and phonograms in any manner or form.

⁴ For the purposes of this Chapter, a Party may interpret “producers of phonograms” as having the same meaning as “authors of sound recordings”.

Article 11.11: Right to Remuneration for Broadcasting⁵

Performers and producers of phonograms shall enjoy the right to a single equitable remuneration, or alternatively the right to receive royalties, for the direct or indirect use of phonograms published for commercial purposes for broadcasting.

Article 11.12: Protection of Broadcasting Organisations and Encrypted Programme-Carrying Satellite Signals

1. Each Party shall provide to broadcasting organisations the exclusive right to prohibit the re-broadcasting of their broadcasts by at least wireless means, the fixation of their broadcasts, and the reproduction of fixations of their broadcasts.^{6, 7}
2. Each Party shall endeavour to provide measures, in accordance with its laws and regulations, against at least one of the following acts:
 - (a) wilful reception;⁸
 - (b) wilful distribution;⁹ or
 - (c) wilful reception and further distribution,¹⁰

of a programme-carrying signal that originated as an encrypted programme-carrying satellite signal, knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

Article 11.13: Collective Management Organisations

1. Each Party shall endeavour to foster the establishment of appropriate organisations for the collective management of copyright and related rights. Each Party shall encourage such organisations to operate in a manner that is fair, efficient, publicly transparent, and accountable to their members, which may include open and transparent record keeping of the collection and distribution of royalties.¹¹
2. The Parties recognise the importance of fostering cooperation between their respective collective management organisations for the purposes of mutually ensuring easier licensing of content among the Parties, as well as encouraging¹² mutual transfer of royalties for use of works or other copyright-protected subject matters of the nationals of another Party.

⁵ Where a Party is, or becomes, party to the WPPT, that Party's obligations under this Article shall be subject to any commitments and reservations that that Party has made, or will make, under the WPPT.

⁶ Where a Party does not grant such rights to broadcasting organisations, it shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention.

⁷ Any Party may, in relation to the rights conferred under this paragraph, provide for conditions, limitations, exceptions, and reservations, to the extent permitted by the Rome Convention.

⁸ For greater certainty and for the purposes of subparagraphs 2(a) and (c), a Party may provide that wilful reception of an encrypted programme-carrying satellite signal means reception and use of the signal, or reception and decoding of the signal.

⁹ For greater certainty, a Party may interpret "distribution" as "retransmission to the public".

¹⁰ For greater certainty, a Party may interpret "distribution" as "retransmission to the public".

¹¹ For greater certainty, "royalties" may include equitable remuneration.

¹² For greater certainty, "encouraging" does not require a Party to intercede in any contractual arrangements between collective management organisations.

Article 11.14: Circumvention of Effective Technological Measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers, or producers of phonograms in connection with the exercise of their rights referred to in this Section and that restrict acts, in respect of their works, performances, or phonograms, which are not authorised by the authors, the performers, or the producers of phonograms concerned or permitted by the laws and regulations of that Party.

Article 11.15: Protection for Electronic Rights Management Information

To protect electronic rights management information (hereinafter referred to as “RMI” in this Chapter),¹³ each Party shall provide adequate and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies with reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights referred to in this Chapter:

- (a) removing or altering any electronic RMI; or
- (b) distributing, importing for distribution, broadcasting, communicating, or making available to the public copies of works, performances fixed in phonograms, or phonograms, knowing that electronic RMI has been removed or altered without authority.

Article 11.16: Limitations and Exceptions to Providing Protection and Remedies for Technological Measures and RMI

1. Each Party may provide for appropriate limitations and exceptions to measures implementing Article 11.14 (Circumvention of Effective Technological Measures) and Article 11.15 (Protection for Electronic Rights Management Information) in accordance with its laws and regulations.
2. The obligations set forth in Article 11.14 (Circumvention of Effective Technological Measures) and Article 11.15 (Protection for Electronic Rights Management Information) are without prejudice to the rights, limitations, exceptions, or defences to infringement of any copyright or related right under a Party’s laws and regulations.

Article 11.17: Government Use of Software

Each Party confirms its commitment to:

¹³ For the purposes of this Article, “RMI” means:

- (a) information that identifies the work, the performance, the phonogram, the author of the work, the performer of the performance, 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 use of the work, performance, or phonogram; or
- (c) any numbers or codes that represent the information described in subparagraphs (a) and (b) of this footnote,

when any of these items of information is attached to a copy of a work, performances fixed in phonograms, or a phonogram, or appears in connection with the communication or the making available of a work, performances fixed in phonograms, or a phonogram to the public.

- (a) maintain appropriate laws, regulations, or policies that provide for its central government to use only non-infringing computer software in a manner consistent with this Chapter; and
- (b) encourage its regional and local governments to adopt or maintain measures similar to those referred to in subparagraph (a).

Article 11.18: Limitations and Exceptions

1. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which 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.¹⁴
2. Nothing in paragraph 1 shall reduce or extend the scope of applicability of the limitations and exceptions available to a Party as a party to the TRIPS Agreement, the Berne Convention, the Rome Convention, the WCT, or the WPPT.
3. Each Party shall endeavour to provide an appropriate balance in its copyright and related rights system, among other things by means of limitations and exceptions consistent with paragraph 1, for legitimate purposes, which may include education, research, criticism, comment, news reporting, and facilitating access to published works for persons who are blind, visually impaired, or otherwise print disabled.
4. For greater certainty, a Party may adopt or maintain limitations or exceptions to the rights referred to in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in paragraph 1.

SECTION C TRADEMARKS

Article 11.19: Trademarks Protection

Each Party shall ensure that any signs or any combination of signs capable of distinguishing the goods and services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes, and combinations of colours, as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, a Party may make registrability depend on distinctiveness acquired through use. No Party shall require, as a condition of registration of a trademark, that signs be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound.¹⁵

Article 11.20: Protection of Collective Marks and Certification Marks

1. 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 laws and regulations, provided that those marks are protected.

¹⁴ For greater certainty, this paragraph shall not prevent a Party from providing limitations or exceptions for broadcasts in accordance with multilateral agreements related to intellectual property to which that Party is, or becomes, party.

¹⁵ A Party may require an adequate description, which can be represented graphically, of the trademark.

2. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system in accordance with its laws and regulations.

Article 11.21: Trademarks Classification System

1. 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 on 15 June 1957, as amended from time to time (hereinafter referred to as the “Nice Agreement” in this Chapter).
2. A Party that relies on translations of the classification system established by the Nice Agreement (hereinafter referred to as the “Nice Classification” in this Chapter) shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Article 11.22: Registration and Applications of Trademarks

1. Each Party shall provide a system for the registration of trademarks, which shall include:
 - (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;
 - (b) an opportunity for the applicant to respond to communications from the Party's competent authorities, to contest an initial refusal, and to make a judicial appeal of a final refusal to register a trademark;
 - (c) an opportunity to do at least one of the following in relation to a trademark before it has been registered:
 - (i) oppose a trademark application; or
 - (ii) provide the competent authority with information that the trademark application does not satisfy the requirements for registration;
 - (d) an opportunity to do at least one of the following in relation to a trademark after it has been registered:
 - (i) oppose the registration;
 - (ii) seek revocation of the registration;
 - (iii) seek cancellation of the registration; or
 - (iv) seek invalidation of the registration; and
 - (e) a requirement that administrative decisions¹⁶ in opposition, revocation, cancellation, or invalidation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.

¹⁶ For the purposes of this subparagraph, “administrative decisions” include quasi-judicial decisions.

2. Each Party shall provide:
 - (a) a system for the electronic application for processing, registering, and maintenance of, trademarks; and
 - (b) a publicly accessible online electronic database of trademark applications and registrations.

Article 11.23: Rights Conferred

Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the 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. The rights described in this Article shall not prejudice any existing prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

Article 11.24: Exceptions

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

Article 11.25: Protection of Trademarks that Predate Geographical Indications

Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications, in accordance with the TRIPS Agreement.

Article 11.26: Protection of Well-Known Trademarks

1. Each Party shall provide for appropriate measures to refuse or cancel the registration, and to prohibit the use,¹⁷ of a trademark that is identical or similar to a well-known trademark^{18, 19} for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark.
2. Each Party recognises the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO, 20 to 29 September 1999.

¹⁷ For greater certainty, a Party may comply with the obligation to provide for appropriate measures to prohibit the use of the trademark that is identical or similar to a well-known trademark under this paragraph by providing its judicial authorities with the authority to prohibit the use of such a trademark.

¹⁸ For the purposes of this paragraph, a Party may treat "a reproduction, an imitation, or a translation of a well-known trademark" as "identical or similar to a well-known trademark".

¹⁹ 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.

3. No Party shall require, as a condition for determining that a trademark is a well-known trademark, that the trademark has been registered in that Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

Article 11.27: Bad Faith Trademarks²⁰

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trademark was made in bad faith in accordance with its laws and regulations.

Article 11.28: One and the Same Application Relating to Several Goods or Services

Each Party shall provide that one and the same application for registration of a trademark may relate to several goods or services, or any combination thereof, irrespective of whether they belong to one class or to several classes of the Nice Classification.

SECTION D GEOGRAPHICAL INDICATIONS

Article 11.29: Protection of Geographical Indications

Each Party shall ensure in its laws and regulations adequate and effective means to protect geographical indications. Each Party recognises that such protection may be provided through a trademark system, a *sui generis* system, or other legal means, provided that all requirements under the TRIPS Agreement are fulfilled.

Article 11.30: Domestic Administrative Procedures for the Protection of Geographical Indications

1. If a Party provides domestic administrative procedures²¹ for the protection of geographical indications, whether through a trademark or a *sui generis* system, that Party shall with respect to applications for that protection:
 - (a) receive those applications for the protection of geographical indications without requiring intercession by a Party on behalf of its nationals;²²
 - (b) process those applications in compliance with reasonable procedures and formalities;²³

²⁰ For the purposes of this Article, the competent authority of a Party may take into consideration whether the trademark is identical or similar to a well-known trademark of another person.

²¹ For the purposes of this Article, "administrative procedures" include quasi-judicial procedures.

²² For greater certainty, a Party may require that an application for protection of a geographical indication originating in another Party include evidence indicating to the satisfaction of the former Party that the geographical indication is protected in that other Party.

²³ The Parties understand that for the purposes of this subparagraph, reasonable procedures and formalities may be considered to be not overly burdensome procedures and formalities.

- (c) ensure that its laws and regulations governing the protection of geographical indications are readily available to the public and clearly set out the procedures relating to the protection of geographical indications including procedures relating to the filing of applications;
 - (d) make available information to allow the public to obtain guidance concerning the procedures for filing applications for the protection of geographical indications, and allow an applicant or their representative to ascertain the status of specific applications; and
 - (e) ensure that such applications are published for opposition and provide procedures for opposing geographical indications that are the subject of applications. Oppositions shall be received without requiring intercession by a Party on behalf of its nationals.
2. With respect to the protection of a geographical indication referred to in paragraph 1, a Party shall provide procedures for cancellation²⁴ of the protection afforded to a geographical indication.

Article 11.31: Grounds for Opposition and Cancellation

1. With respect to the opposition procedures referred to in subparagraph 1(e) of Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), each Party shall provide procedures that allow at least interested persons to oppose the protection of a geographical indication, and that allow for any such protection to be refused at least on the ground that the geographical indication is a term customary in common language as the common name²⁵ for the relevant good in the territory of that Party.
2. If a Party provides protection of a geographical indication through the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available at least the ground which is the same as that referred to in paragraph 1 with respect to oppositions to the protection of that translation or transliteration.²⁶
3. With respect to the procedures referred to in paragraph 1, in determining whether a term is a term customary in common language as the common name for the relevant good in the territory of a Party, each Party shall ensure that its competent authorities have the authority to take into account how consumers understand the term within 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.²⁷

²⁴ For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

²⁵ Where a Party applies this Article to geographical indications for wines and spirits or applications for those geographical indications, the Parties understand that nothing in this Section shall require a Party to protect 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 that exists in the territory of that Party.

²⁶ A Party shall not be required to apply this paragraph to applications for geographical indications for wines and spirits.

²⁷ 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 that Party.

4. With respect to the cancellation procedure referred to in paragraph 2 of Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), no Party shall preclude the possibility that the protection of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected term has ceased meeting the conditions upon which the protection was originally granted in that Party.

Article 11.32: Multi-Component Terms

With respect to the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) and Article 11.31 (Grounds for Opposition and Cancellation), an individual component of a multi-component term that is protected as a geographical indication shall not be protected in a Party if that individual component is a term customary in the common language as the common name for the associated good in the territory of that Party.

Article 11.33: Date of Protection of a Geographical Indication

The protection of a geographical indication through a Party's domestic administrative procedures²⁸ referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) shall commence no earlier than the filing date²⁹ of the application for the protection in that Party or the registration date in that Party, as applicable.

Article 11.34: Protection or Recognition of Geographical Indications Pursuant to International Agreements

If a Party protects or recognises a geographical indication pursuant to an international agreement involving a Party or a non-Party, and that agreement is concluded after the date of entry into force of this Agreement for that Party, and that geographical indication is not protected through the procedures referred to in Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications), that Party shall:

- (a) make available to the public information concerning the procedures for protection or recognition of geographical indications, and if applicable, allow at least interested persons to ascertain the status of requests for protection or recognition;
- (b) ensure that those geographical indications that are being considered for protection or recognition are published for opposition, provide procedures for at least interested persons to oppose those geographical indications on the ground referred to in paragraph 1 of Article 11.31 (Grounds for Opposition and Cancellation), and apply Article 11.32 (Multi-Component Terms) with respect to those procedures; and
- (c) make available to the public details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party.

²⁸ For the purposes of this Article, "administrative procedures" include quasi-judicial procedures.

²⁹ For greater certainty, where a Party protects a geographical indication through its trademark system, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

Article 11.35: Protection or Recognition of Geographical Indications under Concluded International Agreements

1. No Party shall be required to apply Article 11.34 (Protection or Recognition of Geographical Indications Pursuant to International Agreements) 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 was concluded prior to the date of entry into force of this Agreement for that Party.
2. In respect of international agreements referred to in paragraph 1 that permit the protection or recognition of a new geographical indication, a Party shall:³⁰
 - (a) apply subparagraph (c) of Article 11.34 (Protection or Recognition of Geographical Indications Pursuant to International Agreements); and
 - (b) ensure an opportunity for at least 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.

**SECTION E
PATENTS****Article 11.36: Patentable Subject Matter**

1. Subject to paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application.³¹ Subject to paragraph 3 and Section M (Transition Periods and Technical Assistance), patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology, and whether products are imported or locally produced.
2. A Party may exclude from patentability inventions, the prevention within its 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 the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its laws and regulations.
3. A Party may also exclude from patentability:
 - (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

³⁰ A Party may comply with this paragraph by complying with the obligations under Article 11.30 (Domestic Administrative Procedures for the Protection of Geographical Indications) and Article 11.31 (Grounds for Opposition and Cancellation).

³¹ For the purposes of this Section, "inventive step" and "capable of industrial application" may be deemed by a Party to be synonymous with "non-obvious" and "useful", respectively.

- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The Parties shall review this subparagraph upon any amendment to subparagraph 3(b) of Article 27 of the TRIPS Agreement with a view to deciding whether to adopt a similar amendment to this subparagraph.

Article 11.37: Rights Conferred

1. Each Party shall provide that a patent shall confer on its owner the following exclusive rights:
 - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing³² for these purposes that product; and
 - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 11.38: Exceptions to Rights Conferred

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.

Article 11.39: Other Use without Authorisation of the Right Holder

For greater certainty, nothing in this Agreement shall limit a Party's rights and obligations under Article 31 and Article 31*bis* of the TRIPS Agreement, and the Annex and Appendix to the Annex to the TRIPS Agreement.

Article 11.40: Experimental Use of a Patent

Without limiting Article 11.38 (Exceptions to Rights Conferred), each Party shall provide that any person may do an act that would otherwise infringe a patent if the act is done for experimental purposes³³ relating to the subject matter of a patented invention.

³² This right, like all other rights conferred under this Chapter in respect of the use, sale, importation, or other distribution of goods, is subject to Article 11.6 (Exhaustion of Intellectual Property Rights).

³³ For greater certainty, each Party may determine, consistent with Article 11.38 (Exceptions to Rights Conferred), what acts fall within the meaning of "experimental purposes".

Article 11.41: Procedural Aspects of Examination and Registration

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent systems as well as simplifying and streamlining the procedures and processes of their respective competent authorities for the benefit of all users of their respective patent systems and the public as a whole.
2. Each Party shall provide a patent system, which includes:
 - (a) a requirement to provide to the applicant a communication in writing of the reasons for a refusal to grant a patent;
 - (b) an opportunity for the applicant to make amendments and observations in connection with their applications;³⁴
 - (c) an opportunity to do at least one of the following in relation to a patent before it has been granted:
 - (i) file an opposition against the patent application; or
 - (ii) provide the competent authority with information that could deny novelty or inventive step of an invention claimed in the patent application;
 - (d) an opportunity to do at least one of the following in relation to a patent after it has been granted:
 - (i) oppose the grant;
 - (ii) seek revocation;
 - (iii) seek cancellation; or
 - (iv) seek invalidation; and
 - (e) a requirement that administrative decisions³⁵ in opposition, revocation, cancellation, or invalidation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.

Article 11.42: Grace Period for Patents

The Parties recognise the benefits of patent grace periods to disregard certain public disclosures of inventions when determining if an invention is novel in order to support innovation.

³⁴ For the purposes of this subparagraph, the Parties understand that “amendments” may include corrections and “observations” may include explanations or responses to a finding on its application by the competent authority whether or not such response is given in conjunction with an amendment or correction to the application.

³⁵ For the purposes of this subparagraph, “administrative decisions” may include quasi-judicial decisions.

Article 11.43: Electronic Patent Application System

Each Party is encouraged to adopt an electronic patent application system so as to facilitate ease of application by patent applicants.

Article 11.44: 18-Month Publication

1. Each Party shall publish any patent application promptly after the expiry of 18 months from its filing date or, if priority is claimed, from its earliest priority date, unless the application has been published earlier, or has been withdrawn, abandoned, or refused.³⁶
2. If a pending application is not published promptly in accordance with paragraph 1, the Party shall publish that application or the corresponding patent as soon as practicable.
3. Nothing in this Article shall be construed to require a Party to publish any information the disclosure of which it considers to be contrary to its national security or to public order or morality.
4. Each Party shall provide that the applicant may request the early publication of an application prior to the expiry of the period referred to in paragraph 1.

Article 11.45: Information as Prior Art Made Available to the Public on the Internet

The Parties recognise that information made available to the public on the internet may form part of the prior art.

Article 11.46: Expedited Examination

Each Party shall endeavour to provide for domestic procedures for a patent applicant to request to expedite the examination of its patent application in accordance with that Party's laws, regulations, and rules.

Article 11.47: Introduction of International Patent Classification System

Each Party shall endeavour to use a patent classification system that is consistent with the *Strasbourg Agreement Concerning the International Patent Classification* done at Strasbourg on 24 March 1971, as amended from time to time.

Article 11.48: Protection of New Varieties of Plants³⁷

Each Party shall provide for the protection of new varieties of plants through an effective *sui generis* plant variety protection system.

³⁶ The Parties understand that, for the purposes of this Article, an application is withdrawn, abandoned, or refused in accordance with the respective Party's laws and regulations.

³⁷ For greater certainty, with respect to the protection of plant varieties, subparagraph 3(b) of Article 11.36 (Patentable Subject Matter) is subject to this Article.

SECTION F INDUSTRIAL DESIGNS

Article 11.49: Protection of Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. A Party may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Party shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination, or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Each Party shall be free to meet this obligation through industrial design law or through copyright law.
3. Each Party shall provide that the owner of a protected industrial design has the right to prevent third parties not having the owner's consent from making, selling, or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
4. Each Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
5. Each Party 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, in accordance with its laws and regulations.

Article 11.50: Information as Prior Art for Designs Made Available to the Public on the Internet³⁸

The Parties recognise that information made available to the public on the internet may form part of the prior art for designs.

Article 11.51: Registration or Grant and Applications of Industrial Designs

Each Party shall provide a system for the registration or grant of industrial designs, which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register or grant an industrial design;
- (b) an opportunity for the applicant to respond to communications from the Party's competent authorities for industrial designs, and to contest, challenge, or appeal a refusal to register or grant an industrial design;

³⁸ For greater certainty, nothing in this Article shall require a Party to ensure that its administrative authorities conduct substantive examination of designs.

- (c) an opportunity to seek cancellation or invalidation or revocation of a registration or grant; and
- (d) a requirement that administrative decisions³⁹ in cancellation or invalidation or revocation proceedings shall be reasoned and in writing. Such decisions may be provided electronically.

Article 11.52: Introduction of International Classification System for Industrial Designs

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the *Locarno Agreement Establishing an International Classification for Industrial Designs* signed at Locarno on 8 October 1968, as amended from time to time.

SECTION G GENETIC RESOURCES, TRADITIONAL KNOWLEDGE, AND FOLKLORE⁴⁰

Article 11.53: Genetic Resources, Traditional Knowledge, and Folklore

1. Subject to its international obligations, each Party may establish appropriate measures⁴¹ to protect genetic resources, traditional knowledge, and folklore.
2. Where a Party has disclosure requirements relating to the source or origin of genetic resources⁴² as part of its patent system, that Party shall endeavour to make available its laws, regulations, and procedures with respect to such requirements, including on the internet where feasible, in such a manner as to enable interested persons and other Parties to become acquainted with them.
3. Each Party shall endeavour to pursue quality patent examination, which may include:
 - (a) that when 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; and
 - (c) if applicable and appropriate, the use of databases or digital libraries which contain relevant information on traditional knowledge associated with genetic resources.

³⁹ For the purposes of this subparagraph, “administrative decisions” may include quasi-judicial decisions.

⁴⁰ For greater certainty, this Section is without prejudice to the position of any Party on genetic resources, traditional knowledge, and folklore, including in any bilateral or multilateral negotiations through any fora, such as the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

⁴¹ For greater certainty, the Parties understand that such “appropriate measures” are a matter for each Party to determine and may not necessarily involve its intellectual property system.

⁴² The Parties recognise the fact that some Parties also require, if applicable, in their patent systems, evidence of prior informed consent and access and benefit sharing for genetic resources and associated traditional knowledge.

SECTION H UNFAIR COMPETITION

Article 11.54: Effective Protection against Unfair Competition

Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.⁴³

Article 11.55: Domain Names

In connection with its system for the management of its country code top-level domain (ccTLD) domain names and in accordance with its laws and regulations and, if applicable, relevant administrator policies regarding protection of privacy and personal data, each Party shall make the following 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, or that:
 - (i) is designed to resolve disputes expeditiously and at a reasonable cost;
 - (ii) is fair and equitable;
 - (iii) is not overly burdensome; anddoes not preclude resort to judicial proceedings; and
- (b) appropriate remedies,⁴⁴ 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.

Article 11.56: Protection of Undisclosed Information

1. Each Party shall provide protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.
2. Further to paragraph 1, the Parties recognise the importance of protecting undisclosed information in relation to the objectives specified in paragraph 2 of Article 11.1 (Objectives).

SECTION I COUNTRY NAMES

Article 11.57: 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.

⁴³ For greater certainty, the Parties understand that Article 10*bis* of the Paris Convention covers acts of unfair competition in relation to the supply of goods and services, where relevant.

⁴⁴ The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages, or injunctive relief.

**SECTION J
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

**SUBSECTION 1
GENERAL OBLIGATIONS**

Article 11.58: General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its laws and regulations 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 which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. In implementing this Section, 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, if applicable, the interests of third parties.
4. The Parties understand that this Section does not create any obligation 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. Nothing in this Section shall create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.
5. In civil proceedings involving copyright of authors, each Party shall provide for a presumption⁴⁵ that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner as the author of the work is the author of the work. The obligation contained in the preceding sentence shall apply to criminal and administrative proceedings if applicable in a Party's laws and regulations.

**SUBSECTION 2
CIVIL REMEDIES⁴⁶**

Article 11.59: Fair and Equitable Procedures

1. Each Party shall make available to right holders⁴⁷ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. All parties to the procedures shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to

⁴⁵ For greater certainty, a Party may implement this paragraph 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.

⁴⁶ A Party may comply with the obligations under this Subsection to provide civil judicial procedures concerning the enforcement of geographical indications in accordance with footnote 4 of Article 23 of the TRIPS Agreement.

⁴⁷ For the purposes of this Article, "right holder" includes federations and associations that have legal standing to assert such rights.

substantiate their claims and to present all relevant evidence. The procedures shall provide a means to identify and protect confidential information, unless this would be contrary to the Party's constitutional requirements.

2. Each Party may permit the use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.

Article 11.60: Damages

1. Each Party shall provide⁴⁸ that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority 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 right holder's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
2. In determining the amount of damages referred to in paragraph 1, a Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits.⁴⁹
3. In cases of infringement of copyright or related rights and trademark counterfeiting, the judicial authorities shall have the authority to order the infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity to pay the right holder the infringer's profits that are attributable to the infringement.⁵⁰

Article 11.61: Court Costs and Fees

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order,⁵¹ at the conclusion of civil judicial proceedings concerning the infringement of at least copyright or related rights and trademarks, that the prevailing party is awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.

Article 11.62: Destroying Infringing Goods and Materials and Implements

1. Each Party shall provide that in civil judicial procedures its judicial authorities have the authority at least at the right holder's request, to order that pirated copyright goods and counterfeit trademark goods be destroyed, except in exceptional circumstances, without compensation of any sort.⁵²

⁴⁸ A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 1 and 3 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 1 and 3 to be ordered in parallel.

⁴⁹ For greater certainty, a Party's judicial authorities may have the authority to consider the value of the infringed goods or services measured by their market price, in determining the amount of damages, where appropriate.

⁵⁰ A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 1.

⁵¹ The judicial authorities of a Party may have the authority to make such orders through separate proceedings after the conclusion of the civil judicial proceedings.

⁵² For greater certainty, the Parties understand that while judicial authorities have the authority to order the destruction of the goods, they may also have the authority to order, without compensation of any sort, the disposal of such goods outside the channels of commerce in such a manner as to avoid any harm caused to right holders, instead of destruction.

2. Each Party shall further provide that in civil judicial procedures its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the creation of such infringing goods, be, without compensation of any sort, disposed⁵³ of outside the channels of commerce in such a manner as to minimise the risks of further infringements.
3. 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 goods into the channels of commerce.

Article 11.63: Confidential Information in Civil Judicial Proceedings

Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to impose penalties on parties to the proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders⁵⁴ regarding the protection of confidential information produced or exchanged in that proceeding.

Article 11.64: Provisional Measures

1. In civil judicial proceedings concerning trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to adopt provisional measures to order the seizure, or other taking into custody, of suspected infringing goods and both of the following:
 - (a) materials and implements predominantly used in the act of alleged infringement; and
 - (b) documentary evidence relevant to the alleged infringement.
2. In civil judicial proceedings concerning the infringement of copyright or related rights, each Party shall provide that its judicial authorities have the authority to adopt provisional measures to order the seizure, or other taking into custody, of suspected infringing goods and at least one of the following:
 - (a) materials and implements predominantly used in the act of alleged infringement; or
 - (b) documentary evidence relevant to the alleged infringement.
3. Each Party shall provide that its judicial authorities have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

⁵³ For greater certainty, the Parties understand that while judicial authorities have the authority to order the disposal of the materials and implements, they may also have the authority to order, without compensation of any sort, the destruction of such materials and implements instead of disposal.

⁵⁴ For greater certainty, for the purposes of this Article, the Parties understand that a Party's law may use an alternative term to "judicial orders" such as "court orders".

4. Each Party shall provide that its judicial authorities have the authority to require an applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy the judicial authority with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to procedures for such provisional measures.
5. For greater certainty, the Parties understand that provisional measures shall be implemented in accordance with paragraphs 4 through 8 of Article 50 of the TRIPS Agreement.

SUBSECTION 3 BORDER MEASURES

Article 11.65: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application

1. Each Party shall adopt or maintain procedures⁵⁵ with respect to import shipments under which a right holder, who has valid grounds for suspecting that the importation of pirated copyright goods or counterfeit trademark goods may take place, may lodge an application with the Party's competent authorities to suspend the release of the suspected pirated copyright goods or counterfeit trademark goods⁵⁶ in accordance with Article 51 of the TRIPS Agreement.
2. For the purposes of this Subsection, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's laws and regulations.

Article 11.66: Applications for Suspension or Detention

Each Party shall endeavour to provide that an accepted application⁵⁷ for suspension or detention remains in force for an appropriate period with a view to minimising the administrative burden on right holders.

⁵⁵ The Parties understand that there shall be no obligation to apply such procedures to imports of goods put on the market in another Party or non-Party by or with the consent of the right holder, or to goods in transit.

⁵⁶ For the purposes of Subsection 1 (General Obligations), Subsection 2 (Civil Remedies), Subsection 3 (Border Measures), and Subsection 4 (Criminal Remedies):

- (a) "counterfeit trademark goods" means any goods, including packaging, bearing without authorisation a trademark that is identical to a 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 laws and regulations of the Party providing procedures under those Subsections; 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 procedures under those Subsections.

⁵⁷ For the purposes of this Subsection, a Party may treat "application" as meaning "recordation".

Article 11.67: Security or Equivalent Assurance

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures referred to in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 11.68: Information Provided by Competent Authorities to Right Holders

Without prejudice to a Party's laws and regulations pertaining to the confidentiality of information, where its competent authorities have detained or suspended the release of goods that are suspected of being pirated copyright goods or counterfeit trademark goods, that Party may provide that its competent authorities have the authority to inform the right holder of the name and address of the consignor, importer, or consignee; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods.

Article 11.69: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action

1. Each Party shall adopt or maintain procedures with respect to import shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected⁵⁸ pirated copyright goods or counterfeit trademark goods. Each Party shall provide that where its competent authorities act upon their own initiative, the importer and the right holder shall be promptly notified of the suspension.
2. A Party may adopt or maintain procedures with respect to export shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected pirated copyright goods or counterfeit trademark goods. That Party shall provide that where its competent authorities act upon their own initiative, the exporter and the right holder shall be promptly notified of the suspension.
3. Each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 11.70: Information Provided by Right Holders to Competent Authorities in Case of *Ex Officio* Action

Each Party shall provide that its competent authorities shall have the authority, where they act on their own initiative, to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Subsection. A Party may also allow a right holder to supply relevant information to its competent authorities.

⁵⁸ A Party may comply with this obligation on the basis that its competent authorities have reasonable cause to believe that the goods are pirated copyright goods or counterfeit trademark goods.

Article 11.71: Infringement Determination within Reasonable Period by Competent Authorities⁵⁹

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) and Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action), whether suspected pirated copyright goods or counterfeit trademark goods are infringing intellectual property rights.

Article 11.72: Destruction Order by Competent Authorities

Each Party shall provide that, without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, its competent authorities shall have the authority to order the destruction and the authority to order the disposal of goods that are determined to be pirated copyright goods or counterfeit trademark goods. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such 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.

Article 11.73: Fees

Where an application fee, merchandise storage fee, or destruction fee is established or assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

**SUBSECTION 4
CRIMINAL REMEDIES****Article 11.74: Criminal Procedures and Penalties**

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful copyright or related rights piracy or trademark counterfeiting on a commercial scale.⁶⁰
2. Each Party shall treat wilful importation of pirated copyright goods or counterfeit trademark goods on a commercial scale as unlawful activities subject to the criminal procedures and penalties referred to in paragraph 1. A Party may comply with its obligation relating to importation under this Article by providing that distribution or sale of such goods on a commercial scale is an unlawful activity subject to criminal penalties.
3. With respect to the offences described in paragraphs 1 and 2, each Party shall provide for the following:

⁵⁹ A Party may comply with the obligation under this Article with respect to a determination that suspected goods under Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action) infringe an intellectual property right through a determination that the suspected goods bear a false trade description.

⁶⁰ For the purposes of the application of this Article, paragraph 1 shall not prevent a Party from determining the scope of application of criminal procedures and penalties in case of wilful related rights piracy on a commercial scale, in accordance with its laws and regulations.

- (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent consistent with the level of penalties applied for crimes of a corresponding gravity;⁶¹
 - (b) its judicial authorities have the authority to order the seizure⁶² of suspected pirated copyright goods or counterfeit trademark goods, related materials and implements predominantly used in the commission of the offence, and documentary evidence relevant to the alleged offence; and
 - (c) its judicial authorities have the authority to order, without compensation of any kind for the defendant, the forfeiture or destruction of:
 - (i) pirated copyright goods or counterfeit trademark 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.
4. Recognising the need to address the unauthorised copying⁶³ of a cinematographic work on a commercial scale from a performance in a movie theatre, which 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 appropriate criminal procedures and penalties.⁶⁴

SUBSECTION 5 ENFORCEMENT IN THE DIGITAL ENVIRONMENT

Article 11.75: Effective Action against Infringement in the Digital Environment

Each Party confirms that the enforcement procedures set out in Subsection 2 (Civil Remedies) and Subsection 4 (Criminal Remedies) shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks, in the digital environment.

SECTION K COOPERATION AND CONSULTATION

Article 11.76: Cooperation and Dialogue

1. The Parties recognise the importance of the utilisation and protection of intellectual property and enforcement of intellectual property rights in further promoting trade and investment among the Parties.

⁶¹ Nothing in this Article shall be construed to oblige a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

⁶² A Party may comply with its obligations under this subparagraph, with respect to pre-trial seizure, by providing its criminal enforcement authorities with the authority to order such seizures.

⁶³ For the purposes of this paragraph, a Party may treat "copying" as synonymous with "reproduction".

⁶⁴ For the purposes of this paragraph, a Party may determine specific criminal thresholds for unauthorised copying of a cinematographic work in accordance with its laws and regulations.

2. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property.
3. To facilitate the effective implementation of this Chapter, each Party shall cooperate with other Parties in the area of intellectual property, and engage in dialogue and information exchange on intellectual property issues.
4. The Parties shall endeavour to cooperate in order to promote education and awareness regarding the effective utilisation and protection of intellectual property and enforcement of intellectual property rights.
5. The Parties shall cooperate on border measures with a view to eliminating international trade in goods that infringe intellectual property rights.
6. The Parties shall endeavour to, where appropriate, cooperate among their respective patent offices to facilitate the sharing of search and examination work, and exchanges of information on quality assurance systems which may facilitate better understanding in the Parties' patent systems.⁶⁵
7. The Parties shall endeavour to cooperate by sharing information on steps each Party is taking to help prevent online copyright infringement.
8. The Parties may cooperate on the administration of systems for the protection of new varieties of plants, including exceptions to the breeder's rights, in relation to paragraph 3 of Article 11.9 (Multilateral Agreements) or Article 11.48 (Protection of New Varieties of Plants).
9. The Parties shall endeavour to cooperate on issues relating to patent grace periods in order to support innovation.
10. The Parties may cooperate on issues relating to the procedures and processes of their respective patent offices, with a view to reducing the cost of obtaining the grant of a patent.
11. The Parties may exchange information on the protection of their respective geographical indications, including information on systems, procedures, and goods covered.
12. The Parties may cooperate on the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.
13. All cooperation activities under this Chapter shall be on request of a Party, on mutually agreed terms, and subject to the relevant laws and regulations and availability of resources of the Parties involved.

⁶⁵ This paragraph may apply to multilateral information sharing systems to support work-sharing initiatives.

SECTION L TRANSPARENCY

Article 11.77: Transparency

1. Each Party shall provide that final judicial decisions and administrative rulings of general application that pertain to the availability, scope, acquisition, enforcement, and prevention of the abuse of intellectual property rights shall be published, or where such publication is not practicable, made publicly available, in at least a national language of that Party in such a manner as to enable the other Parties and right holders to become acquainted with them. Each Party shall endeavour to provide that such final judicial decisions be published online, where feasible.⁶⁶
2. Each Party shall take appropriate measures, to the extent possible under its laws and regulations, to publish or make available to the public, information on applications and registrations of intellectual property rights, and where applicable, legal status information thereof, such as registration and expiration dates.

SECTION M TRANSITION PERIODS AND TECHNICAL ASSISTANCE

Article 11.78: Transitional Periods for Least Developed Country Parties under the TRIPS Agreement

Nothing in this Chapter shall derogate from the rights of any Party to avail itself of any applicable transitional period under the TRIPS Agreement that has been or may be agreed in the WTO, either before, on, or after the date of entry into force of this Agreement.

Article 11.79: Party-Specific Transition Periods

1. Noting each Party's different stage of development, and without prejudice to Article 11.78 (Transitional Periods for Least Developed Country Parties under the TRIPS Agreement), a Party may delay the implementation of certain provisions of this Chapter in accordance with Annex 11A (Party-Specific Transition Periods).
2. During the relevant periods set out in Annex 11A (Party-Specific Transition Periods), a Party shall not amend a measure to make it less consistent with its obligations under the provisions referred to in Annex 11A (Party-Specific Transition Periods) for that Party, or adopt a new measure that is less consistent with those obligations than relevant measures of that Party that are in effect on the date of signature of this Agreement. This Article does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.

⁶⁶ For greater certainty, nothing in this paragraph shall require a Party to specify online publication in its laws and regulations.

Article 11.80: Notifications in Relation to Party-Specific Transition Periods

1. Any Party which has a Party-specific transition period for any obligation under this Chapter as set out in Annex 11A (Party-Specific Transition Periods) shall provide a notification to the Committee on the Business Environment on its plans for and progress towards implementing each such obligation, after the date of entry into force of this Agreement for that Party, as follows:
 - (a) for any transition period of five years or less, that Party shall provide a notification six months before the expiration of the transition period; and
 - (b) for any transition period of more than five years, that Party shall provide an annual notification on the anniversary of the date of entry into force of this Agreement for that Party, beginning on the fifth anniversary for that Party, and a notification six months before the expiration of the transition period.⁶⁷
2. Any Party may request additional information regarding another Party's progress towards implementing the obligation. The requested Party shall promptly reply to such a request.
3. No later than the date on which a transition period expires, a Party with a Party-specific transition period shall provide a notification to the other Parties of what measures it has taken to implement the obligation for which it has a transition period. If a Party fails to provide the notification referred to in paragraph 3, the matter shall be automatically placed on the agenda for the next regular meeting of the Committee on the Business Environment.

Article 11.81: Technical Assistance

1. In accordance with the objectives of Chapter 15 (Economic and Technical Cooperation), the Parties agree to undertake the necessary technical assistance, pursuant to the identified needs for the implementation of this Chapter, as set out in Annex 11B (List of Technical Assistance Requests).
2. The technical assistance referred to in paragraph 1 shall be on mutually agreed terms, subject to the relevant rules and regulations and availability of resources of the Parties involved.

**SECTION N
PROCEDURAL MATTERS****Article 11.82: Improvement of Procedures for the Administration of Intellectual Property Rights**

The Parties recognise the importance of providing efficient administration of their intellectual property systems, and in this regard each Party shall continue to review and endeavour, where appropriate, to make improvements to its procedures for the administration of intellectual property rights.

⁶⁷ For greater certainty, this subparagraph shall also apply to any extension of a transition period set out in Annex 11A (Party-Specific Transition Periods).

Article 11.83: Streamlining of Procedural Requirements on Paper

Further to Article 11.82 (Improvement of Procedures for the Administration of Intellectual Property Rights), each Party shall endeavour to streamline any procedural requirements it maintains regarding:

- (a) the certification of translations in relation to patent applications; and
- (b) the authentication of signatures in relation to applications for patents, industrial designs, and trademarks.

CHAPTER 12 ELECTRONIC COMMERCE

SECTION A GENERAL PROVISIONS

Article 12.1: Definitions

For the purposes of this Chapter:

- (a) **computing facilities** means computer servers and storage devices for processing or storing information for commercial use;
- (b) **covered person** means:
 - (i) a “covered investment” as defined in subparagraph (a) of Article 10.1 (Definitions);
 - (ii) an “investor of a Party” as defined in subparagraph (e) of Article 10.1 (Definitions), but does not include an investor in a financial institution or an investor in a financial service supplier;¹ or
 - (iii) a service supplier of a Party as defined in Article 8.1 (Definitions),but does not include a “financial institution”, a “public entity”, or a “financial service supplier”, as defined in Article 1 (Definitions) of Annex 8A (Financial Services);
- (c) **electronic authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement’s or claim’s reliability; and
- (d) **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.²

Article 12.2: Principles and Objectives

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of frameworks that promote consumer confidence in electronic commerce, and the importance of facilitating the development and use of electronic commerce.
2. The objectives of this Chapter are to:
 - (a) promote electronic commerce among the Parties and the wider use of electronic commerce globally;
 - (b) contribute to creating an environment of trust and confidence in the use of electronic commerce; and

¹ For greater certainty, an investor in a financial institution or an investor in a financial service supplier may still be a “covered person” in relation to other investments that are not in a financial institution or in a financial service supplier.

² A Party may apply the definition to unsolicited commercial electronic messages delivered through one or more modes of delivery, including Short Message Service (SMS) or e-mail. Notwithstanding this footnote, Parties should endeavour to adopt or maintain measures consistent with Article 12.9 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

- (c) enhance cooperation among the Parties regarding development of electronic commerce.

Article 12.3: Scope³

1. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.
2. This Chapter shall not apply to government procurement.
3. This Chapter shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.
4. Article 12.14 (Location of Computing Facilities) and Article 12.15 (Cross-Border Transfer of Information by Electronic Means) shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter 8 (Trade in Services) or Chapter 10 (Investment) to the extent that such measures are adopted or maintained in accordance with:
 - (a) Article 8.8 (Schedules of Non-Conforming Measures) or Article 10.8 (Reservations and Non-Conforming Measures);
 - (b) any terms, limitations, qualifications, and conditions specified in a Party's commitments, or are with respect to a sector that is not subject to a Party's commitments, made in accordance with Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.7 (Schedules of Specific Commitments); or
 - (c) any exception that is applicable to the obligations in Chapter 8 (Trade in Services) or Chapter 10 (Investment).
5. For greater certainty, measures affecting the supply of a service delivered electronically are subject to the obligations contained in the relevant provisions of:
 - (a) Chapter 8 (Trade in Services); and
 - (b) Chapter 10 (Investment),

including Annex II (Schedules of Specific Commitments for Services), Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), as well as any exceptions that are applicable to those obligations.

Article 12.4: Cooperation

1. Each Party shall, where appropriate, cooperate to:
 - (a) work together to assist small and medium enterprises to overcome obstacles in the use of electronic commerce;

³ For greater certainty, the Parties affirm that the obligations under this Chapter are without prejudice to any Party's position in the WTO.

- (b) identify areas for targeted cooperation between the Parties which will help Parties implement or enhance their electronic commerce legal framework, such as research and training activities, capacity building, and the provision of technical assistance;
 - (c) share information, experiences, and best practices in addressing challenges related to the development and use of electronic commerce;
 - (d) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and
 - (e) actively participate in regional and multilateral fora to promote the development of electronic commerce.
2. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international fora.

SECTION B TRADE FACILITATION

Article 12.5: Paperless Trading

1. Each Party shall:
 - (a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by international organisations including the World Customs Organization;⁴
 - (b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents; and
 - (c) endeavour to make trade administration documents available to the public in electronic form.
2. The Parties shall cooperate in international fora to enhance acceptance of electronic versions of trade administration documents.

Article 12.6: Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.⁵
2. Taking into account international norms for electronic authentication, each Party shall:

⁴ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this subparagraph for a period of five years after the date of entry into force of this Agreement.

⁵ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

- (a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;
 - (b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and
 - (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic authentication.
3. Notwithstanding paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.
4. The Parties shall encourage the use of interoperable electronic authentication.

SECTION C CREATING A CONDUCIVE ENVIRONMENT FOR ELECTRONIC COMMERCE

Article 12.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence.
2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers.⁶
3. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.
4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:
 - (a) consumers can pursue remedies; and
 - (b) business can comply with any legal requirements.

⁶ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

Article 12.8: Online Personal Information Protection

1. Each Party shall adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce.^{7,8}
2. In the development of its legal framework for the protection of personal information, each Party shall take into account international standards, principles, guidelines, and criteria of relevant international organisations or bodies.
3. Each Party shall publish information on the personal information protection it provides to users of electronic commerce, including how:
 - (a) individuals can pursue remedies; and
 - (b) business can comply with any legal requirements.
4. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information.
5. The Parties shall cooperate, to the extent possible, for the protection of personal information transferred from a Party.

Article 12.9: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages;
 - (b) require the consent, as specified according to its laws and regulations, 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 who do not comply with its measures implemented pursuant to paragraph 1.⁹
3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

⁷ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

⁸ For greater certainty, a Party may comply with the obligation under this paragraph by adopting or maintaining measures such as comprehensive privacy or personal information protection laws and regulations, sector-specific laws and regulations covering the protection of personal information, or laws and regulations that provide for the enforcement of contractual obligations assumed by juridical persons relating to the protection of personal information.

⁹ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement. Brunei Darussalam shall not be obliged to apply this paragraph for a period of three years after the date of entry into force of this Agreement.

Article 12.10: Domestic Regulatory Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions, taking into account the *UNCITRAL Model Law on Electronic Commerce 1996*, the *United Nations Convention on the Use of Electronic Communications in International Contracts* done at New York on 23 November 2005, or other applicable international conventions and model laws relating to electronic commerce.¹⁰
2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Article 12.11: Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.
2. The practice referred to in paragraph 1 is in accordance with the *WTO Ministerial Decision of 13 December 2017* in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/65).
3. Each Party may adjust its practice referred to in paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.
4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.
5. For greater certainty, paragraph 1 shall not preclude a Party from imposing taxes, fees, or other charges on electronic transmissions, provided that such taxes, fees, or charges are imposed in a manner consistent with this Agreement.

Article 12.12: Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available, including on the internet where feasible, all relevant measures of general application pertaining to or affecting the operation of this Chapter.
2. Each Party shall respond as promptly as possible to a relevant request from another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 12.13: Cyber Security

The Parties recognise the importance of:

¹⁰ Cambodia shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

- (a) building the capabilities of their respective competent authorities responsible for computer security incident responses including through the exchange of best practices; and
- (b) using existing collaboration mechanisms to cooperate on matters related to cyber security.

SECTION D PROMOTING CROSS-BORDER ELECTRONIC COMMERCE

Article 12.14: Location of Computing Facilities

1. The Parties recognise that each Party may have its own measures regarding the use or location 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 Party's territory.¹¹
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹² provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
 - (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

Article 12.15: 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. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.¹³
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹⁴ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

¹¹ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

¹² For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

¹³ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

¹⁴ For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

- (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

SECTION E OTHER PROVISIONS

Article 12.16: Dialogue on Electronic Commerce

1. The Parties recognise the value of dialogue, including with stakeholders where appropriate, in promoting the development and use of electronic commerce. In conducting such a dialogue, the Parties shall consider the following matters:
 - (a) cooperation in accordance with Article 12.4 (Cooperation);
 - (b) current and emerging issues, such as the treatment of digital products, source code, and cross-border data flow and the location of computing facilities in financial services; and
 - (c) other matters relevant to the development and use of electronic commerce, such as anti-competitive practices, online dispute resolution, and the promotion of skills relevant for electronic commerce including for cross-border temporary movement of professionals.
2. The dialogue shall be conducted in accordance with subparagraph 1(j) of Article 18.3 (Functions of the RCEP Joint Committee).
3. The Parties shall take the matters listed in paragraph 1, and any recommendation arising from any dialogue conducted pursuant to this Article, into account in the context of the general review of this Agreement undertaken in accordance with Article 20.8 (General Review).

Article 12.17: Settlement of Disputes

1. In the event of any differences between Parties regarding the interpretation and application of this Chapter, the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.
2. In the event that the consultations referred to in paragraph 1 fail to resolve the differences, any Party engaged in the consultations may refer the matter to the RCEP Joint Committee in accordance with Article 18.3 (Functions of the RCEP Joint Committee).
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter. As part of any general review of this Agreement undertaken in accordance with Article 20.8 (General Review), the Parties shall review the application of Chapter 19 (Dispute Settlement) to this Chapter. Following the completion of the review, Chapter 19 (Dispute Settlement) shall apply to this Chapter between those Parties that have agreed to its application.

CHAPTER 13 COMPETITION

Article 13.1: Objectives

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

Article 13.2: Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.
2. Acknowledging each Party's rights and obligations under this Chapter, the Parties recognise:
 - (a) the sovereign rights of each Party to develop, set, administer, and enforce its competition laws, regulations, and policies; and
 - (b) the significant differences that exist among the Parties in capacity and level of development in the area of competition law and policy.

Article 13.3: Appropriate Measures against Anti-Competitive Activities¹⁵

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities,¹⁶ and shall enforce those laws and regulations accordingly.
2. Each Party shall establish or maintain an authority or authorities to effectively implement its competition laws and regulations.
3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws and regulations.
4. Each Party shall apply and enforce its competition laws and regulations in a manner that does not discriminate on the basis of nationality.

¹⁵ This Article is subject to:

- (a) Annex 13A (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Brunei Darussalam);
- (b) Annex 13B (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Cambodia);
- (c) Annex 13C (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Lao PDR); and
- (d) Annex 13D (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Myanmar).

¹⁶ Examples may include anti-competitive agreements, abuses of a dominant position, and anti-competitive mergers and acquisitions.

5. Each Party shall apply its competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership. Any exclusion or exemption from the application of each Party's competition laws and regulations, shall be transparent and based on grounds of public policy or public interest.
6. Each Party shall make publicly available its competition laws and regulations, and any guidelines issued in relation to the administration of such laws and regulations, except for internal operating procedures.
7. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, subject to:
 - (a)
 - (i) its laws and regulations;
 - (ii) its need to safeguard confidential information; or
 - (iii) its need to safeguard information on grounds of public policy or public interest; and
 - (b) redactions from the final decision or order on any of the grounds referred to in subparagraphs (a)(i) through (iii).
8. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, such person or entity is given the reasons, which should be in writing where possible, for the allegations that the Party's competition laws or regulations have been breached, and a fair opportunity to be heard and to present evidence.
9. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, available to the person or entity subject to that sanction or remedy.¹⁷
10. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws and regulations has access to an independent review of or appeal against that sanction or remedy.
11. Each Party recognises the importance of timeliness in the handling of competition cases.

¹⁷ This paragraph shall not apply to a jury verdict in a criminal trial.

Article 13.4: Cooperation¹⁸

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

- (a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;¹⁹
- (b) upon request, discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interest of the requesting Party;
- (c) upon request, exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement; and in writing through the diplomatic channel. Such confirmation should be made as promptly as possible after the communication concerned among the competition authorities of the Parties concerned.
- (d) upon request, coordination in enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

Article 13.5: Confidentiality of Information

1. This Chapter shall not require the sharing of information by a Party, which is contrary to that Party's laws, regulations, and important interests.
2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:
 - (a) the purpose of the request;
 - (b) the intended use of the requested information; and
 - (c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.

¹⁸ This Article is subject to:

- (a) Annex 13A (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Brunei Darussalam);
- (b) Annex 13B (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Cambodia);
- (c) Annex 13C (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Lao PDR); and
- (d) Annex 13D (Application of Article 13.3 (Appropriate Measures against Anti-Competitive Activities) and Article 13.4 (Cooperation) to Myanmar).

¹⁹ In the case of notification to the competition authority of Japan pursuant to this subparagraph, the notification should be confirmed in writing through the diplomatic channel. Such confirmation should be made as promptly as possible after the communication concerned among the competition authorities of the Parties concerned.

3. The sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned.
4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with its laws and regulations, the Party receiving the information shall:
 - (a) maintain the confidentiality of the information received;
 - (b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;
 - (c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on request of the Party receiving the information, such information was provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties concerned;
 - (d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and
 - (e) comply with any other conditions required by the Party providing the information.

Article 13.6: Technical Cooperation and Capacity Building

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

- (a) sharing of relevant experiences and non-confidential information on the development and implementation of competition law and policy;
- (b) the exchange of consultants and experts on competition law and policy;
- (c) the exchange of officials of competition authorities for training purposes;
- (d) participation of officials of competition authorities in advocacy programmes; and
- (e) other activities as agreed by the Parties.

Article 13.7 Consumer Protection

1. The Parties recognise the importance of consumer protection law and the enforcement of such law as well as cooperation among the Parties on matters related to consumer protection in order to achieve the objectives of this Chapter.
2. Each Party shall adopt or maintain laws or regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.
3. Each Party also recognises the importance of improving awareness of, and access to, consumer redress mechanisms.

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

Article 13.8: Consultations

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

Article 13.9: Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 14 SMALL AND MEDIUM ENTERPRISES

Article 14.1: Objectives

1. The Parties recognise that small and medium enterprises, including micro enterprises, contribute significantly to economic growth, employment, and innovation, and therefore seek to promote information sharing and cooperation in increasing the ability of small and medium enterprises to utilise and benefit from the opportunities created by this Agreement.
2. The Parties acknowledge the provisions of various Chapters in this Agreement that contribute to encouraging and facilitating the participation of small and medium enterprises in this Agreement.

Article 14.2: Information Sharing

1. Each Party shall promote the sharing of information related to this Agreement that is relevant to small and medium enterprises, including through the establishment and maintenance of a publicly accessible information platform, and information exchange to share knowledge, experiences, and best practices among the Parties.
2. The information to be made publicly accessible in accordance with paragraph 1 will include:
 - (a) the full text of this Agreement;
 - (b) information on trade and investment-related laws and regulations that the Party considers relevant to small and medium enterprises; and
 - (c) additional business-related information that the Party considers useful for small and medium enterprises interested in benefitting from the opportunities provided by this Agreement.
3. Each Party shall take reasonable steps to ensure that information referred to in paragraph 2 is accurate and up-to-date.

Article 14.3: Cooperation

The Parties shall strengthen their cooperation under this Chapter, which may include:

- (a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;
- (b) improving small and medium enterprises' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;
- (c) promoting the use of electronic commerce by small and medium enterprises;
- (d) exploring opportunities for exchanges of experiences among Parties' entrepreneurial programmes;

- (e) encouraging innovation and use of technology;
- (f) promoting awareness, understanding, and effective use of the intellectual property system among small and medium enterprises;
- (g) promoting good regulatory practices and building capacity in formulating regulations, policies, and programmes that contribute to small and medium enterprise development; and
- (h) sharing best practices on enhancing the capability and competitiveness of small and medium enterprises.

Article 14.4: Contact Points

Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points to facilitate cooperation and information sharing under this Chapter and notify the other Parties of the contact details of that contact point or those contact points. Each Party shall notify the other Parties of any change to those contact details.

Article 14.5: Non-Application of Dispute Settlement

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

CHAPTER 15 ECONOMIC AND TECHNICAL COOPERATION

Article 15.1: Definition

For the purposes of this Chapter, **work programme** means the list of economic and technical cooperation activities mutually determined by the Parties in accordance with Article 15.5 (Work Programme).

Article 15.2: Objectives

1. The Parties reaffirm the importance of ongoing economic and technical cooperation initiatives between Parties and agree to complement their existing economic partnership in areas where the Parties have mutual benefits and interests.
2. The Parties shall seek to prioritise economic and technical cooperation initiatives and, where possible, minimise duplication of ongoing efforts and utilisation of resources, particularly under the free trade agreements between the Member States of ASEAN and their free trade partners.
3. The Parties agree that the economic and technical cooperation in the RCEP context aims at narrowing development gaps among the Parties and maximising mutual benefits from the implementation and utilisation of this Agreement. The economic and technical cooperation shall take into account the different levels of development and national capacity of each Party.
4. The Parties acknowledge the provisions to encourage and facilitate economic and technical cooperation included in various Chapters of this Agreement.

Article 15.3: Scope

1. Economic and technical cooperation under this Chapter shall support the inclusive, effective and efficient implementation and utilisation of this Agreement through economic and technical cooperation activities which are trade or investment related as specified in the work programme.
2. The Parties shall explore and undertake economic and technical cooperation activities, including capacity building and technical assistance that focus on the following:
 - (a) trade in goods;
 - (b) trade in services;
 - (c) investment;
 - (d) intellectual property;
 - (e) electronic commerce;
 - (f) competition;
 - (g) small and medium enterprises; and
 - (h) other matters, as agreed upon among the Parties.

Article 15.4: Resources

1. Resources for economic and technical cooperation under this Chapter shall be provided voluntarily and in a manner that is agreed upon among the relevant Parties, taking into account the objectives set out in Article 15.2 (Objectives).
2. The Parties, on the basis of mutual benefit, may consider cooperation with, and contribution from:
 - (a) non-Parties; or
 - (b) sub-regional, regional, or international organisations or institutions,that are interested in developing mutually beneficial cooperation and partnerships, to support the implementation of the work programme.

Article 15.5: Work Programme

1. In accordance with paragraph 4 of Article 15.2 (Objectives), the Parties shall develop the work programme taking into consideration the economic and technical cooperation provisions in this Agreement and the needs identified by committees established pursuant to Chapter 18 (Institutional Provisions).
2. To encourage effective implementation and utilisation of this Agreement, in the work programme the Parties will give priority to activities that:
 - (a) provide capacity building and technical assistance to developing country Parties and Least Developed Country Parties;
 - (b) increase public awareness;
 - (c) enhance access to information for businesses; and
 - (d) other activities as may be agreed upon among the Parties.
3. The Parties may, when necessary and as may be agreed, modify the work programme.

Article 15.6: Least Developed Country Parties which are Member States of ASEAN

The Parties shall take into consideration specific constraints faced by Least Developed Country Parties which are Member States of ASEAN. Appropriate capacity building and technical assistance, as agreed upon by the Party or Parties contributing such assistance and the Party or Parties seeking such assistance, shall be provided to help these Parties implement their obligations and take advantage of the benefits of this Agreement.

Article 15.7: Non-Application of Dispute Settlement

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

CHAPTER 16 GOVERNMENT PROCUREMENT

Article 16.1: Objectives

The Parties recognise the importance of promoting the transparency of laws, regulations, and procedures, and developing cooperation among the Parties, regarding government procurement.

Article 16.2: Scope

1. This Chapter shall apply to the laws, regulations, and procedures of a Party regarding government procurement implemented by its central government entities, as defined or notified by that Party for the purposes of this Chapter.
2. Nothing in this Chapter shall require a Least Developed Country Party to undertake any obligation regarding transparency and cooperation. A Least Developed Country Party may benefit from cooperation among the Parties.

Article 16.3: Principles

The Parties recognise the role of government procurement in furthering the economic integration of the region so as to promote growth and employment. Where government procurement is expressly open to international competition, each Party, to the extent possible and as appropriate, shall conduct its government procurement in accordance with generally accepted government procurement principles as applied by that Party.

Article 16.4: Transparency

1. Each Party shall:
 - (a) make publicly available its laws and regulations; and
 - (b) endeavour to make publicly available its procedures,

regarding government procurement, which may include information on where tender opportunities are published.
2. To the extent possible and as appropriate, each Party endeavours to make available and update the information referred to in paragraph 1 through electronic means.
3. Each Party may specify in Annex 16A (Paper or Electronic Means Utilised by Parties for the Publication of Transparency Information) the paper or electronic means utilised by that Party to publish the information referred to in paragraph 1.
4. Each Party endeavours to make the information referred to in paragraph 1 available in the English language.

Article 16.5: Cooperation

The Parties endeavour to cooperate on matters relating to government procurement with a view to achieving a better understanding of each Party's respective government procurement systems. Such cooperation may include:

- (a) exchanging information, to the extent possible, on Parties' laws, regulations, and procedures, and any modifications thereof;
- (b) providing training, technical assistance, or capacity building to Parties, and sharing information on these initiatives;
- (c) sharing information, where possible, on best practices, including those in relation to small and medium enterprises, including micro enterprises; and
- (d) sharing information, where possible, on electronic procurement systems.

Article 16.6: Review

The Parties may review this Chapter within the period stipulated in Article 20.8 (General Review) with a view to improving this Chapter in the future to facilitate government procurement, as agreed by the Parties.

Article 16.7: Contact Points

Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points to facilitate cooperation and information sharing under this Chapter and notify the other Parties of the relevant details of that contact point or those contact points. Each Party shall promptly notify the other Parties of any change regarding the relevant details of its contact point or contact points.

Article 16.8: Non-Application of Dispute Settlement

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

CHAPTER 17 GENERAL PROVISIONS AND EXCEPTIONS

Article 17.1: Definition

For the purposes of this Chapter, **administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within 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.

Article 17.2: Geographical Scope of Application^{1, 2}

This Agreement shall apply to the geographical scope for which a Party assumes its obligations in relation to another Party under the WTO Agreement.

Article 17.3: 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, including on the internet where feasible, or otherwise made available in such a manner as to enable interested persons and other Parties to become acquainted with them.
2. To the extent possible and practicable, each Party shall:
 - (a) publish in advance any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement that it proposes to adopt; and
 - (b) provide, where appropriate, interested persons and other Parties with a reasonable opportunity to comment on any such laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement.

Article 17.4: Provision of Information

On request of any Party, the requested Party shall promptly provide information and respond to questions pertaining to any actual or proposed laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement that the requesting Party considers may affect the operation of this Agreement.

¹ Nothing in this Agreement shall prejudice the position of any Party with regard to any issues concerning territorial sovereignty or any issues concerning the law of the sea.

² For the purposes of this Agreement, "territory" has the same geographical scope as determined in accordance with this Article.

Article 17.5: Administrative Proceedings

With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Agreement in a consistent, impartial, objective, and reasonable manner, each Party shall ensure in its administrative proceedings applying such measures to a particular person, good, or service of another Party in specific cases that:

- (a) wherever possible, a person of another Party that is directly affected by such a proceeding is provided with reasonable notice, in accordance with its 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 such 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) it follows its procedures in accordance with its laws and regulations.

Article 17.6: Review and Appeal

1. Each Party shall establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purposes of prompt review and, where warranted, correction of final administrative actions with respect to any matter covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
2. Each Party shall ensure that, in any such tribunals or procedures, each party to a proceeding is provided with the right to:
 - (a) a reasonable opportunity to support or defend that party's positions; and
 - (b) a decision based on the evidence and submissions of record or, where required by its laws and regulations, the record compiled by the relevant office or authority.
3. Each Party shall ensure, subject to appeal or further review as provided in its laws and regulations, that the decision referred to in subparagraph 2(b) shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 17.7: Disclosure of Information

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

Article 17.8: Confidentiality

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

Article 17.9: Measures against Corruption

1. Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption with respect to any matter covered by this Agreement.
2. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Article.

Article 17.10: Convention on Biological Diversity

Each Party affirms its rights and responsibilities under the *Convention on Biological Diversity* done at Rio de Janeiro on 5 June 1992.

Article 17.11: Screening Regime and Dispute Settlement

A decision by a competent authority, including a foreign investment authority, of a Party³.

³ For the purposes of this Article, "a competent authority, including a 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 Framework including the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth), and any amendments thereto;
- (b) for Cambodia, the Council for the Development of Cambodia designated under the following laws and regulations, and any amendments thereto:
 - (i) *Royal Kram No. 03/NS/94* dated 5 August 1994 promulgating *Law on Investment of the Kingdom of Cambodia*;
 - (ii) *Royal Kram No. NS/RKM/0303/009* dated 24 March 2003 promulgating *Law on the Amendment of the Law on Investment of the Kingdom of Cambodia*;
 - (iii) *Sub-Decree No. 88/ANK/BK* dated 29 December 1997 on the *Implementation of the Law on Investment of the Kingdom of Cambodia*;
 - (iv) *Sub-Decree No. 111 ANK/BK* dated 27 September 2005 on the *Implementation of the Law on the Amendment of the Law on Investment of the Kingdom of Cambodia*; and
 - (v) *Sub-Decree No. 148.ANK.BK* dated 29 December 2005 on the *Establishment and Management of Special Economic Zones*;
- (c) for China, the authorities responsible for granting approval of foreign investment for sectors requiring governmental approval under the relevant laws and regulations including *Foreign Investment Law of the People's Republic of China* (Adopted on 15 March 2019), and any amendments thereto;
- (d) for Indonesia, a competent authority including a foreign investment authority designated under the *Law Number 25 Year 2007 on Investment* and other relevant laws, regulations, and policies, as may be amended;
- (e) for Korea, the competent authorities as listed in the *Foreign Investment Promotion Act (Law No. 16479, 20 August 2019)*, the *Enforcement Decree of the Foreign Investment Promotion Act (Presidential Decree No. 29172, 18 September 2018)*, the *Regulations on Foreign Investment (Notice of the Ministry of Trade, Industry, and Energy, No. 2018-137, 6 July 2018)*, the *Consolidated Public Notice for Foreign Investment (No. 2018-191, 27 February 2018, Ministry of Trade, Industry, and Energy)*, and the *Act on Prevention of Divulgence and Protection of Industrial Technology (Law No. 16476, 20 August 2019)*, and any amendments thereto;
- (f) for Lao PDR, the Ministry of Planning and Investment under the *Law on Investment Promotion (Law No. 14, dated 17 November 2016)*, and any amendments thereto, and the Ministry of Industry and Commerce under the *Law on Enterprise (Law No. 46, dated 26 December 2013)*, and any amendments thereto;
- (g) for Malaysia, the Ministers performing functions and exercising powers under, but not limited to, the *Promotion of Investments Act 1986 [Act 327]*, the *Income Tax Act 1967 [Act 53]*, the *Petroleum Development Act 1974 [Act 144]*, and the *Industrial Co-ordination Act 1975 [Act 156]*, and any amendments thereto;

⁴ on whether or not to approve or admit a foreign investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions under Chapter 19 (Dispute Settlement).

Article 17.12: General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Standards, Technical Regulations, and Conformity Assessment Procedures), Chapter 10 (Investment), and Chapter 12 (Electronic Commerce), Article XX of GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*.⁵
2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Temporary Movement of Natural Persons), Chapter 10 (Investment), and Chapter 12 (Electronic Commerce), Article XIV of GATS including its footnotes is incorporated into and made part of this Agreement, *mutatis mutandis*.⁶

Article 17.13: Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent any Party from taking any action which it considers necessary for the protection of
 - (h) for Myanmar, the Myanmar Investment Commission and Region/State Investment Committees under the *Myanmar Investment Law*, the *Pyidaungsu Hluttaw Law No. 40/2016* dated 18 October 2016 and the *Myanmar Investment Rules, Notification No. 35/2017* of the Ministry of Planning and Finance of the Government of the Republic of the Union of Myanmar dated 30 March 2017, and committees under the *Myanmar Special Economic Zone Law*, the *Pyidaungsu Hluttaw Law No. 1/2014* dated 23 January 2014 and the *Industrial Zone Law*, the *Pyidaungsu Hluttaw Law No. 7/2020* dated 26 May 2020, and any amendments thereto;
 - (i) for New Zealand, the decision-making Ministers authorised under New Zealand's overseas investment framework including the *Overseas Investment Act 2005* and the *Fisheries Act 1996*, and any amendments thereto;
 - (j) for Thailand, the competent authorities responsible under its laws and regulations, as may be amended, for the sectors or activities where foreign investment is proposed or approved; and
 - (k) for Viet Nam, the competent authority as defined in the *Law on Investment* and other relevant laws and regulations such as *Law on Securities*, *Law on Credit Institutions*, *Law on Insurance Business*, and *Law on Oil and Gas*, as may be amended.

If a Party establishes a competent authority, including a foreign investment authority after the date of entry into force of this Agreement, this Article shall also apply to such competent authority.

⁴ For the purposes of this Article, "a decision by a competent authority, including a foreign investment authority" means:

- (a) for Japan, a decision under the *Foreign Exchange and Foreign Trade Law (Law No. 228 of 1949)*, as may be amended, regarding an investment that requires prior notification under that law, including an order to alter the content of investment or discontinue the investment process; and
- (b) for the Philippines, the decision by the Securities and Exchange Commission under *Republic Act No. 11232*, otherwise known as the *Revised Corporation Code of the Philippines*; the National Security Council under *Executive Order No. 292*, otherwise known as the *Administrative Code of 1987*, as amended; the Board of Investments under *Executive Order No. 226*, otherwise known as the *Omnibus Investments Code of 1987*, as amended; and the relevant agencies of the Philippine Government vested with jurisdiction and mandate to regulate specific sectors or activities under *Republic Act No. 7042*, otherwise known as the *Foreign Investments Act of 1991*, as amended; and any amendments thereto.

⁵ The Parties understand that the measures referred to in subparagraph (b) of Article XX of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that subparagraph (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

⁶ The Parties understand that the measures referred to in subparagraph (b) of Article XIV of GATS include environmental measures necessary to protect human, animal or plant life or health.

its essential security interests:

- (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment;
 - (iii) taken so as to protect critical public infrastructures⁷ including communications, power, and water infrastructures;
 - (iv) taken in time of national emergency or war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.

Article 17.14: Taxation Measures

1. For the purposes of this Article:
 - (a) **tax convention** means an agreement for the avoidance of double taxation or other international taxation agreement or arrangement; and
 - (b) **taxes** and **taxation measures** do not include any import or customs duties.
2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.
3. This Agreement shall only grant rights or impose obligations with respect to taxation measures:
 - (a) to the extent that the WTO Agreement grants rights or imposes obligations with respect to such taxation measures;
 - (b) to the extent that Article 10.9 (Transfers) grants rights or imposes obligations with respect to such taxation measures.
4. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency relating to taxation measures between this Agreement and any such tax convention, the latter shall prevail.
5. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference, or privilege arising from any existing or future tax convention by which the Party is bound.

Article 17.15: Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under

⁷ For greater certainty, this includes critical public infrastructures whether publicly or privately owned.

threat thereof, it may:

- (a) in the case of trade in goods, adopt or maintain restrictive import measures in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions;
 - (b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to such commitments.
2. In the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, or where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 10.1 (Definitions).
3. Restrictions adopted or maintained under subparagraph 1(b) or paragraph 2 shall:
 - (a) be consistent with the IMF Articles of Agreement as may be amended;
 - (b) avoid unnecessary damage to the commercial, economic, and financial interests of any other Party;
 - (c) not exceed those necessary to deal with the circumstances described in subparagraph 1(b) or paragraph 2;
 - (d) be temporary and be phased out progressively as the situation specified in subparagraph 1(b) or paragraph 2 improves; and
 - (e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or a non-Party.
4. With respect to trade in services and investment:
 - (a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;
 - (b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular sector.
5. Any restriction adopted or maintained by a Party under paragraph 1 or 2, or any change thereto, shall be notified promptly to the other Parties.
6. A Party adopting or maintaining any restriction under paragraph 1 or 2 shall:

- (a) in the case of investments, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;
- (b) in the case of trade in services, promptly commence consultations with any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not taking place at the WTO.

Article 17.16: 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 Māori 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 19 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 19.11 (Establishment and Reconvening 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.

CHAPTER 18 INSTITUTIONAL PROVISIONS

Article 18.1: Meetings of the RCEP Ministers

1. The Ministers of the RCEP (hereinafter referred to as the “RCEP Ministers” in this Chapter) shall meet within one year of the date of entry into force of this Agreement, and every year thereafter unless the Parties agree otherwise, to consider any matter relating to this Agreement.
2. The RCEP Ministers shall take decisions on any matter by consensus.

Article 18.2: Establishment of the RCEP Joint Committee

The Parties hereby establish an RCEP Joint Committee consisting of senior officials designated by each Party.

Article 18.3: Functions of the RCEP Joint Committee

1. The functions of the RCEP Joint Committee shall be as follows:
 - (a) to consider any matter relating to the implementation and operation of this Agreement;
 - (b) to consider any proposal to amend this Agreement;
 - (c) to discuss differences that may arise regarding the interpretation or application of this Agreement and to issue interpretations of the provisions of this Agreement as it may deem appropriate and necessary;
 - (d) to seek expert advice on any matter within its functions;
 - (e) to refer matters, assign tasks, or delegate functions to any subsidiary body established pursuant to Article 18.6 (Subsidiary Bodies of the RCEP Joint Committee) (hereinafter referred to as “subsidiary body” in this Chapter);
 - (f) to supervise and coordinate the work of all subsidiary bodies;
 - (g) to consider and take any decisions on issues referred to it by any subsidiary body;
 - (h) to restructure, reorganise, or dissolve any subsidiary body, if necessary;
 - (i) to establish and thereafter supervise an RCEP Secretariat, on terms agreed by the Parties, to provide secretariat and technical support to the RCEP Joint Committee and its subsidiary bodies;
 - (j) to hold dialogue forums on topics to be agreed by Parties, which may include participation from the business sector, experts, academia, and other stakeholders, as appropriate; and
 - (k) to carry out any other function as the Parties may agree.

2. The RCEP Joint Committee shall report to the RCEP Ministers and may, as appropriate, refer matters to the RCEP Ministers for consideration and decision.

Article 18.4: Rules of Procedure of the RCEP Joint Committee

1. The RCEP Joint Committee shall take decisions on any matter by consensus.¹
2. The RCEP Joint Committee shall establish its rules of procedure at its first meeting.

Article 18.5: Meetings of the RCEP Joint Committee

1. The RCEP Joint Committee shall meet within one year of the date of entry into force of this Agreement and prior to the first meeting of the RCEP Ministers, and every year thereafter unless the Parties agree otherwise.
2. The RCEP Joint Committee shall convene alternately, and on a rotational basis, in a Party which is a Member State of ASEAN and a Party which is not a Member State of ASEAN, unless the Parties agree otherwise.
3. The RCEP Joint Committee shall be co-chaired by a representative appointed by the Parties which are Member States of ASEAN and a representative appointed by the Parties which are not Member States of ASEAN on a rotational basis, unless the Parties agree otherwise. The role of the co-chairs of the RCEP Joint Committee shall be to ensure the effective and impartial management of the meetings, with a view to facilitating consensus among the Parties.
4. Each Party shall be responsible for the composition of its delegation.
5. The RCEP Joint Committee may carry out its work through whatever means that are appropriate, which may include electronic mail, videoconferencing, or other means.

Article 18.6: Subsidiary Bodies of the RCEP Joint Committee

1. The RCEP Joint Committee shall establish at its first meeting:
 - (a) a Committee on Goods, to cover work on trade in goods; rules of origin; customs procedures and trade facilitation; sanitary and phytosanitary measures; standards, technical regulations, and conformity assessment procedures; and trade remedies;
 - (b) a Committee on Services and Investment, to cover work on trade in services including financial services, telecommunication services, and professional services; temporary movement of natural persons; and investment;
 - (c) a Committee on Sustainable Growth, to cover work on small and medium enterprises; economic and technical cooperation; and emerging issues; and

¹ The RCEP Joint Committee shall be deemed to have taken a decision by consensus if no Party present at the meeting when the decision is taken objects to the proposed decision. In case a Party is absent from the meeting, the decision shall be circulated to that Party for it to consider the decision, seek clarification where required, and that Party may convey its acknowledgement within 14 days of the circulation of the decision.

- (d) a Committee on the Business Environment, to cover work on intellectual property; electronic commerce; competition; and government procurement.
- 2. Each Committee established pursuant to paragraph 1 shall have the functions set out for it in Annex 18A (Functions of the Subsidiary Bodies of the RCEP Joint Committee), and any other functions as set out for it in this Agreement or agreed by the Parties.
- 3. The RCEP Joint Committee may establish additional subsidiary bodies including other committees, as it deems necessary.
- 4. Each Committee established pursuant to paragraph 1 shall meet within one year of the date of entry into force of this Agreement and every year thereafter unless the Parties agree otherwise.

Article 18.7: Meetings of Subsidiary Bodies

Except as otherwise provided in this Agreement, any subsidiary body:

- (a) shall be composed of representatives from each Party;
- (b) shall be co-chaired by a representative appointed by the Parties which are Member States of ASEAN and a representative appointed by the Parties which are not Member States of ASEAN on a rotational basis, unless the Parties agree otherwise;
- (c) shall take decisions on any matter within its functions by consensus;²
- (d) may carry out its work through whatever means that are appropriate, which may include electronic mail, videoconferencing, or other means; and
- (e) shall meet as directed by the RCEP Joint Committee or as otherwise agreed by the Parties.

Article 18.8: Contact Point

Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate an overall contact point to facilitate communications among the Parties on any matter relating to this Agreement and notify the other Parties of the contact details of that contact point. Each Party shall promptly notify the other Parties of any change to those contact details. All official communications in this regard shall be in the English language.

² A subsidiary body shall be deemed to have taken a decision by consensus if no Party present at the meeting when the decision is taken objects to the proposed decision. In case a Party is absent from the meeting, the decision shall be circulated to that Party for it to consider the decision, seek clarification where required, and that Party may convey its acknowledgement within 14 days of the circulation of the decision.

CHAPTER 19 DISPUTE SETTLEMENT

Article 19.1: Definitions

For the purposes of this Chapter:

- (a) **Complaining Party** means any Party or Parties that requests consultations pursuant to paragraph 1 of Article 19.6 (Consultations);
- (b) **Parties to the dispute** means the Complaining Party and the Responding Party;
- (c) **Party to the dispute** means the Complaining Party or the Responding Party;
- (d) **Responding Party** means any Party to which the request for consultations is made pursuant to paragraph 1 of Article 19.6 (Consultations);
- (e) **Rules of Procedures** means the *Rules of Procedures for Panel Proceedings* adopted by the RCEP Joint Committee; and
- (f) **Third Party** means any Party that makes a notification pursuant to paragraph 2 of Article 19.10 (Third Parties).

Article 19.2: Objective

The objective of this Chapter is to provide effective, efficient, and transparent rules and procedures for settlement of disputes arising under this Agreement.

Article 19.3: Scope³

- 1. Unless otherwise provided in this Agreement, this Chapter shall apply:
 - (a) to the settlement of disputes between Parties regarding the interpretation and application of this Agreement; and
 - (b) when a Party considers that a measure of another Party is not in conformity with the obligations under this Agreement or that another Party has otherwise failed to carry out its obligations under this Agreement.
- 2. Subject to Article 19.5 (Choice of Forum), this Chapter shall be without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is party.

Article 19.4: General Provisions

- 1. This Agreement shall be interpreted in accordance with the customary rules of interpretation of public international law.

³ Non-violation complaints shall not be permitted under this Agreement.

2. 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 WTO panels and the WTO Appellate Body, adopted by the WTO Dispute Settlement Body. The findings and determinations of the panel cannot add to or diminish the rights and obligations under this Agreement.⁴
3. All notifications, requests, and replies made pursuant to this Chapter shall be in writing.
4. The Parties to the dispute are encouraged at every stage of a dispute to make every effort through cooperation and consultations to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be jointly notified by the Parties to the dispute to the other Parties.
5. Any period of time provided in this Chapter may be modified by agreement of the Parties to the dispute provided that any modification shall be without prejudice to the rights of the Third Parties provided in Article 19.10 (Third Parties).
6. The prompt settlement of disputes in which a Party considers that any benefits accruing to it directly or indirectly under this Agreement is being impaired by measures taken by another Party is essential to the effective functioning of this Agreement and the maintenance of a proper balance between the rights and obligations of the Parties.

Article 19.5: Choice of Forum

1. Where a dispute concerns substantially equivalent rights and obligations under this Agreement and another international trade or investment agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to settle the dispute and that forum shall be used to the exclusion of other fora.
2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of a panel pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel) or requested the establishment of, or referred a matter to, a dispute settlement panel or tribunal under another international trade or investment agreement.
3. This Article shall not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

Article 19.6: Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in paragraph 1 of Article 19.3 (Scope). A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.

⁴ The Parties confirm that the first sentence of this paragraph does not prevent a panel from considering relevant interpretations in reports of WTO panels and the WTO Appellate Body adopted by the WTO Dispute Settlement Body, with respect to a provision of the WTO Agreement which is not incorporated into this Agreement.

2. Any request for consultations made pursuant to paragraph 1 shall give the reasons for the request, including identification of the measures at issue and an indication of the factual and legal basis for the complaint.
3. The Complaining Party shall simultaneously provide a copy of the request for consultations made pursuant to paragraph 1 to the other Parties.
4. The Responding Party shall immediately acknowledge its receipt of the request for consultations made pursuant to paragraph 1, by way of notification to the Complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the Responding Party's receipt of the request. The Responding Party shall simultaneously provide a copy of the notification to the other Parties.
5. The Responding Party shall:
 - (a) reply to the request for consultations made pursuant to paragraph 1 no later than seven days after the date of its receipt of the request; and
 - (b) simultaneously provide a copy of the reply to the other Parties.
6. The Responding Party shall enter into consultations no later than:
 - (a) 15 days after the date of its receipt of the request for consultations made pursuant to paragraph 1 in cases of urgency including those which concern perishable goods; or
 - (b) 30 days after the date of its receipt of the request for consultations made pursuant to paragraph 1 regarding any other matter.
7. The Parties to the dispute shall engage in consultations in good faith and make every effort to reach a mutually agreed solution through consultations. To this end, the Parties to the dispute shall:
 - (a) provide sufficient information in the course of consultations to enable a full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;
 - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
 - (c) endeavour to make available for the consultations personnel of their government agencies or other regulatory bodies who have responsibility for or expertise in the matter.
8. The consultations shall be confidential and without prejudice to the rights of any Party to the dispute in any further or other proceedings.
9. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute no later than seven days after the date of receipt of the copy of the request for consultations referred to in paragraph 3, of its desire to be joined in the consultations. The notifying Party shall simultaneously provide a copy of the notification to the other Parties. The notifying Party shall be joined in the consultations if the Parties to the dispute agree.

Article 19.7: Good Offices, Conciliation, or Mediation

1. The Parties to the dispute may at any time agree to voluntarily undertake an alternative method of dispute resolution, including good offices, conciliation, or mediation. Procedures for such alternative methods of dispute resolution may begin at any time, and may be terminated by any Party to the dispute at any time.
2. If the Parties to the dispute agree, such procedures referred to in paragraph 1 may continue while the matter is being examined by a panel under this Chapter.
3. Proceedings involving such procedures referred to in paragraph 1 and positions taken by a Party to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Party to the dispute in any further or other proceedings.

Article 19.8: Request for Establishment of a Panel

1. The Complaining Party may request the establishment of a panel to examine the matter, by way of notification to the Responding Party, if:
 - (a) the Responding Party does not:
 - (i) reply to the request for consultations in accordance with subparagraph 5(a) of Article 19.6 (Consultations); or
 - (ii) enter into consultations in accordance with paragraph 6 of Article 19.6 (Consultations); or
 - (b) the consultations fail to resolve a dispute within:
 - (i) 20 days after the date of the Responding Party's receipt of the request for consultations made pursuant to paragraph 1 of Article 19.6 (Consultations) in cases of urgency including those which concern perishable goods; or
 - (ii) 60 days after the date of the Responding Party's receipt of the request for consultations made pursuant to paragraph 1 of Article 19.6 (Consultations) regarding any other matter.
2. A request for the establishment of a panel made pursuant to paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis for the complaint, including the relevant provisions of this Agreement, to be addressed by the panel, sufficient to present the problem clearly.
3. The Complaining Party shall simultaneously provide a copy of the request for the establishment of a panel made pursuant to paragraph 1 to the other Parties.
4. The Responding Party shall immediately acknowledge its receipt of the request for the establishment of a panel made pursuant to paragraph 1, by way of notification to the Complaining Party, indicating the date on which the request was received, otherwise the date when the request was made shall be deemed to be the date of the Responding Party's receipt of the request. The Responding Party shall simultaneously provide a copy of the notification to the other Parties.

5. Where a request for the establishment of a panel is made pursuant to paragraph 1, a panel shall be established in accordance with Article 19.11 (Establishment and Reconvening of a Panel).

Article 19.9: Procedures for Multiple Complainants

1. Where more than one Party requests the establishment or reconvening of a panel relating to the same matter, a single panel should be established or reconvened to examine the complaints relating to that matter whenever feasible.
2. The single panel shall organise its examination and present its findings and determinations to the Parties to the disputes in such a manner that the rights which the Parties to the disputes would have enjoyed had separate panels examined the complaints are in no way impaired.
3. If more than one panel is established or reconvened to examine the complaints relating to the same matter, the Parties to the disputes shall endeavour to ensure that the same individuals serve as panellists on each of the separate panels. The panels shall consult with each other and the Parties to the disputes to ensure, to the greatest extent possible, that the timetables for the panels' processes are harmonised.

Article 19.10: Third Parties

1. The interests of the Parties to the dispute and those of other Parties shall be fully taken into account during the panel process.
2. Any Party having a substantial interest in a matter before a panel may notify the Parties to the dispute of its interest no later than 10 days after the date of the request made pursuant to:
 - (a) paragraph 1 of Article 19.8 (Request for Establishment of a Panel); or
 - (b) paragraph 1 of Article 19.16 (Compliance Review); or
 - (c) paragraph 13 of Article 19.17 (Compensation and Suspension of Concessions or Other Obligations).

The notifying Party shall simultaneously provide a copy of the notification to the other Parties.

3. Any Party notifying its substantial interest pursuant to paragraph 2 shall have the rights and obligations of a Third Party.
4. Subject to the protection of confidential information, each Party to the dispute shall make available to each Third Party its written submissions, written versions of its oral statements, and its written responses to questions, made prior to the issuance of the interim report, at the time such submissions, statements, and responses are submitted to the panel.
5. A Third Party shall have the right to:
 - (a) subject to the protection of confidential information, be present at the first and second hearings of the panel with the Parties to the dispute prior to the issuance of the interim report;

- (b) make at least one written submission prior to the first hearing;
 - (c) make an oral statement to the panel and respond to questions from the panel during a session of the first hearing set aside for that purpose; and
 - (d) respond in writing to any questions from the panel directed to the Third Parties.
6. If a Third Party provides any submissions or other documents to the panel, it shall simultaneously provide them to the Parties to the dispute and the other Third Parties.
7. A panel may, with the agreement of the Parties to the dispute, grant additional or supplemental rights to any Third Party regarding its participation in panel proceedings.

Article 19.11: Establishment and Reconvening of a Panel

1. Where a request for the establishment of a panel is made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), a panel shall be established in accordance with this Article.
2. Unless the Parties to the dispute agree otherwise, the panel shall consist of three panellists. All appointments and nominations of panellists under this Article shall conform with the requirements referred to in paragraphs 10 and 13.
3. Within 10 days of the date of the receipt of the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the panel, taking into account the factual, technical, and legal aspects of the dispute. Any such procedures agreed upon shall also be used for the purposes of paragraphs 15 and 16.
4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the panel within 20 days of the date of the receipt of the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), any Party to the dispute may at any time thereafter notify the other Party to the dispute that it wishes to use the procedures set out in paragraphs 5 through 7. Where such a notification is made, the panel shall be composed in accordance with paragraphs 5 through 7.
5. The Complaining Party shall appoint one panellist within 10 days of the date of the receipt of the notification made pursuant to paragraph 4. The Responding Party shall appoint one panellist within 20 days of the date of the receipt of the notification made pursuant to paragraph 4. A Party to the dispute shall notify the appointment of its panellist to the other Party to the dispute.
6. Following the appointment of the panellists in accordance with paragraph 5, the Parties to the dispute shall agree on the appointment of the third panellist who shall serve as the chair of the panel. To assist in reaching such agreement, each Party to the dispute may provide to the other Party to the dispute a list of up to three nominees for the chair of the panel.

7. If any panellist has not been appointed within 35 days of the date of the receipt of the notification made pursuant to paragraph 4, any Party to the dispute, within a further period of 25 days, may request the Director-General of the WTO to appoint the remaining panellists within 30 days of the date of such request. Any list of nominees which was provided under paragraph 6 shall also be provided to the Director-General of the WTO, and may be used in making the required appointments.
8. If the Director-General of the WTO notifies the Parties to the dispute that he or she is unavailable, or does not appoint the remaining panellists within 30 days of the date of the request made pursuant to paragraph 7, any Party to the dispute may request the Secretary-General of the Permanent Court of Arbitration to appoint the remaining panellists promptly. Any list of nominees which was provided under paragraph 6 shall also be provided to the Secretary-General of the Permanent Court of Arbitration, and may be used in making the required appointments under paragraph 12.⁵
9. The date of establishment of the panel shall be the date on which the last panellist is appointed.
10. Each panellist 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 judgement;
 - (c) be independent of, and not be affiliated with or take instructions from, any Party;
 - (d) not have dealt with the matter in any capacity;
 - (e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to his or her independence or impartiality; and
 - (f) comply with the Code of Conduct as annexed to the Rules of Procedures.
11. In addition to the requirements of paragraph 10, each panellist appointed under paragraph 7 or 8 shall:
 - (a) have expertise in law including public international law, international trade, and the resolution of disputes arising under international trade agreements;
 - (b) be a well-qualified governmental or non-governmental individual including an individual who has served on a WTO panel or the WTO Appellate Body or in the WTO Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a WTO Member; and
 - (c) in the case of the chair of the panel, wherever possible:
 - (i) have served on a WTO panel or the WTO Appellate Body; and
 - (ii) have expertise or experience relevant to the subject matter of the dispute.

⁵ For greater certainty, the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules shall not be used to appoint any remaining panellist under this paragraph.

12. In appointing a panellist under paragraph 8, and in accordance with the requirements referred to in paragraphs 10 and 11, the following procedure shall be used, unless the Parties to the dispute agree otherwise:
- (a) the Secretary-General of the Permanent Court of Arbitration shall notify the Parties to the dispute of an identical list containing at least three nominees for panellists;
 - (b) within 15 days of the date of the receipt of the list referred to in subparagraph (a), each Party to the dispute may return the list to the Secretary-General of the Permanent Court of Arbitration after having deleted any of the nominees which it objects to and having numbered the remaining nominees on the list in the order of its preference;
 - (c) after the expiry of the period of time referred to in subparagraph (b), the Secretary-General of the Permanent Court of Arbitration shall appoint the remaining panellists from the remaining nominees on any list returned to him or her and in accordance with the order of preference indicated by the Parties to the dispute; and
 - (d) if for any reason the remaining panellists cannot be appointed in accordance with the procedure set out in this paragraph, the Secretary-General of the Permanent Court of Arbitration may appoint, in his or her discretion, the remaining panellists in accordance with this Chapter.
13. Unless the Parties to the dispute agree otherwise, the chair shall not be a national of any Party to the dispute or a Third Party and shall not have his or her usual place of residence in any Party to the dispute.
14. Each panellist shall serve in his or her individual capacity and not as a government representative, nor as a representative of any organisation. Any Party shall not give any panellist instructions nor seek to influence any panellist as an individual with regard to matters before a panel.
15. If a panellist appointed under this Article resigns or becomes unable to act, a successor panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist and shall have all the powers and duties of the original panellist. The work of the panel shall be suspended until the successor panellist is appointed. In such a case, any relevant period of time for the panel proceedings shall be suspended until the successor panellist is appointed.
16. Where a panel is reconvened pursuant to Article 19.16 (Compliance Review) or Article 19.17 (Compensation and Suspension of Concessions or Other Obligations), the reconvened panel shall, where feasible, have the same panellists as the original panel. Where this is not feasible, a replacement panellist shall be appointed in the same manner as prescribed for the appointment of the original panellist, and shall have all the powers and duties of the original panellist.

Article 19.12: Functions of Panels

1. The panel shall make an objective assessment of the matter before it, including an objective assessment of:
- (a) the facts of the case;

- (b) the applicability of the provisions of this Agreement cited by the Parties to the dispute; and
 - (c) whether:
 - (i) the measure at issue is not in conformity with the obligations under this Agreement; or
 - (ii) the Responding Party has otherwise failed to carry out its obligations under this Agreement.
2. The panel shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days of the date of the establishment of the panel:
- “To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel made pursuant to paragraph 1 of Article 19.8 (Request for Establishment of a Panel), and to make findings and determinations as provided for in this Agreement.”
3. The panel shall set out in its report:
- (a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;
 - (b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;
 - (c) its determinations as to whether:
 - (i) the measure at issue is not in conformity with the obligations under this Agreement; or
 - (ii) the Responding Party has otherwise failed to carry out its obligations under this Agreement; and
 - (d) the reasons for its findings and determinations referred to in subparagraphs (b) and (c).
4. In addition to paragraph 3, a panel shall include in its report any other findings and determinations pertaining to the dispute which have been jointly requested by the Parties to the dispute or provided for in its terms of reference. The panel may suggest ways in which the Responding Party could implement the findings and determinations.
5. Unless the Parties to the dispute agree otherwise, a panel shall base its report on the relevant provisions of this Agreement, the submissions and arguments of the Parties to the dispute, and any information or technical advice it has received in accordance with paragraphs 12 and 13 of Article 19.13 (Panel Procedures).
6. A panel shall only make the findings, determinations, and suggestions provided for in this Agreement.
7. Each Third Party’s submission shall be reflected in the report of the panel.

8. The findings and determinations of the panel cannot add to or diminish the rights and obligations under this Agreement.
9. The panel shall consult regularly with the Parties to the dispute and provide adequate opportunities for the Parties to the dispute to develop a mutually agreed solution.
10. Paragraphs 1 through 4 shall not apply to a panel reconvened pursuant to Article 19.16 (Compliance Review) and Article 19.17 (Compensation and Suspension of Concessions or Other Obligations).

Article 19.13: Panel Procedures

1. A panel shall adhere to this Chapter and, unless the Parties to the dispute agree otherwise, shall follow the Rules of Procedures.
2. On request of a Party to the dispute or on its own initiative, a panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with this Chapter and with the Rules of Procedures. A panel reconvened pursuant to Article 19.16 (Compliance Review) or Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) may, after consulting the Parties to the dispute, establish its own rules of procedures which do not conflict with this Chapter and the Rules of Procedures, drawing as it deems appropriate from this Chapter or the Rules of Procedures.
3. Panel procedures should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the panel process.

Timetable

4. After consulting the Parties to the dispute, a panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) shall, as soon as practicable and whenever possible within 15 days of the date of its establishment, fix the timetable for the panel process. The period of time from the date of establishment of a panel until the date of issuance of the panel's final report to the Parties to the dispute shall, as a general rule, not exceed seven months.
5. A panel reconvened pursuant to Article 19.16 (Compliance Review) or paragraph 13 of Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) shall, as soon as practicable and whenever possible within 15 days of the date of its reconvening, fix the timetable for the compliance review process taking into account the periods of time specified in Article 19.16 (Compliance Review).

Panel Proceedings

6. The panel shall make its findings and determinations by consensus, provided that where the panel is unable to reach consensus, it may make its findings and determinations by majority vote. A panellist may furnish dissenting or separate opinions on matters not unanimously agreed. Opinions expressed by an individual panellist in the report shall be anonymous.
7. Panel deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the panel to appear before it.

8. There shall be no *ex parte* communications with the panel concerning matters under consideration by it.

Submissions

9. Each Party to the dispute shall have the opportunity to set out in writing the facts of its case, its arguments and counter arguments. Further to paragraphs 4 and 5, the timetable fixed by the panel shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

Hearings

10. Further to paragraphs 4 and 5, the timetable fixed by the panel shall provide for at least one hearing for the Parties to the dispute to present their case to the panel. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

Confidentiality

11. Written submissions to the panel shall be treated as confidential, but shall be made available to the Parties to the dispute and, where provided for in Article 19.10 (Third Parties), the Third Parties. The Parties to the dispute, the Third Parties, and the panel shall treat as confidential, information submitted by a Party to the dispute or a Third Party to the panel which that Party has designated as confidential. For greater certainty, nothing in this paragraph shall preclude a Party to the dispute or a Third Party from disclosing statements of its own positions to the public, provided that there is no disclosure of statements or information submitted by a Party to the dispute or a Third Party to the panel which that Party has designated as confidential. A Party to the dispute or a Third Party shall, on request of a Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

12. Each Party to the dispute and each Third Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate.
13. On request of a Party to the dispute or on its own initiative, a panel may seek additional information and technical advice from any individual or body which it deems appropriate. However, before doing so the panel shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the panel should not seek the additional information or technical advice, the panel shall not do so. The panel shall provide the Parties to the dispute with any additional information or technical advice it receives and an opportunity to provide comments. Where the panel takes into account the additional information or technical advice in preparation of its report, it shall also take into account any comments by a Party to the dispute on the additional information or technical advice.

Reports of the Panel

14. The panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) shall issue its interim report to the Parties to the dispute within 150 days of the date of its establishment. In cases of urgency including those which concern perishable goods, the panel shall endeavour to issue its interim report within 90 days of the date of its establishment.

15. In exceptional cases, if the panel established pursuant to Article 19.11 (Establishment and Reconvening of a Panel) considers it cannot issue its interim report within the period of time referred to in paragraph 14, it shall notify the Parties to the dispute of the reasons for the delay together with an estimate of the period within which it will issue its interim report to the Parties to the dispute. Any delay shall not exceed a further period of 30 days.
16. A Party to the dispute may submit written comments to the panel on its interim report within 15 days of the date of the receipt of the interim report. After considering any written comments by the Parties to the dispute on the interim report, the panel may make any further examination it considers appropriate and modify its interim report.
17. The panel shall issue its final report to the Parties to the dispute within 30 days of the date of issuance of the interim report.
18. The interim and final reports of the panel shall be drafted without the presence of the Parties to the dispute.
19. The panel shall circulate its final report to the other Parties within seven days of the date of issuance of the final report to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the final report publicly available subject to the protection of any confidential information contained in the final report.

Article 19.14: Suspension and Termination of Proceedings

1. The Parties to the dispute may agree at any time that the panel suspend its work for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended panel proceedings shall resume on request of any Party to the dispute. In the event of such suspension, any relevant period of time for the panel proceedings shall be extended by the period of time that the work was suspended. If the work of the panel has been continuously suspended for more than 12 months, the authority for establishment of the panel shall lapse unless the Parties to the dispute agree otherwise.
2. The Parties to the dispute may agree to terminate the panel proceedings in the event that a mutually agreed solution has been found. In such event, the Parties to the dispute shall jointly notify the chair of the panel.
3. Before the panel issues its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.
4. The Parties to the dispute shall jointly notify the other Parties that the panel proceedings have been suspended or terminated or the authority for the establishment of the panel has lapsed, pursuant to paragraph 1 or 2.

Article 19.15: Implementation of the Final Report

1. The findings and determinations of the panel shall be final and binding on the Parties to the dispute. The Responding Party shall:
 - (a) if the panel makes a determination that the measure at issue is not in conformity with the obligations under this Agreement, bring the measure into conformity; or

- (b) if the panel makes a determination that the Responding Party has otherwise failed to carry out its obligations under this Agreement, carry out those obligations.
2. Within 30 days of the date of the issuance of the panel's final report to the Parties to the dispute pursuant to paragraph 17 of Article 19.13 (Panel Procedures), the Responding Party shall notify the Complaining Party of its intentions with respect to implementation and:
- (a) if the Responding Party considers it has complied with the obligation under paragraph 1, it shall notify the Complaining Party without delay. The Responding Party shall include in the notification a description of any measure it considers achieves compliance, the date the measure comes into effect, and the text of the measure, if any; or
- (b) if it is impracticable to comply immediately with the obligation under paragraph 1, the Responding Party shall notify the Complaining Party of the reasonable period of time the Responding Party considers it would need to comply with the obligation under paragraph 1 along with an indication of possible actions it may take for such compliance.
3. If the Responding Party makes a notification pursuant to subparagraph 2(b) that it is impracticable for it to comply immediately with the obligation under paragraph 1, it shall have a reasonable period of time to comply with the obligation under paragraph 1.
4. The reasonable period of time referred to in paragraph 3 shall, whenever possible, be agreed by the Parties to the dispute. Where the Parties to the dispute are unable to agree on the reasonable period of time within 45 days of the date of the issuance of the panel's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the panel determine the reasonable period of time, by way of notification to the chair and the other Party to the dispute. Such a request shall be made within 120 days of the date of the issuance of the panel's final report to the Parties to the dispute.
5. Where a request is made pursuant to paragraph 4, the chair of the panel shall present the Parties to the dispute with a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the receipt by the chair of the panel of the request.
6. As a guideline, the reasonable period of time determined by the chair of the panel should not exceed 15 months from the date of the issuance of the panel's final report to the Parties to the dispute. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.
7. Where the Responding Party considers it has complied with the obligation under paragraph 1, it shall notify the Complaining Party without delay. The Responding Party shall include in the notification a description of any measure it considers achieves compliance, the date the measure comes into effect, and the text of the measure, if any.

Article 19.16: Compliance Review⁶

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report), such dispute shall be settled through recourse to a panel reconvened for this purpose (hereinafter referred to as “Compliance Review Panel” in this Chapter). The Complaining Party may request the reconvening of a Compliance Review Panel by way of notification to the Responding Party. The Complaining Party shall simultaneously provide a copy of the request to the other Parties.
2. The request referred to in paragraph 1 may only be made after the earlier of either:
 - (a) the expiry of the reasonable period of time established in accordance with Article 19.15 (Implementation of the Final Report); or
 - (b) a notification to the Complaining Party made by the Responding Party pursuant to subparagraph 2(a) or paragraph 7 of Article 19.15 (Implementation of the Final Report) that it has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report).
3. A Compliance Review Panel shall make an objective assessment of the matter before it, including an objective assessment of:
 - (a) the factual aspects of any action taken by the Responding Party to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
 - (b) the existence or consistency with this Agreement of any measure taken by the Responding Party to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report).
4. The Compliance Review Panel shall set out in its report:
 - (a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;
 - (b) its findings on the facts of the case arising under this Article and on the applicability of the provisions of this Agreement;
 - (c) its determinations on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
 - (d) its reasons for its findings and determinations referred to in subparagraphs (b) and (c).

⁶ For greater certainty, consultations under Article 19.6 (Consultations) are not required for the procedures under this Article.

5. Where a request is made pursuant to paragraph 1, a Compliance Review Panel shall reconvene within 15 days of the date of the request. The Compliance Review Panel shall, where possible, issue its interim report to the Parties to the dispute within 90 days of the date of its reconvening, and its final report 30 days thereafter. If the Compliance Review Panel considers that it cannot issue either report within the relevant period of time, it shall notify the Parties to the dispute of the reasons for the delay together with an estimate of the period of time within which it will issue the report.
6. The period of time from the date of the request made pursuant to paragraph 1 until the date of issuance of the final report of the Compliance Review Panel shall not exceed 150 days.

Article 19.17: Compensation and Suspension of Concessions or Other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) within the reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report). Compensation is voluntary and, if granted, shall be consistent with this Agreement.
2. Where any of the following circumstances exists:
 - (a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); or
 - (b) the Responding Party fails to notify the Complaining Party in accordance with paragraph 2 of Article 19.15 (Implementation of the Final Report); or
 - (c) the Responding Party fails to notify the Complaining Party in accordance with paragraph 7 of Article 19.15 (Implementation of the Final Report) by the expiry of the reasonable period of time; or
 - (d) the Compliance Review Panel determines that the Responding Party has failed to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) in accordance with Article 19.16 (Compliance Review),

the Responding Party shall, on request of the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If the Parties to the dispute have:
 - (a) been unable to agree on compensation within 30 days after the date of the receipt of the request made pursuant to paragraph 2; or
 - (b) agreed on compensation but the Responding Party has failed to observe the terms and conditions of that agreement,

the Complainant Party may at any time thereafter notify the Responding Party and the other Parties that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification or impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of the receipt of the notification.

4. Notwithstanding paragraph 3, the Complainant Party shall not exercise the right to begin suspending concessions or other obligations under that paragraph where:
 - (a) a review is being undertaken pursuant to paragraph 9; or
 - (b) a mutually agreed solution has been reached.
5. A notification made pursuant to paragraph 3 shall specify the level of the intended suspension of concessions or other obligations and indicate the relevant sector or sectors in which the Complainant Party proposes to suspend such concessions or other obligations.
6. In considering what concessions or other obligations to suspend, the Complainant Party shall apply the following principles:
 - (a) the Complainant Party should first seek to suspend concessions or other obligations in the same sector or sectors in which the panel has determined that there is non-conformity with, or failure to carry out an obligation under this Agreement; and
 - (b) if the Complainant Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, it may suspend concessions or other obligations in other sectors.
7. The level of the suspension of concessions or other obligations shall be equivalent to the level of nullification or impairment.
8. If the Responding Party:
 - (a) objects to the level of suspension proposed; or
 - (b) considers that it has observed the terms and conditions of the compensation agreement; or
 - (c) considers that the principles set out in paragraph 6 have not been followed,it may, within 30 days of the date of the receipt of the notification made pursuant to paragraph 3, request the reconvening of a panel to examine the matter by way of notification to the Complainant Party. The Responding Party shall simultaneously provide a copy of the request to the other Parties.
9. When a request is made pursuant to paragraph 8, the panel shall reconvene within 15 days of the date of the request. The reconvened panel shall provide its determination to the Parties to the dispute within 45 days of the date of its reconvening.

10. In the event the panel reconvened pursuant to paragraph 9 determines that the level of suspension is not equivalent to the level of nullification or impairment, it shall determine the appropriate level of suspension it considers to be of equivalent effect. In the event the panel determines that the Responding Party has observed the terms and conditions of the compensation agreement, the Complaining Party shall not suspend concessions or other obligations referred to in paragraph 3. In the event the panel determines that the Complaining Party has not followed the principles set out in paragraph 6, the Complaining Party shall apply them consistently with that paragraph.
11. The Complaining Party may suspend concessions or other obligations only in a manner consistent with the panel's determination referred to in paragraph 10.
12. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report) has been complied with or a mutually agreed solution has been reached.
13. Where:
 - (a) the right to suspend concessions or other obligations has been exercised by the Complaining Party under this Article;
 - (b) the Responding Party has made a notification pursuant to paragraph 7 of Article 19.15 (Implementation of the Final Report) that it has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report); and
 - (c) the Parties to the dispute disagree on the existence or consistency with this Agreement of any measure taken to comply with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report),any Party to the dispute may request the reconvening of a panel to examine the matter by way of notification to the other Party to the dispute. The requesting Party shall simultaneously provide a copy of the request to the other Parties.⁷
14. Where the panel reconvenes pursuant to paragraph 13, paragraphs 3 through 6 of Article 19.16 (Compliance Review) shall apply *mutatis mutandis*.
15. If the panel reconvened pursuant to paragraph 13 determines that the Responding Party has complied with the obligation under paragraph 1 of Article 19.15 (Implementation of the Final Report), the Complaining Party shall promptly terminate the suspension of concessions or other obligations.

⁷ Where a panel is reconvened pursuant to this paragraph, it may also, upon request, determine whether the level of any suspension of concessions or other obligations is still appropriate in light of its findings on the measure taken by the Responding Party and, if not, determine an appropriate level.

Article 19.18: Special and Differential Treatment Involving Least Developed Country Parties

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a Least Developed Country Party, particular consideration shall be given to the special situation of Least Developed Country Parties. In this regard, Parties shall exercise due restraint in raising matters under these procedures involving a Least Developed Country Party. If nullification or impairment is found to result from a measure taken by a Least Developed Country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 19.17 (Compensation and Suspension of Concessions or Other Obligations) or other obligations pursuant to these procedures.
2. Where any Party to the dispute is a Least Developed Country Party, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a Least Developed Country Party that form part of this Agreement which have been raised by that Party in the course of the dispute settlement procedures.

Article 19.19: Expenses

1. Unless the Parties to the dispute agree otherwise, each Party to the dispute shall bear the costs of its appointed panellist and its own expenses and legal costs.
2. Unless the Parties to the dispute agree otherwise, the costs of the chair of the panel and other expenses associated with the conduct of the panel proceedings shall be borne in equal parts by the Parties to the dispute.

Article 19.20: Contact Point

1. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate a contact point for this Chapter and shall notify the other Parties of the contact details of that contact point. Each Party shall promptly notify the other Parties of any change to those contact details.
2. Any notification, request, reply, written submission, or other document relating to any proceedings under this Chapter shall be delivered to the relevant Party through its designated contact point. The relevant Party shall provide confirmation of the receipt of such documents in writing through its designated contact point.

Article 19.21: Language

1. All proceedings under this Chapter shall be conducted in the English language.
2. Any document submitted for use in any proceedings under this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall submit that document together with an English translation.

CHAPTER 20 FINAL PROVISIONS

Article 20.1: Annexes, Appendices, and Footnotes

The Annexes, Appendices, and footnotes to this Agreement shall constitute an integral part of this Agreement.

Article 20.2: 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 such 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 that Party and at least one other Party are party, upon request, the relevant Parties which are party to the other agreement shall consult with a view to reaching a mutually satisfactory solution. This paragraph shall be without prejudice to a Party's rights and obligations under Chapter 19 (Dispute Settlement).¹

Article 20.3: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Agreement or incorporated into this Agreement is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Agreement, unless otherwise provided in this Agreement.

Article 20.4: Amendments

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force 60 days after the date on which all Parties have notified the Depositary in writing of the completion of their respective applicable legal procedures, or on such other date as the Parties may agree.

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 there is an inconsistency within the meaning of paragraph 2.

Article 20.5: Depository

1. This Agreement, and any amendment thereto, shall be deposited with the Secretary-General of ASEAN who is designated as the Depository for this Agreement. The Depository shall promptly provide a certified copy of the original text of this Agreement, and any amendment thereto, to each signatory State and acceding State or separate customs territory.
2. The Depository shall promptly notify each signatory State and acceding State or separate customs territory, and provide them with the date and a copy, of:
 - (a) notifications under Article 20.4 (Amendments) and subparagraph 4(b) of Article 20.9 (Accession);
 - (b) the deposit of an instrument of ratification, acceptance, or approval under Article 20.6 (Entry into Force);
 - (c) a notice of withdrawal under paragraph 1 of Article 20.7 (Withdrawal);
 - (d) a request to accede to this Agreement under paragraph 2 of Article 20.9 (Accession); and
 - (e) the deposit of an instrument of accession under Article 20.9 (Accession).

Article 20.6: Entry into Force

1. This Agreement shall be subject to ratification, acceptance, or approval by each signatory State in accordance with its applicable legal procedures. The instrument of ratification, acceptance, or approval of a signatory State shall be deposited with the Depository.
2. This Agreement shall enter into force for those signatory States that have deposited their instrument of ratification, acceptance, or approval, 60 days after the date on which at least six signatory States which are Member States of ASEAN and three signatory States other than Member States of ASEAN have deposited their instrument of ratification, acceptance, or approval with the Depository.
3. After the date of entry into force of this Agreement, this Agreement shall enter into force for any other signatory State 60 days after the date on which it has deposited its instrument of ratification, acceptance, or approval with the Depository.

Article 20.7: Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of its withdrawal to the Depository.
2. A Party's withdrawal from this Agreement shall take effect six months after the date on which that Party provides written notice to the Depository 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 20.8: General Review

1. The Parties shall undertake a general review of this Agreement with a view to updating and enhancing this Agreement to ensure that this Agreement remains relevant to the trade and investment issues and challenges confronting the Parties, five years after the date of entry into force of this Agreement, and every five years thereafter, unless the Parties agree otherwise.
2. In conducting a review pursuant to this Article, the Parties shall:
 - (a) consider ways to further enhance trade and investment among the Parties; and
 - (b) take into account:
 - (i) the work of all committees and subsidiary bodies established pursuant to Chapter 18 (Institutional Provisions); and
 - (ii) relevant developments in international fora.

Article 20.9: Accession

1. This Agreement shall be open for accession by any State or separate customs territory 18 months after the date of entry into force of this Agreement.² Such accession shall be subject to the consent of the Parties and any terms or conditions that may be agreed between the Parties and the State or separate customs territory.
2. A State or separate customs territory may seek to accede to this Agreement by submitting a request in writing to the Depositary.
3. The instrument of accession shall be deposited with the Depositary.
4. A State or separate customs territory shall become a Party to this Agreement subject to the terms and conditions agreed pursuant to paragraph 1, either:
 - (a) 60 days after the date on which it deposits an instrument of accession with the Depositary indicating it accepts such terms and conditions; or
 - (b) on the date on which all Parties have notified the Depositary that they have completed their respective applicable legal procedures,whichever is later.
5. In addition to this Article, the accession process shall be carried out in accordance with the procedures for accession to be adopted by the RCEP Joint Committee.

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

² Notwithstanding this sentence, this Agreement shall be open for accession by India, as an original negotiating State, from the date of entry into force of this Agreement.

DONE in a single original in the English language and **SIGNED** on the Fifteenth Day of November in the Year of Two Thousand and Twenty at Bandar Seri Begawan, Brunei Darussalam; Phnom Penh, Cambodia; Bogor, Indonesia; Vientiane, Lao PDR; Kuala Lumpur, Malaysia; Nay Pyi Taw, Myanmar; Manila, Philippines; Singapore; Bangkok, Thailand; Ha Noi, Viet Nam; Canberra, Australia; Beijing, China; Tokyo, Japan; Seoul, Republic of Korea; and Auckland, New Zealand.

For the Government of Brunei Darussalam
DATO DR. AMIN ABDULLAH
Minister at the Prime Minister's Office and Minister of Finance and Economy II

For the Government of the Kingdom of Cambodia
PAN SORASAK
Minister of Commerce

For the Government of the Republic of Indonesia
AGUS SUPARMANTO
Minister of Trade

For the Government of the Lao People's Democratic Republic
KHEMMANI PHOLSENA
Minister of Industry and Commerce

For the Government of Malaysia
DATO' SERI MOHAMED AZMIN ALI
Senior Minister
Minister of International Trade and Industry

For the Government of the Republic of the Union of Myanmar
THAUNG TUN
Minister for Investment and Foreign Economic Relations

For the Government of the Republic of the Philippines
RAMON M. LOPEZ
Secretary of Trade and Industry

For the Government of the Republic of Singapore
CHAN CHUN SING
Minister for Trade and Industry

For the Government of the Kingdom of Thailand
JURIN LAKSANAWISIT
Deputy Prime Minister and Minister of Commerce

For the Government of the Socialist Republic of Viet Nam
TRAN TUAN ANH
Minister of Industry and Trade

For the Government of Australia
SIMON BIRMINGHAM
Minister for Trade, Tourism, and Investment

For the Government of the People's Republic of China
ZHONG SHAN
Minister of Commerce

For the Government of Japan
MOTEGI TOSHIMITSU
Minister for Foreign Affairs

For the Government of the Republic of Korea
MYUNG-HEE YOO
Minister for Trade

For the Government of New Zealand
DAMIEN PETER O'CONNOR
Minister for Trade and Export Growth