2023 SECOND PROTOCOL TO AMEND THE AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

Signed in Semarang, Indonesia on 21 August 2023

2023 SECOND PROTOCOL TO AMEND THE AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA 3

APPENDIX 5

CHAPTER 1 ESTABLISHMENT OF FREE TRADE AREA, OBJECTIVES AND GENERAL DEFINITIONS 6

CHAPTER 2 TRADE IN GOODS 10

SECTION A GENERAL PROVISIONS AND MARKET ACCESS FOR GOODS 10

SECTION B NON-TARIFF MEASURES 14

SECTION C INSTITUTIONAL ARRANGEMENTS 19

CHAPTER 3 RULES OF ORIGIN 23

CHAPTER 4 CUSTOMS PROCEDURES AND TRADE FACILITATION 33

CHAPTER 5 SANITARY AND PHYTOSANITARY MEASURES 47

CHAPTER 6 STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES 52

CHAPTER 7 SAFEGUARD MEASURES 59

CHAPTER 8 TRADE IN SERVICES 64

CHAPTER 10 ELECTRONIC COMMERCE 85

SECTION A GENERAL PROVISIONS 85

SECTION B TRADE FACILITATION 88

SECTION C CREATING A CONDUCIVE ENVIRONMENT FOR ELECTRONIC COMMERCE 89

SECTION D PROMOTING CROSS-BORDER ELECTRONIC COMMERCE 93

SECTION E OTHER PROVISIONS 94

CHAPTER 11 INVESTMENT 97

SECTION A 97

SECTION B INVESTMENT DISPUTES BETWEEN A PARTY AND AN INVESTOR 112

CHAPTER 12 ECONOMIC CO-OPERATION 121

CHAPTER 13 TRADE AND SUSTAINABLE DEVELOPMENT 125

CHAPTER 14 INTELLECTUAL PROPERTY 128

CHAPTER 15 COMPETITION 135

CHAPTER 16 MICRO, SMALL AND MEDIUM ENTERPRISES 142

CHAPTER 17 GOVERNMENT PROCUREMENT 146

CHAPTER 18 GENERAL PROVISIONS AND EXCEPTIONS 150

CHAPTER 19 INSTITUTIONAL PROVISIONS 155

CHAPTER 20 CONSULTATIONS AND DISPUTE SETTLEMENT 158

SECTION A INTRODUCTORY PROVISIONS 158

SECTION B CONSULTATION PROVISIONS 160

SECTION C ADJUDICATION PROVISIONS 161

SECTION D IMPLEMENTATION PROVISIONS 168
SECTION E FINAL PROVISIONS 171
CHAPTER 21 FINAL PROVISIONS 174

2023 SECOND PROTOCOL TO AMEND THE AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

Signed in Semarang, Indonesia on 21 August 2023

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Republic of the Union of Myanmar (Myanmar), the Republic of the Philippines (Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), collectively, the Member States of the Association of Southeast Asian Nations, and Australia and New Zealand;

RECALLING the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, signed at Cha-am, Petchaburi, Thailand on 27 February 2009, as amended by the First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Nay Pyi Taw, Myanmar on 26 August 2014 (the "Agreement");

RECOGNISING the need to upgrade the Agreement, including in the areas of trade in goods, rules of origin, customs procedures and trade facilitation, trade in services, investment, movement of natural persons, electronic commerce, competition and consumer protection, micro, small and medium enterprises, trade and sustainable development, and government procurement, to ensure that the Agreement retains its relevance to business and adds value to developments in other fora including the Regional Comprehensive Economic Partnership (RCEP) signed on 15 November 2020;

DESIRING to modernise the Agreement to take account of changing global business and trade practices and the evolving regional economic architecture, including incorporating and implementing provisions to facilitate trade and investment and remove unnecessary barriers to accelerate post-pandemic recovery; and

NOTING that Article 6 (Amendments) of Chapter 18 (Final Provisions) of the Agreement provides for amendments thereto to be agreed in writing by the Parties,
Have agreed as follows:

ARTICLE 1
AMENDMENT TO THE AGREEMENT

1. In accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions), the Parties have agreed to amend the Agreement on the terms set out in the Appendix to this Protocol.

2. This Protocol shall form an integral part of the Agreement.

ARTICLE 2
ENTRY INTO FORCE

1. This Protocol shall be subject to ratification, acceptance or approval by each Party in accordance with its applicable legal procedures. The instrument of ratification, acceptance or approval of a Party shall be deposited with the Depositary, who shall promptly notify all other Parties of each deposit.

2. This Protocol shall enter into force 60 days after the date on which Australia, New Zealand and at least four ASEAN Member States have deposited their instruments of ratification, acceptance or approval.

3. For each Party ratifying, accepting or approving the Protocol after the date on which Australia, New Zealand and at least four ASEAN Member States have deposited their instruments of ratification, acceptance or approval in accordance with Paragraph 2, this Protocol shall enter into force for that Party 60 days after the date of the deposit of its own instrument of ratification, acceptance or approval.

ARTICLE 3
DEPOSITARY

This Protocol shall be deposited with the Secretary-General of ASEAN who is designated as the Depositary for this Protocol. The Depositary shall promptly provide a certified copy of the original text of this Protocol to each Party.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area.

DONE at Semarang, Indonesia, this Twenty-First day of August in the Year Two Thousand and Twenty-Three, in a single original copy in the English language.

APPENDIX

1. Replace Chapter 1 (Establishment of Free Trade Area, Objectives and General Definitions) with:

CHAPTER 1
ESTABLISHMENT OF FREE TRADE AREA, OBJECTIVES AND GENERAL DEFINITIONS

ARTICLE 1
OBJECTIVES

The objectives of this Agreement are to:

(a) progressively liberalise and facilitate trade in goods among the Parties through, inter alia, progressive elimination of tariff and non-tariff barriers in substantially all trade in goods among the Parties;

(b) progressively liberalise trade in services among the Parties, with substantial sectoral coverage;

(c) facilitate, promote and enhance investment opportunities among the Parties through further development of favourable investment environments;

(d) establish a co-operative framework for strengthening, diversifying and enhancing trade, investment and economic links among the Parties; and

(e) provide special and differential treatment to ASEAN Member States, especially to the newer ASEAN Member States, to facilitate their more effective economic integration.

ARTICLE 2
ESTABLISHMENT OF THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

The Parties hereby establish, consistent with Article XXIV of GATT 1994 and Article V of GATS, an ASEAN, Australia and New Zealand Free Trade Area.

ARTICLE 3
GENERAL DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires:

(a) **AANZFTA** means the ASEAN-Australia-New Zealand Free Trade Area;

(b) **Agreement** means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area;

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

(d) **ASEAN** means the Association of Southeast Asian Nations which comprises of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam and whose members are referred to in this Agreement

collectively as the **ASEAN Member States** and individually as an **ASEAN Member State**;

(e) **customs duties** means any customs or import duty and a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

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

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

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

(f) **days** means calendar days, including weekends and holidays;

(g) **essential goods** means goods considered by a Party as essential for disaster relief and urgent medical purposes during a humanitarian crisis, epidemic or pandemic;[1]

(h) **FTA Joint Committee** means the ASEAN, Australia and New Zealand FTA Joint Committee established pursuant to Article 1 (FTA Joint Committee) of Chapter 19 (Institutional Provisions);

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

(j) **GATT 1994** means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(k) **HS Code** means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Description and Coding System done at Brussels on 14 June 1983, as amended;

(l) **humanitarian** crisis means an event that poses, or series of events that pose, an imminent threat to or affect the health, safety or well-being of, a community or a region, and may include natural or human-induced disasters and may occur throughout a large land area;

(m) **IMF** means the International Monetary Fund;

(n) **IMF Articles of Agreement** means the Articles of Agreement of the International Monetary Fund adopted at Bretton Woods on 22 July 1944;

[1] A Party may refer to guidelines issued by relevant international organisations, of which all Parties are members, when determining if a good is essential.

(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) **MSMEs** means micro, small and medium enterprises, and may be further defined, where applicable, in accordance with the respective laws, regulations, or national policies of each Party;

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

(s) **originating good** means a good that qualifies as originating under Chapter 3 (Rules of Origin);

(t) **Parties** means the ASEAN Member States, Australia and New Zealand collectively;

(u) **Party** means an ASEAN Member State or Australia or New Zealand;

(v) **Second Protocol** means the *Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*;

(w) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, in Annex 1C to the WTO Agreement;

(x) **WTO** means the World Trade Organization; and

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

2. Replace Chapter 2 (Trade in Goods) with:

CHAPTER 2
TRADE IN GOODS

SECTION A
GENERAL PROVISIONS AND MARKET ACCESS FOR GOODS

ARTICLE 1
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 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

ARTICLE 2
REDUCTION OR ELIMINATION OF CUSTOMS DUTIES

Except as otherwise provided in this Agreement, each Party shall progressively reduce or eliminate customs duties on originating goods of the other Parties in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

ARTICLE 3
ACCELERATION OF TARIFF COMMITMENTS

1. Nothing in this Agreement shall preclude the Parties from negotiating and entering into arrangements to accelerate or improve tariff commitments made under this Agreement. An agreement among the Parties to accelerate or improve tariff commitments shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions). Such acceleration or improvement of tariff commitments shall be implemented by the Parties.

2. Two or more Parties may also enter into consultations to consider accelerating or improving tariff commitments set out in their schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments). An agreement between these Parties to accelerate or improve their respective tariff commitments under this Agreement shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions). Tariff concessions arising from such acceleration or improvement of tariff commitments shall be extended to all Parties.

3. A Party may, at any time, unilaterally accelerate the reduction or elimination of customs duties on originating goods of the other Parties set out in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments). A Party intending to do so shall inform the other Parties before the new rate of customs duties takes effect, or in any event, as early as practicable.

ARTICLE 4
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 the 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 in accordance with its laws and regulations;

(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 port other than that through which it was admitted.

6. Each Party shall, if it is in accordance with its laws and regulations,[1] provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

ARTICLE 5
TEMPORARY ADMISSION FOR CONTAINERS AND PALLETS

1. Each Party shall, as provided for in its laws and regulations, or the provisions of the related international agreements to which it is party, 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.

2. For the purposes of this Article, “container” means an article of transport equipment (lift-van, movable tank, or other similar structure):

(a) fully or partially enclosed to constitute a compartment intended for containing goods;

(b) of a permanent character and accordingly strong enough to be suitable for repeated use;

(c) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

(d) designed for ready handling, particularly when being transferred from one mode of transport to another;

(e) designed to be easy to fill and to empty; and

(f) 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.

3. For the purposes of this Article, “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 of fork lift trucks or pallet trucks; it may or may not have a superstructure.

[1] This paragraph shall apply to Parties who have relevant laws and regulations.

4. Subject to Chapter 8 (Trade in Services) and Chapter 11 (Investment), in respect of containers granted temporary admission pursuant to Paragraph 1: [2]

(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;[3]

(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 6
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 7
ELIMINATION OF AGRICULTURAL EXPORT SUBSIDIES

Consistent with their rights and obligations under the WTO Agreement, each Party agrees to eliminate and not reintroduce all forms of export subsidies for agricultural goods destined for the other Parties.

ARTICLE 8
TRANSPOSITION OF SCHEDULES OF TARIFF COMMITMENTS

1. Each Party shall ensure that the transposition of its Schedule in Annex 1 (Schedules of Tariff Commitments), undertaken in order to implement Annex 1 (Schedules of Tariff Commitments) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing the tariff commitments set out in Annex 1 (Schedules of Tariff Commitments).

2. The transposition of the schedules of tariff commitments referred to in Paragraph 1 shall be carried out in accordance with the methodologies and procedures adopted by the Committee on Trade in Goods. The procedures should, at a minimum, provide for:

[2] For greater certainty, nothing in this Paragraph shall affect the right of a Party to adopt or maintain measures in accordance with Article 1 (General Exceptions) or Article 2 (Security Exceptions) of Chapter 18 (General Provisions and Exceptions).

[3] 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, in accordance with its laws and regulations, provide the other Parties with a list of ports available for exit of containers.

(a) the timely circulation by each Party of a draft schedule of tariff commitments in the nomenclature of the revised HS Code, accompanied by a two-way transposition setting out, at national tariff line level:

(i) a concordance between the draft schedule of tariff commitments in the nomenclature of the revised HS Code and the schedule of tariff commitments in the nomenclature of the then current HS Code; and

(ii) a concordance between the schedule of tariff commitments in the nomenclature of the then current HS Code and the draft schedule of tariff commitments in the nomenclature of the revised HS Code;

(b) the provision of comments by other Parties on the draft schedules circulated in accordance with Subparagraph (a), and consultations between the Parties, as necessary, with a view to resolving any concerns raised;

(c) the requirement to make publicly available in a timely manner the schedules of tariff commitments in the nomenclature of the revised HS Code shall be made publicly available in a timely manner, following completion of the process in Subparagraphs (a) and (b); and

(d) the positive consideration of proposals for technical assistance for the purpose of implementing Subparagraph (a).

ARTICLE 9
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, modify or withdraw a concession contained in its Schedule in Annex 1 (Schedules of Tariff Commitments). In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions 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 apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions).

SECTION B
NON-TARIFF MEASURES

ARTICLE 10
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 11
QUANTITATIVE RESTRICTIONS AND NON-TARIFF MEASURES

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 shall be incorporated into and shall form 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 12
PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS

1. Article X of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. In accordance with its laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings of the kind referred to in Paragraph 1 available on the internet.

ARTICLE 13
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 (the “requesting Party” for the purposes of this Article) and the Party to which a request has been made (the “requested Party” for the purposes of 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 (collectively, “the consulting Parties”).

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 Trade in 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 20 (Consultations and Dispute Settlement) and the WTO Agreement.

ARTICLE 14
NON-TARIFF MEASURES ON ESSENTIAL GOODS DURING HUMANITARIAN CRISES, EPIDEMICS OR PANDEMICS

1. During a humanitarian crisis, epidemic or pandemic, nothing in this Article shall prevent a Party from exercising its rights or obligations under the WTO Agreement, or any other international agreements to which it is a party.

2. During a humanitarian crisis, epidemic or pandemic, which adversely impacts Parties on a substantial scale, each Party shall, to the extent possible:

(a) facilitate timely information-sharing with regard to non-tariff measures on essential goods;

(b) refrain from introducing trade-restricting non-tariff measures on essential goods unless necessary, and in which case such non-tariff measures must be targeted, proportionate, transparent, temporary and in conformity with its rights and obligations under the WTO Agreement and other relevant international agreements; and

(c) endeavour to ensure the timely notification and publication, in accordance with the WTO Agreement, of regulatory information on matters pertaining to its non-tariff measures on essential goods.

3. The Committee on Trade in Goods shall be convened, where necessary and possible, to identify and resolve any unnecessary non-tariff measures on trade in essential goods in an expedited and timely manner during a humanitarian crisis, epidemic or pandemic. A Party may request essential goods from another Party and the requested Party shall, to the extent possible, positively consider the request, subject to the requested Party's internal situation and considerations.

4. Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Article.

ARTICLE 15
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.[4] 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 the Second Protocol 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 established by Article 4 of the Import Licensing Agreement (the "WTO Committee on Import Licensing"), 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 the Second Protocol for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures referred to 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 the new or modified procedure's publication. A notification provided under this Paragraph 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 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 import licensing procedure that is a subject of the notification:

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

[4] For the purposes of this Article, "Import Licensing Agreement" means the *Agreement on Import Licensing Procedures* in Annex 1A of the WTO Agreement.

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

(i) membership in an industry association;

(ii) approval by an industry association of the request for an import license;

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

(iv) 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 licensing authorities when granting or denying import licenses. Each Party shall publish sufficient information for the other Parties and traders to know the basis for granting or allocating import licenses.

8. No Party shall refuse an application for an import license 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 license application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the written request, provide the applicant with a written explanation of the reason for the denial.

ARTICLE 16
FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Each Party shall ensure, in accordance with paragraph 1 of Article VIII of GATT 1994 and its interpretive notes, 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. No Party shall apply fees and charges imposed in connection with importation or exportation until information on them, and on any updates or changes to those fees and charges, has been published, in accordance with its laws and regulations. Such information shall include the reason for the fees and charges, the responsible authority, and when and how payment is to be made. Such information shall be published promptly on the internet to the extent possible.

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

4. 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.

5. Each Party shall, in accordance with its laws and regulations, periodically review its fees and charges in connection with importation or exportation, with a view to reducing their number and diversity if practicable.

SECTION C
INSTITUTIONAL ARRANGEMENTS

ARTICLE 17
SECTORAL INITIATIVES

1. The Parties shall make reasonable efforts to initiate a work programme on sector-specific issues, to be established and overseen by the Committee on Trade in 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 during the course of the negotiation of the Second Protocol 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 issues;

(b) facilitate input from businesses and other relevant stakeholders; and

(c) explore 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 Trade in Goods may make recommendations to the FTA Joint Committee.

ARTICLE 18
CONTACT POINTS AND CONSULTATIONS

1. Each Party shall designate a contact point to facilitate communication among the Parties on any matter relating to this Chapter.

2. Where a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party or Parties shall respond promptly to such requests for information and consultations.

ARTICLE 19
COMMITTEE ON TRADE IN GOODS

1. The Parties hereby establish a Committee on Trade in Goods consisting of representatives of the Parties.

2. The Committee on Trade in Goods may meet at the request of any Party or the FTA Joint Committee to consider any matter arising under this Chapter, or under:

(a) Chapter 3 (Rules of Origin);

(b) Chapter 4 (Customs Procedures and Trade Facilitation);

(c) Chapter 5 (Sanitary and Phytosanitary Measures);

(d) Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); and

(e) Chapter 7 (Safeguard Measures).

3. The functions of the Committee on Trade in Goods shall include:

(a) monitoring and reviewing the implementation and operation of Chapter 2 (Trade in Goods);

(b) identifying and recommending measures to promote and facilitate improved market access, including through consultations on the acceleration or improvement of tariff commitments under this Agreement;

(c) addressing and minimising unnecessary barriers to trade in goods between the Parties, including those relevant issues on tariff and non-tariff measures, other than technical issues solely within the competence of another subsidiary body;

(d) considering matters related to the classification of goods under the HS Code for the application of Annex 1 (Schedules of Tariff Commitments) and the transposition of each Party's Schedule in Annex 1 (Schedules of Tariff Commitments) following periodic amendments to the HS Code, in accordance with Article 8 (Transposition of Schedules of Tariff Commitments);

(e) reviewing non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties. The Committee on Trade in Goods shall submit to the FTA Joint Committee an initial report on progress in this work, including any recommendations, within two years of entry into force of the Second Protocol. Any Party may nominate non-tariff measures for consideration by the Committee on Trade in Goods;

(f) discussing any other matter related to Chapter 2 (Trade in Goods), including the implementation and promotion of good regulatory practice on measures affecting trade in goods and exploring avenues for enhancing co-operation on the use of good regulatory practice and supply chain connectivity, as appropriate;

(g) inviting, as agreed by all Parties, input to the Committee on Trade in Goods from businesses, including MSMEs and other stakeholders, on matters affecting trade in goods;

(h) making publicly available information on its work programmes (including work on non-tariff measures), as agreed by all Parties;

(i) receiving reports from, and reviewing the work of:

(i) the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) the SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) the STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); and

(j) reporting, as required, to the FTA Joint Committee.

4. The Committee on Trade in Goods may agree to establish subsidiary working groups or refer issues for consideration to the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin).

5. The Committee on Trade in Goods may hold its meetings in person, or by any other means as mutually determined by the Parties, and whenever necessary, invite relevant officials to its meetings.

ARTICLE 20
APPLICATION

Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by the regional and local governments and authorities within its territories.

3. Replace Chapter 3 (Rules of Origin) with:

CHAPTER 3
RULES OF ORIGIN

ARTICLE 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 seedstock 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) **back-to-back Proof of Origin means a Proof of Origin** issued by an intermediate Party's Issuing Authority/Body, approved exporter, or exporter based on one or more Proof(s) of Origin issued by the first exporting Party;

(c) **CIF** means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;

(d) **FOB** means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;

(e) **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;

(f) **good** means any merchandise, product, article or material;

(g) **identical and interchangeable materials** means materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

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

  (i) fuel and energy;

  (ii) tools, dies and moulds;

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

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

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

(vi) equipment, devices and supplies used for testing or inspecting goods;

(vii) catalysts and solvents; and

(viii) 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;

(i) **intermediate Party** means a Party, other than the exporting Party and the importing Party, through which goods are transported;

(j) **material** means any matter or substance used or consumed in the production of goods or physically incorporated into a good or subjected to a process in the production of another good;

(k) **non-originating good** or **non-originating material** means a good or material that does not qualify as originating under this Chapter;

(l) **originating good** or **originating material** means a good or material that qualifies as originating under this Chapter;

(m) **packing materials and containers for transportation** means goods used to protect a good during its transportation, different from those containers or materials used for its retail sale;

(n) **producer** means a person who grows, mines, harvests, farms, raises, breeds, extracts, gathers, collects, captures, fishes, traps, hunts, manufactures, produces, processes or assembles a good;

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

(p) **Product-Specific Rules** are the rules in Annex 3B (Product-Specific Rules) that specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content criterion or a combination of any of these criteria; and

(a) **Proof of Origin** means a proof of origin as set out in Rule 1 of Annex 3A (Operational Certification Procedures).

ARTICLE 2
ORIGINATING GOODS

1. For the purposes of this Chapter, a good shall be treated as an originating good if it is either:

   (a) wholly produced or obtained in a Party as provided in Article 3 (Goods Wholly Produced or Obtained);

   (b) not wholly produced or obtained in a Party provided that the good has satisfied the requirements of Article 4 (Goods Not Wholly Produced or Obtained); or

   (c) produced in a Party exclusively from originating materials from one or more of the Parties,

   and it meets all other applicable requirements of this Chapter.

2. A good which complies with the origin requirements of Paragraph 1 will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently re-exported to another Party.

ARTICLE 3
GOODS WHOLLY PRODUCED OR OBTAINED

For the purposes of Article 2.1(a) (Originating Goods), the following goods shall be considered as wholly produced or obtained in a Party:

(a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party;[1]

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

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

(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law[2], by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

---

[1] For the purposes of this Article, "in a Party" means the land, territorial sea, Exclusive Economic Zone, Continental Shelf over which a Party exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law.

For the avoidance of doubt, nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Party of the outstanding maritime and territorial claims made by any other Party, nor shall be taken as pre-judging the determination of such claims.

[2] "International law" refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea.*

(g) goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in Subparagraph (f);

(h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law;[3]

(i) goods which are:

(i) waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained in a Party solely from products referred to in Subparagraphs (a) to (i) or from their derivatives.

ARTICLE 4
GOODS NOT WHOLLY PRODUCED OR OBTAINED

1. For the purposes of Article 2.1(b) (Originating Goods), a good shall qualify as an originating good of a Party if it satisfies all applicable requirements of Annex 3B (Product-Specific Rules).

2. Where Annex 3B (Product-Specific Rules) provides a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is an originating good.

ARTICLE 5
CALCULATION OF REGIONAL VALUE CONTENT

1. For the purposes of Article 4 (Goods Not Wholly Produced or Obtained), the formula for calculating the regional value content will be either:

(a) Direct Formula

$$\frac{\text{AANZFTA Material Cost} + \text{Labour Cost} + \text{Overhead Cost} + \text{Profit} + \text{Other Costs}}{\text{FOB}} \times 100\%$$

or

(b) Indirect/Build-Down Formula

[3] "International law" refers to generally accepted international law such as the *United Nations Convention on the Law of the Sea.*

$$\frac{\text{FOB} - \text{Value of Non-Originating Materials}}{\text{FOB}} \times 100\%$$

where:

(i) **AANZFTA Material Cost** is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;

(ii) **Labour Cost** includes wages, remuneration and other employee benefits;

(iii) **Overhead Cost** is the total overhead expense;

(iv) **Other Costs** are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;

(v) **FOB** is the free-on-board value of the goods as defined in Article 1 (Definitions); and

(vi) **Value of Non-Originating Materials** is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

2. The value of goods under this Chapter shall be determined in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation.

ARTICLE 6
CUMULATIVE RULES OF ORIGIN

1. Unless otherwise provided in this Agreement, goods and materials which comply with the origin requirements provided in Article 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. In addition to Paragraph 1, the Participating Parties shall extend the application of cumulation referred to in Paragraph 1 to all production undertaken on, and value-added to, non-originating materials in any Participating Party, which are used in another Participating Party as materials in the production of another good or material. Such production undertaken on, or value added to, a non-originating material in the territory of one or more of the Participating Parties shall contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of a Participating Party, regardless of whether that production or value added was sufficient to confer originating status to the material itself.

3. The Participating Parties shall implement Paragraph 2 180 days after the date of entry into force of the Second Protocol.

4. For the purposes of this Article, "Participating Party" means:

(a) a Party that does not make a notification under Paragraph 5; or

(b) a Party that has withdrawn its notification in accordance with Paragraph 6.

5. Paragraph 2 shall not apply to a Party[4] if that Party notifies the other Parties in writing through the FTA Joint Committee of its intention to not implement Paragraph 2 (and is therefore a "non-Participating Party" for the purposes of this Article) within 120 days after the date of entry into force of the Second Protocol.

6. A Party that has made a notification under Paragraph 5 may at any time notify the other Parties in writing through the FTA Joint Committee of its withdrawal of the notification. 180 days after the date of a Party's notification of withdrawal, Paragraph 2 shall apply with respect to that Party.

7. For greater certainty, for the purposes of Paragraph 2:

(a) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a non-Participating Party shall not contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of a Participating Party;

(b) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a Participating Party shall not contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of a non-Participating Party; and

(c) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a non-Participating Party shall not contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of another non-Participating Party.

ARTICLE 7
MINIMAL OPERATIONS AND PROCESSES

Where a claim for origin is based solely on regional value content, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

(a) ensuring preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation;

(c) packaging or presenting goods for transportation or sale;

[4] For greater certainty, a Party for whom the Second Protocol has not entered into force may also make a notification under this Paragraph.

(d) simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;

(e) affixing of marks, labels or other like distinguishing signs on products or their packaging; and

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

ARTICLE 8
DE MINIMIS

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3B (Product-Specific Rules) will nonetheless be an originating good if:

(a) (i) for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

(ii) for a good provided for in Chapters 50 to 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, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and

(b) the good meets all other applicable criteria of this Chapter.

2. The value of such materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

ARTICLE 9
ACCESSORIES, SPARE PARTS, TOOLS AND INSTRUCTIONAL OR OTHER INFORMATION MATERIALS

1. For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating 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 that good.

2. Notwithstanding Paragraph 1, if the 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 or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. Paragraphs 1 and 2 do not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good, provided it is proven subsequently by the importing Party that they are not sold therewith.

ARTICLE 10
IDENTICAL AND INTERCHANGEABLE MATERIALS

The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of Generally Accepted Accounting Principles of stock control applicable, or inventory management practice, in the exporting Party.

ARTICLE 11
TREATMENT OF PACKING MATERIALS AND CONTAINERS

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

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

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

ARTICLE 12
INDIRECT MATERIALS

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 the accounting records of the producer of the good.

ARTICLE 13
RECORDING OF COSTS

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the Party in which the goods are produced.

ARTICLE 14
DIRECT CONSIGNMENT, TRANSIT AND TRANSSHIPMENT

An originating good shall retain its originating status as determined under Article 2 (Originating Goods) if the following conditions have been met:

(a) the good has been transported to the importing Party without passing through any non-Party; or

(b) the good has transited through one or more non-Parties, provided that:

(i) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party; and

(ii) the good has not entered into commerce or free circulation in the non-Party.

ARTICLE 15
PROOF OF ORIGIN

A claim that goods are eligible for preferential tariff treatment shall be supported by a Proof of Origin in accordance with Annex 3A (Annex on Operational Certification Procedures).

ARTICLE 16
DENIAL OF PREFERENTIAL TARIFF TREATMENT

The Customs Authority of the importing Party may deny a claim for preferential tariff treatment when:

(a) the good does not qualify as an originating good; or

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

4. Replace Chapter 4 (Customs Procedures) with:

CHAPTER 4
CUSTOMS PROCEDURES AND TRADE FACILITATION

ARTICLE 1
OBJECTIVES

The objectives of this Chapter are to:

(a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;

(b) promote efficient administration of customs procedures, and the expeditious clearance of goods;

(c) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards;

(d) promote co-operation between the customs authorities of the Parties; and

(e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

ARTICLE 2
SCOPE

This Chapter shall apply to customs procedures applied to:

(a) goods traded among the Parties; and

(b) means of transport which enter or leave the customs territories of the Parties.

ARTICLE 3
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 procedures** means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to customs laws and regulations;

(c) **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;

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

(e) **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

(f) **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
CUSTOMS PROCEDURES

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate trade, including through the expeditious clearance of goods.

2. The customs procedures of each Party shall, 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 and the World Trade Organization.

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

ARTICLE 5
CUSTOMS CO-OPERATION

1. To the extent permitted by its customs laws and regulations, the customs authority of each Party may, as deemed appropriate, assist the customs authority of another Party, 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. Subject to available resources, the customs authority of the Parties may, as deemed appropriate, explore and undertake co-operation projects, including:

(a) capacity building programmes to enhance the capability of customs personnel of the Parties; and

(b) technical assistance programmes to facilitate the Parties' development in customs reform and modernisation, including implementation of the single windows outlined in Article 13 (Single Window).

ARTICLE 6
CONSISTENCY

1. Each Party shall ensure consistent implementation and application of its customs laws and regulations 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 ensures consistent application of the customs laws and regulations of that Party among its regional customs offices.

3. If a Party fails to comply with Paragraphs 1 and 2, another Party may consult with that Party on the matter relating thereto in accordance with Article 24 (Consultation).

4. 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.

ARTICLE 7
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 or parts thereof with any country or countries relating to importation, exportation or transit; and

(j) contact information for the enquiry points, as well as information on how to make enquiries on customs matters, as provided for in Article 8 (Enquiry Points).

2. The publication or provision of the information referred to in Paragraph 1 shall, to the extent possible, be in English.

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 new or amended 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, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

ARTICLE 8
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 9
CONFIDENTIALITY

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information, the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its laws and regulations;

(b) be contrary to any of its laws and regulations including laws and regulations protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or

(d) prejudice legitimate commercial interests, which may include the competitive position of particular enterprises, whether public or private.

2. Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the Party receiving the information shall maintain the

confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

ARTICLE 10
ADVANCE RULINGS

1. Each Party shall issue an advance ruling to any person with justifiable cause, in accordance with its laws, regulations and administrative rules, with respect to the:

(a) tariff classification of a product;

(b) origin of goods; and

(c) appropriate method or criteria, and the application thereof, to be used for determining the customs value of a good under a particular set of facts in accordance with the Customs Valuation Agreement.

2. On receipt of all necessary information, each Party shall issue an advance ruling on tariff classification, origin and valuation in a reasonable, specified and time-bound manner, and to the extent possible within 90 days or in such shorter time as specified by its laws, regulations and administrative rules. A Party:

(a) may at any time during the course of an evaluation of an application for advance ruling, request that the applicant provide additional information, which may include a sample of the good, necessary to evaluate the application;

(b) may reject a request for an advance ruling where the additional information requested in accordance with Paragraph 2(a) is not provided in 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;

(c) 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; and

(d) shall provide that when issuing an advance ruling, it shall be valid from the date it is issued, or another date specified in the advance ruling, provided that the laws, regulations and administrative rules, and facts and circumstances, on which the advance ruling is based remain unchanged.

3. The customs authority of each Party shall establish a validity period for an advance ruling of at least three years from the date of its issuance.

4. An issuing Party may modify or revoke an advance ruling if:

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

(b) the information provided is false or inaccurate;

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

(d) any of the conditions, to which the ruling was made subject, cease to be met or complied with; or

(e) a change is required to conform with a judicial decision or a change in its laws, regulations or administrative rules.

5. Each Party shall provide that a modification or revocation of an advance ruling shall take effect on the date on which the modification or revocation is issued, or on such later date as may be specified therein.

6. Where a Party revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

7. Where a Party revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

8. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

9. 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.

10. 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 11
PRESHIPMENT INSPECTION

1. No Party shall 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 referred to in 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 Agreement on Preshipment Inspection, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

ARTICLE 12
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 the goods with a view to expediting the release of the 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 13
SINGLE WINDOW

1. Each Party shall, to the extent possible, establish or maintain a single window, enabling traders to submit clear and readable electronic copies of documentation and/or data requirements for importation, exportation or transit of goods through a single-entry point to the participating authorities or agencies. After the examination by participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances or in accordance with other limited exceptions which are made public.

3. Each Party shall adopt or maintain procedures to determine duties and taxes upon the submission of a customs declaration and to allow collection of payment electronically upon approval of a customs declaration.

4. In implementing initiatives related to this Article, each Party shall take into account the relevant standards and best practices recommended by the World Customs Organization and other international organisations, taking into consideration the available infrastructure and capabilities of each Party.

5. The Parties are encouraged to co-operate in relation to exchanging trade-related electronic documents according to their respective laws and regulations through the single window.

ARTICLE 14
VALUATION

The Parties shall determine the customs value of goods traded among them in accordance with the provisions of the Customs Valuation Agreement.

ARTICLE 15
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 (the “authorised operators”). 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 MSMEs.

3. The trade facilitation measures provided pursuant to Paragraph 1 shall include at least three of the following measures:[1]

(i) low documentary and data requirements, as appropriate;

(ii) low rate of physical inspections and examinations, as appropriate;

(iii) rapid release time, as appropriate;

(iv) deferred payment of duties, taxes, fees and charges;

(v) use of comprehensive guarantees or reduced guarantees;

(vi) a single customs declaration for all imports or exports in a given period; and

(vii) clearance of goods at the premises of the authorised operator or another place authorised by a customs authority.

4. Each Party is encouraged to develop an authorised operator scheme 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 authorised operators, each Party shall afford to the other Parties the possibility of negotiating mutual recognition of authorised operator schemes.

[1] A measure listed in Paragraph 3(a) to (g) that is generally available to all operators will be deemed to be provided to authorised operators.

6. The Parties are encouraged to co-operate, where appropriate, in developing their respective authorised operator schemes using the contact points in Article 24 (Consultation) and the relevant AANZFTA body 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 16
RELEASE OF GOODS

1. Each Party shall adopt or maintain procedures that:

(a) provide for the release of goods within a period of time no greater than that required to ensure compliance with its laws and regulations;

(b) provide, to the extent possible, for goods to be released within 48 hours of arrival and lodgment of all necessary information for customs clearance; and

(c) allow the release of imported goods prior to the final determination by its customs authority of the applicable customs duties, other duties and taxes, provided that the good is otherwise eligible for release from customs and that all other regulatory requirements have been met.

2. Notwithstanding Paragraph 1(c), each Party may, in accordance with its laws and regulations, require the importer to provide:

(a) a guarantee; or

(b) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument.

3. If a Party allows for the release of goods conditioned on a guarantee, according to its laws and regulations, it shall adopt or maintain procedures that:

(a) ensure that the amount of any guarantee is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled; and

(b) ensure that any guarantee shall be discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled.

4. Nothing in this Article shall affect the right of a Party to examine, detain, seize, confiscate or deal with goods in any manner consistent with its laws and regulations.

ARTICLE 17
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,[2] by:

(a) providing for pre-arrival processing of information related to express consignments;

(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) to (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 18
PERISHABLE GOODS

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

(a) provide for the release of perishable goods, to the extent possible, within six hours of the arrival of the goods and the submission of the necessary customs information; and

[2] 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) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release.[3] 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.

4. Each Party shall, where practicable and consistent with its laws and regulations, on request of the importer, provide for the release to take place at those storage facilities.

ARTICLE 19
FACILITATION OF ESSENTIAL GOODS DURING HUMANITARIAN CRISES, EPIDEMICS OR PANDEMICS

1. Each Party shall, to the extent permitted by its laws and regulations, expedite and facilitate the movement, release and clearance, including transit through its exit or entry points, of all essential goods.

2. Each Party shall, to the extent permitted by its laws and regulations, expedite the release of essential goods upon arrival, including by adopting or maintaining procedures allowing for the submission of import documentation and other required information, including manifests, prior to the arrival of the essential goods, in order to allow the processing of such documentation and information to begin prior to the arrival of the essential goods.

3. Each Party shall, to the extent permitted by its laws and regulations, clear essential goods using documents received through electronic means during a humanitarian crisis, epidemic or pandemic.

ARTICLE 20
RISK MANAGEMENT

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such inspection activities as part of its risk management.

2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

3. Each Party shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include the HS Code, nature and description of the

[3] This requirement can be relaxed for a Party until it has met its obligations under the *Agreement on Trade Facilitation*.

goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders and means of transport.

ARTICLE 21
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 results, the person's rights and obligations and the reasons for the results.

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 22
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 World Customs Organization with a view to assessing its trade facilitation measures and 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 23
REVIEW AND APPEAL

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision[4] has the right, within its territory, to:

[4] 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 for the purposes of this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Party’s laws and regulations. For addressing such failure, each 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).

(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.[5]

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.[6]

5. Each Party shall ensure that the person referred to in Paragraph 1 is provided with the reasons for the administrative decision to enable that person to have recourse to procedures for appeal or review, where necessary.

6. Each Party is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.

ARTICLE 24
CONSULTATION

1. A Party may, at any time, request consultations with any other 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 Parties' designated contact points and shall commence within 30 days following the date of the receipt of the request, unless the Parties mutually 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 Trade in Goods.

3. Each Party shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Parties and any change to that information shall be notified promptly.

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

[6] 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. Replace Chapter 5 (Sanitary and Phytosanitary Measures) with:

CHAPTER 5
SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 1
OBJECTIVES

The objectives of this Chapter are to:

(a) facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party;

(b) provide greater transparency in and understanding of the application of each Party's regulations and procedures relating to sanitary and phytosanitary measures;

(c) strengthen co-operation among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

(d) enhance practical implementation of the principles and disciplines contained within the SPS Agreement.

ARTICLE 2
SCOPE

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

ARTICLE 3
DEFINITIONS

For the purposes of this Chapter:

(a) **competent authorities** means those authorities within each Party recognised by the national government as responsible for developing and administering the various sanitary and phytosanitary measures within that Party;

(b) **international standards, guidelines and recommendations** shall have the same meaning as set out in paragraph 3 of Annex A to the SPS Agreement;

(c) **sanitary or phytosanitary measure** shall have the same meaning as set out in paragraph 1 of Annex A to the SPS Agreement; and

(d) **SPS Agreement** means the *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement.

ARTICLE 4
GENERAL PROVISIONS

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

2. Each Party commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party.

ARTICLE 5
EQUIVALENCE

1. The Parties shall strengthen co-operation on equivalence in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade among the Parties.

2. To facilitate trade, the competent authorities of the relevant Parties may develop equivalence arrangements and make equivalence decisions, in particular in accordance with Article 4 of the SPS Agreement and with the guidance provided by the relevant international standard setting bodies and by the WTO Committee on Sanitary and Phytosanitary Measures established pursuant to Article 12 of the SPS Agreement.

3. A Party shall, upon request, enter into negotiations with the aim of achieving bilateral recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

ARTICLE 6
COMPETENT AUTHORITIES AND CONTACT POINTS

1. Each Party shall provide each other Party with a description of its competent authorities and their division of responsibilities.

2. Each Party shall provide each other Party with a contact point to facilitate distribution of requests or notifications made in accordance with this Chapter.

3. Each Party shall ensure the information provided under Paragraphs 1 and 2 is kept up to date.

ARTICLE 7
NOTIFICATION

1. Each Party acknowledges the value of exchanging information on its sanitary or phytosanitary measures.

2. Each Party agrees to provide timely and appropriate information directly to the contact points of the relevant Parties where a:

(a) change in animal or plant health status may affect existing trade;

(b) significant sanitary or phytosanitary non-compliance associated with an export consignment is identified by the importing Party; and

(c) provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health within the importing Party.

3. The exporting Party should, to the extent possible, endeavour to provide information to the importing Party if the exporting Party identifies that an export consignment which may be associated with a significant SPS risk has been exported.

ARTICLE 8
CO-OPERATION

1. Each Party shall explore opportunities for further co-operation, collaboration and information exchange with the other Parties on sanitary and phytosanitary matters of mutual interest consistent with the objectives of this Chapter.

2. In relation to Paragraph 1, each Party shall endeavour to co-ordinate with regional or multilateral work programmes with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.

3. Each Party agrees to further explore how it can strengthen co-operation on the provision of technical assistance especially in relation to trade facilitation.

4. Any two Parties may, by mutual agreement, co-operate on adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

ARTICLE 9
CONSULTATIONS

Where a Party considers that a sanitary or phytosanitary measure affecting trade between it and another Party warrants further discussion, it may, through the contact points, request a detailed explanation of the sanitary or phytosanitary measure and if necessary, request to hold consultations in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The other Party shall respond promptly to any requests for such explanations, and if so requested, shall enter into consultations, within 30 days from the date of the request. The Parties to the consultations shall make every effort to reach a mutually satisfactory resolution through consultations within 60 days from the date of the request, or a timeline mutually agreed upon by the consulting Parties. Should the consultations fail to achieve resolution, the matter shall be forwarded to the FTA Joint Committee.

ARTICLE 10
MEETINGS AMONG THE PARTIES ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters (the “SPS Sub-Committee”), consisting of representatives from the relevant government agencies of each

Party. The SPS Sub-Committee shall meet within one year of the entry into force of this Agreement and thereafter as mutually determined by the Parties.

2. The SPS Sub-Committee shall review the progress made by the Parties in implementing their commitments under this Chapter and may set up subsidiary working groups, as agreed between or among the relevant Parties, to consider specified issues relating to this Chapter.

3. Competent authorities of any two Parties may meet to make decisions bilaterally implementing the commitments under this Chapter. Each Party shall provide to the SPS Sub-Committee updates on the status of their work.

4. Subject to Paragraph 1, meetings under this Article shall occur as and when mutually determined by the relevant Parties and all decisions and/or records made shall be by mutual agreement of the relevant Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by the Parties.

ARTICLE 11
NON-APPLICATION OF CHAPTER 20 (CONSULTATIONS AND DISPUTE SETTLEMENT)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

6. Replace Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures) with:

CHAPTER 6
STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

ARTICLE 1
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) promoting mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;

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

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

(e) providing a framework to implement supporting mechanisms to realise these objectives.

ARTICLE 2
SCOPE

1. For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may affect trade in goods between the Parties except:

(a) purchasing specifications prepared by governmental bodies for the production or consumption requirements of such bodies; and

(b) sanitary or phytosanitary measures as defined in Chapter 5 (Sanitary and Phytosanitary Measures).

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards, technical regulations and conformity assessment procedures only to the extent necessary to fulfil a legitimate objective. Such legitimate objectives are, *inter alia*, national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health; or the environment.

ARTICLE 3
DEFINITIONS

For the purposes of this Chapter, the definitions set out in Annex 1 to the *Agreement on Technical Barriers to Trade* (TBT Agreement) in Annex 1A to the WTO Agreement shall apply.

ARTICLE 4
AFFIRMATION OF THE TBT AGREEMENT

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

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 and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

ARTICLE 5
STANDARDS

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

2. Each Party shall encourage the standardising body or bodies in its territory to co-operate with the standardising body or bodies of other Parties. Such co-operation shall include, but is not limited to:

(a) exchange of information on standards;

(b) exchange of information relating to standard setting procedures; and

(c) co-operation in the work of international standardising bodies in areas of mutual interest.

ARTICLE 6
TECHNICAL REGULATIONS

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. Where a Party does not accept a technical regulation of another Party as equivalent to its own it shall, upon request of the other Party, explain the reasons for its decision.

ARTICLE 7
CONFORMITY ASSESSMENT PROCEDURES

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of other Parties, even where those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include:

(a) recognition by a Party of the results of conformity assessments performed in the territory of another Party;

(b) recognition of co-operative arrangements between accreditation bodies in the territories of the Parties;

(c) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of each Party;

(d) accreditation of conformity assessment bodies in the territory of another Party;

(e) use of existing regional and international multilateral recognition agreements and arrangements;

(f) designating conformity assessment bodies located in the territory of another Party to perform conformity assessment; and

(g) suppliers' declaration of conformity.

3. Each Party shall exchange information with other Parties on its experience in the development and application of the approaches in Paragraph 2(a) to (g) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, upon request of another Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

ARTICLE 8
CO-OPERATION

1. The Parties shall intensify their joint efforts in the field of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's markets.

2. Each Party shall, upon request of another Party, give positive consideration to proposals to supplement existing co-operation on standards, technical regulations and conformity assessment procedures. Such co-operation, which shall be on mutually determined terms and conditions, may include:

(a) advice or technical assistance relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) co-operation between conformity assessment bodies, both governmental and non-governmental, in the territories of each of the Parties such as:

(i) use of accreditation to qualify conformity assessment bodies; and

(ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(c) co-operation 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 existing frameworks for mutual recognition developed by relevant regional and international bodies; and

(d) enhancing co-operation in the development and improvement of technical regulations and conformity assessment procedures such as:

(i) co-operation in the development and promotion of good regulatory practice;

(ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and

(iii) management of risks relating to health, safety, the environment and deceptive practices.

3. Upon request of another Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further co-operation under this Chapter.

ARTICLE 9
TECHNICAL CONSULTATIONS

1. A Party (the “requesting Party”) may request technical consultations with another Party (the “requested Party”) on issues relating to the implementation of this Chapter. The request for technical consultations shall be made in writing.

2. The requested Party shall enter into technical consultations with the requesting Party, with a view to reaching a mutually satisfactory solution, within 60 days of receipt of the written request from the requesting Party, unless otherwise mutually determined by the Parties concerned. Technical consultations may be conducted via any means agreed by the Parties concerned.

ARTICLE 10
AGREEMENTS OR ARRANGEMENTS

1. Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.

2. Such trade-facilitating initiatives may include agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations and conformity assessment procedures, and compliance issues.

3. Parties to an existing agreement or arrangement shall give consideration to extending such an agreement or arrangement to another Party upon request of that Party. Such consideration may be subject to appropriate confidence building processes to ensure equivalency of relevant standards, technical regulations and/or conformity assessment procedures.

4. Where a Party declines a request of another Party to consider extending the application of an existing agreement or arrangement it shall, upon request of that Party, explain the reasons for its decision.

ARTICLE 11
TRANSPARENCY

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in printed form and, where possible, in electronic form.

ARTICLE 12
CONTACT POINTS

1. Each Party shall designate a contact point or contact points who shall, for that Party, have responsibility for co-ordinating the implementation of this Chapter.

2. Each Party shall provide each of the other Parties with the name of the designated contact point or contact points and the contact details of the relevant official in that organisation, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify each of the other Parties promptly of any change of their contact points or any amendments to the details of the relevant officials.

4. 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 a Party.

ARTICLE 13
SUB-COMMITTEE ON STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

1. The Parties hereby establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (the “STRACAP Sub-Committee”), consisting of representatives of the Parties, to promote and monitor the implementation and administration of this Chapter.

2. The STRACAP Sub-Committee shall meet as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The STRACAP Sub-Committee shall determine its terms of reference in accordance with this Chapter.

4. The STRACAP Sub-Committee shall determine its work programme in response to priorities as identified by the Parties.

7. Replace Chapter 7 (Safeguard Measures) with:

CHAPTER 7
SAFEGUARD MEASURES

ARTICLE 1
SCOPE

This Chapter applies to safeguard measures adopted or maintained by a Party affecting trade in goods among the Parties during the transitional safeguard period.

ARTICLE 2
DEFINITIONS

For the purposes of this Chapter:

(a) **domestic industry** means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(b) **global safeguard measure** means a measure applied under Article XIX of GATT 1994 and the *Agreement on Safeguards* in Annex 1A to the WTO Agreement (Safeguards Agreement) or Article 5 of the *Agreement on Agriculture* in Annex 1A to the WTO Agreement (Agreement on Agriculture);

(c) **provisional measure** means a provisional safeguard measure described in Article 7 (Provisional Safeguard Measures);

(d) **safeguard measure** means a transitional safeguard measure described in Article 6 (Scope and Duration of Transitional Safeguard Measures);

(e) **serious injury** means a significant overall impairment in the position of a domestic industry;

(f) **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; and

(g) **transitional safeguard period** means, in relation to a particular good, the period from the entry into force of this Agreement until three years after the customs duty on that good is to be eliminated, or reduced to its final commitment, in accordance with that Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

ARTICLE 3
IMPOSITION OF A SAFEGUARD MEASURE

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of another Party or Parties is being imported into the territory of a Party during the transitional safeguard period for that good 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 a domestic industry that produces like or directly competitive goods, that Party may:

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

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

(i) the most-favoured-nation applied rate of duty on the good in effect at the time the action is taken; or

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

ARTICLE 4
INVESTIGATION

1. A Party shall take a safeguard measure only following an investigation by that Party's competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Safeguards Agreement; and to this end, Article 3 and Article 4.2 of the Safeguards Agreement shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Each Party shall ensure that its competent authorities complete any such investigation expeditiously and, in any event, within one year following the date of its initiation.

ARTICLE 5
NOTIFICATION

1. A Party shall immediately notify the other Parties, in writing, on:

(a) initiating an investigation under Article 4 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of another Party or Parties resulting from the reduction or elimination of a customs duty on that originating good;

(c) taking a decision to apply or extend a safeguard measure;

(d) taking a decision to progressively liberalise an existing safeguard measure; or

(e) applying a provisional measure.

2. A Party shall provide promptly to the other Parties a copy of the public version of the report of its competent authorities required under Article 4 (Investigation).

3. In making a notification pursuant to Paragraph 1(c), the Party applying or extending a safeguard measure shall provide the other Parties with evidence of serious injury or threat of serious injury caused by increased imports of an originating good of another Party or Parties as a result of the reduction or elimination of a customs duty pursuant to this Agreement. Such notification shall include:

(a) a precise description of the originating good subject to the proposed safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments) are based;

(b) a precise description of the proposed safeguard measure; and

(c) the proposed date of the safeguard measure's introduction, its expected duration, and a timetable for progressive liberalisation of the measure, if applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

Upon request, the Party applying or extending a safeguard measure shall provide additional information as another Party or Parties may consider necessary.

4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Parties which would be affected by the safeguard measure with a view to reviewing the information provided under Paragraphs 2 and 3 arising from the investigation referred to in Article 4 (Investigation), exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 8 (Compensation).

5. Where a Party applies a provisional measure referred to in Article 7 (Provisional Safeguard Measures), on request of another Party or Parties, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

ARTICLE 6
SCOPE AND DURATION OF TRANSITIONAL SAFEGUARD MEASURES

1. A Party may not maintain a 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 two years, except that the period may be extended by up to one year if the competent authorities of that Party determine, in conformity with the procedures referred to in Article 4 (Investigation), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting; or

(c) for a period exceeding three years, including any extension.

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

3. Where the expected duration of the safeguard measure is over one year, the importing Party shall ensure that the safeguard measure is progressively liberalised at regular intervals during the period of application.

4. When a Party terminates a safeguard measure on a good, the rate of customs duty for that good shall be no higher than the rate that, according to the Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments), would have been in effect as if the safeguard measure had never been applied.

5. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate following the end of the transitional safeguard period for such good.

6. No safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a safeguard measure, for a period of time equal to the duration of the previous safeguard measure, or two years, whichever is longer.

7. A Party shall not apply a safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

ARTICLE 7
PROVISIONAL SAFEGUARD MEASURES

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good from another Party or Parties have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of Article 2 (Definitions), Article 3 (Imposition of a Safeguard Measure), Article 4 (Investigation), Article 5 (Notification) and Article 6 (Scope and Duration of Transitional Safeguard Measures) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to in Article 6 (Scope and Duration of Transitional Safeguard Measures).

3. The customs duty imposed as a result of the provisional measure shall be refunded if the subsequent investigation referred to in Article 4 (Investigation) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

ARTICLE 8
COMPENSATION

1. The Party proposing to apply a safeguard measure shall, in consultation with the exporting Party or Parties who would be affected by such a measure, provide to that Party or Parties mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement between the Party applying the safeguard measure and the exporting Party or Parties who would be affected by such a measure.

2. In seeking compensation under Paragraph 1 for a safeguard measure, if the Parties mutually agree, they may hold consultations in the Committee on Trade in Goods established pursuant to Article 19 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) to determine the substantially equivalent level of concessions to that existing under this Agreement between the Party taking the safeguard measure and the exporting Party or Parties who would be affected by such a measure prior to any suspension of equivalent concessions. Any proceedings arising from such consultations shall be completed within 30 days from the date on which the safeguard measure was applied.

3. If no agreement on the compensation is reached within the time frame specified in Paragraph 2, the Party or Parties against whose originating good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The Party or Parties may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the safeguard measure is maintained. The right of suspension provided for in this Paragraph shall not be exercised for the first two years that a safeguard measure is in effect, provided that the safeguard measure has been applied as a result of an absolute increase in imports and that such a safeguard measure conforms to this Chapter.

4. A Party shall notify the other Parties in writing at least 30 days before suspending concessions under Paragraph 3.

5. The obligation to provide compensation under Paragraph 1 and the right to suspend substantially equivalent concessions under Paragraph 3 shall terminate on the termination of the safeguard measure.

ARTICLE 9
RELATIONSHIP TO THE WTO AGREEMENT

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.

2. A Party shall not apply a safeguard measure or provisional measure, as provided in Article 6 (Scope and Duration of Transitional Safeguard Measures) or Article 7 (Provisional Safeguard Measures) on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement, nor shall a Party continue to maintain a safeguard measure or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement.

2. A Party considering the imposition of a global safeguard measure on an originating good of another Party or Parties shall initiate consultations with that Party or Parties as far in advance of taking such measure as practicable.

8. Replace Chapter 8 (Trade in Services) with:

CHAPTER 8
TRADE IN SERVICES

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

(h) **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 those Parties to be offered to the public generally; and

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

(i) **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;

(j) **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 residence[1] 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 that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;

(k) **person** means a natural person or a juridical person;

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

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex 2 (Schedules of Specific Commitments for Services) or Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); and

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

(m) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These

[1] Where a Party has made a reservation with respect to permanent residents in its schedules under this Agreement, that reservation shall not prejudice the Parties' rights and obligations in GATS.

activities do not include the pricing of air transport services nor the applicable conditions;

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

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

(p) **service of 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;

(q) **service supplier** means a person that supplies a service; [2, 3]

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

(s) **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;

(t) **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

(u) **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,

[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.

and criteria for designation of airlines, including such criteria as number, ownership and control.

ARTICLE 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

   (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] Notwithstanding Subparagraphs (iv) to (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 3 (Scheduling of Commitments).

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

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

ARTICLE 3
SCHEDULING OF COMMITMENTS

1. Each Party shall make commitments under Article 4 (National Treatment) and Article 5 (Market Access) in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

2. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access) and Article 9 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) may also make commitments under Article 6 (Additional Commitments).

3. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured Nation Treatment) and Article 10 (Local Presence). A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) may also make commitments under Article 6 (Additional Commitments).

ARTICLE 4
NATIONAL TREATMENT

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex 2 (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, in like circumstances, [5] to its own services and service suppliers.[6]

2. A Party making commitments in accordance with Article 12 (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, in like circumstances,

[5] For greater certainty, whether treatment is accorded in "like circumstances" under Article 4 (National Treatment) or Article 9 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether services and service suppliers are like, and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

[6] 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.

to its own services and service suppliers, subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures).[7]

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.

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 5
MARKET ACCESS

1. With respect to market access through the modes of supply identified in Article 1(t) (Definitions), a Party making commitments in accordance with Article 11 (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 Annex 2 (Schedules of Specific Commitments for Services).[8]

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 11 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 12 (Schedules of Non-Conforming 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 services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(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

[7] 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.

[8] If a Party undertakes a market-access commitment in relation to the supply of a services through the mode of supply referred to in Article 1(t)(i) (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 of Article 1(t)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

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

directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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

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

ARTICLE 6
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 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment) for those Parties making commitments in accordance with Article 11 (Schedules of Specific Commitments); or

(b) Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence) for those Parties making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

2. A Party making additional commitments under Paragraph 1(a) shall inscribe such commitments in its Schedule in Annex 2 (Schedules of Specific Commitments for Services).

3. A Party making additional commitments under Paragraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

ARTICLE 7
REVIEW OF COMMITMENTS

The Parties shall review the commitments on trade in services, as necessary, but no later than the next general review of this Agreement under Article 10 (Review) of Chapter 21 (Final Provisions), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

ARTICLE 8
WORK PROGRAMME

1. Within one year of the date of entry into force of the Second Protocol, the Parties shall commence negotiations on an article that requires:

(a) Parties making commitments in accordance with Article 11 (Schedule of Specific Commitments) (“transitioning Party” for the purposes of this Article) to submit a proposed Schedule of Non-Conforming Measures that accords with Article 12

(Schedules of Non-Conforming Measures) ("Proposed Schedule" for the purposes of this Article); and

(b) that the commitments contained in a transitioning Party's Proposed Schedule provide an equivalent or greater level of liberalisation, and not result in a decrease in the level of commitments, as compared to the transitioning Party's commitments made in accordance with Article 11 (Schedules of Specific Commitments).

2. The article referred to in Paragraph 1 shall set out a fixed time frame, to be agreed by the Parties, for:

(a) the submission of a transitioning Party's Proposed Schedule; and

(b) the conclusion of negotiations on, and adoption of, a transitioning Party's Proposed Schedule,

and shall take into account any transition to Schedules of Non-Conforming Measures occurring pursuant to other international agreements that all Parties to this Agreement are party to.

3. The Parties shall endeavour to conclude the negotiations referred to in Paragraph 1 within two years of the date of entry into force of the Second Protocol.

4. Upon the conclusion of the negotiations referred to in Paragraph 1, the Parties shall amend this Chapter in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions) to incorporate the article referred to in Paragraph 1.

ARTICLE 9
MOST-FAVOURED-NATION TREATMENT

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) that makes commitments on Most-Favoured-Nation Treatment shall, in respect of the sectors and subsectors inscribed in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) that are identified with an "MFN" and subject to any conditions and qualifications set out therein, accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or of any non-Party.

2. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to 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 the Second Protocol.

4. Notwithstanding Paragraphs 1 and 2, each Party which is an ASEAN Member State reserves the right to adopt or maintain any measure that accords differential treatment to services and service

suppliers of any other Party which is an ASEAN Member State 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 ASEAN Member States.

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.

6. Notwithstanding Paragraphs 1 and 2, Least Developed Country Parties are not obliged to make commitments under this Article. These Parties may, however, do so on a voluntary basis.

ARTICLE 10
LOCAL PRESENCE

A Party making commitments in accordance with Article 12 (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 Article 1(t)(i), (iii) or (iv) (Definitions), subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures).

ARTICLE 11
SCHEDULES OF SPECIFIC COMMITMENTS

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 2 (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 4 (National Treatment), Article 5 (Market Access), Article 6 (Additional Commitments) and Article 9 (Most-Favoured-Nation Treatment). With respect to sectors where such commitments are undertaken, each schedule in Annex 2 (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;

(d) the sectors that are committed for Most-Favoured-Nation Treatment in accordance with Article 9.1 (Most-Favoured-Nation Treatment);

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

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

2. Measures inconsistent with both Article 4 (National Treatment) and Article 5 (Market Access) shall be inscribed in the column relating to Article 5 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 4 (National Treatment) as well.

3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex 2 (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 Paragraph 1(a) to (c) 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 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment), 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 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment).

5. Least Developed Country Parties are not required to identify sectors or subsectors for future liberalisation under Paragraph 4. These Parties, however, may do so on a voluntary basis.

ARTICLE 12
SCHEDULES OF NON-CONFORMING MEASURES

1. For a Party making commitments in accordance with this Article, Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (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 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services);

(ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); 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 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence).

2. Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (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 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

ARTICLE 13
MODIFICATION OF SCHEDULES

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 2 (Schedules of Specific Commitments for Services) or Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons), at any time after three years have elapsed from

the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, mutatis mutandis, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999 (the GATS Article XXI Procedures), *mutatis mutandis*, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the "Secretariat" and the "Council for Trade in Services" shall each be read as references to the FTA Joint Committee.

ARTICLE 14
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 and procedures, 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 Paragraph 5(a), international standards of relevant international organisations[10] 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:

(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 under consideration;

(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 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 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

[10] "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all the Parties.

(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 the other Parties to use without undue restrictions, the business names under which they trade in the territory of that other Party.

Application Time Frames

10. If a Party requires authorisation for the supply of a service, it shall endeavour to ensure that its competent authorities, to the extent practicable and subject to its laws and regulations, permit submission of an application at any time throughout the year.[11] If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application.[12]

11. Paragraphs 1 to 10 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 4 (National Treatment) or Article 5 (Market Access) by reason of a Party's commitments made in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

ARTICLE 15
TRANSPARENCY

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

Publication

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

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

(b) all international agreements pertaining to, or affecting, trade in services to which a Party is a signatory.

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

4. Where publication referred to in Paragraphs 2 and 3 is not practicable, such information[13] shall be made otherwise publicly available.

---

[11] Competent authorities are not required to start considering applications outside of their official working hours and working days.

[12] Notwithstanding this Paragraph, Least Developed Country Parties are not obliged to apply this Paragraph for two years after the date of entry into force of the Second Protocol.

[13] For greater certainty, such information may be published in each Party's chosen language.

5. To the extent provided for under its legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the Parties on measures referred to in Paragraph 2(a) before adoption.

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

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

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

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

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

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

ARTICLE 16
DEVELOPMENT AND APPLICATION OF REGULATIONS

Administrative Processes

1. With a view to administering in a consistent, impartial and reasonable manner its laws, regulations, procedures and administrative rulings of general application affecting trade in services, each Party shall ensure that its administrative agencies, in applying such laws, regulations, procedures and administrative rulings to particular services or service suppliers of another Party in specific cases through administrative processes, including adjudication, rule-making, licensing, determination and approval processes:

(a) to the extent provided under its legal framework, and where possible, provide service suppliers of the other Party that are directly affected by an administrative process with reasonable notice that the process is taking place;

(b) to the extent provided under its legal framework, endeavour to afford such service suppliers with reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process and the public interest permit; and

(c) follow procedures that are in accordance with its laws.

Review and Appeal

2. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review,[14] and, where warranted, correction of final administrative actions resulting from the processes covered by Paragraph 1. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

3. Each Party shall ensure that, in any such tribunal or under any such procedures, the parties to any proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision in accordance with the Party's laws.

4. Each Party shall ensure, subject to appeal or further review as provided in its laws, that any decision referred to in Paragraph 3(b) shall be implemented in accordance with its laws.

ARTICLE 17
DISCLOSURE OF CONFIDENTIAL INFORMATION

Nothing in this Chapter shall be construed as requiring a Party to provide to the other Parties confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

ARTICLE 18
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 4 (National Treatment) and Article 5 (Market Access).

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

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

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

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

[14] For avoidance of doubt, "review" includes merits review only where provided for under the Party's laws.

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

ARTICLE 19
BUSINESS PRACTICES

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 18 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

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

ARTICLE 20
RECOGNITION

1. For the purpose 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 a 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 9 (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 co-operation 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 21
PAYMENTS AND TRANSFERS

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions), 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 transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions) or on request of the IMF.

ARTICLE 22
SUBSIDIES

1. Notwithstanding Article 2.3(b) (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 20 (Consultations and Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

ARTICLE 23
SAFEGUARD MEASURES

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

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

3. Any measures taken pursuant to Paragraph 2 shall be mutually agreed by the Parties concerned.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Committee on Trade in Services (the "Services Committee") established pursuant to Article 28 (Committee on Trade in Services) following the conclusion of consultations.

ARTICLE 24
INCREASING PARTICIPATION FOR NEWER ASEAN MEMBER STATES

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and the objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

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

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

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

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

ARTICLE 25
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 26
TREATMENT AND PROTECTION OF COMMERCIAL PRESENCE

1. Chapter 11 (Investment) shall not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.

2. Notwithstanding Paragraph 1, Article 5 (Senior Management and Board of Directors),[15] Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), Article 11 (Subrogation), and Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment), 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, but only to the extent that any such measure relates to a covered investment within the meaning of Chapter 11 (Investment), and an obligation under Chapter 11 (Investment).

ARTICLE 27
CO-OPERATION

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

2. The Parties shall strengthen co-operation on the treatment and protection of commercial presence, including initiating discussions to better understand the implications of cross-applying prohibition of performance requirements in Chapter 11 (Investment) to this Chapter. The Parties shall explore the possibility of capacity building initiatives in this area where relevant.

3. The Parties shall strengthen co-operation on domestic regulations pertaining to trade in services by initiating discussions with a view to enhance the ease of doing business in the region. The Parties shall consider relevant developments at other multilateral platforms, such as the World Trade Organisation's Joint Initiative on Services Domestic Regulation, including provisions in the areas of submission of applications and independence.

4. The Parties shall strengthen co-operation in education services, as set out in Annex 8D (Education Services Co-operation).

ARTICLE 28
COMMITTEE ON TRADE IN SERVICES

1. The Parties hereby establish a Services Committee, consisting of representatives of the Parties.

[15] Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

2. The Services Committee's functions shall be:

(a) to conduct reviews of commitments in accordance with Article 7 (Review of Commitments);

(b) if the multilateral negotiations referred to in Article 23 (Safeguard Measures) have not concluded within three years from entry into force of this Agreement, to enter into discussion on the question of emergency safeguard measures based on the principle of non-discrimination for the purpose of considering appropriate amendments to this Chapter;

(c) to enter into discussions on the application of most-favoured-nation treatment to trade in services for the purpose of considering appropriate amendments to this Chapter, in conjunction with the first review of commitments under Article 7 (Review of Commitments);

(d) to review the implementation of this Chapter;

(e) to consider any other matters identified by the Parties; and

(f) to report to the FTA Joint Committee as required.

3. The Services Committee shall conclude the discussions referred to in Paragraph 2(a) to (c) within five years of entry into force of this Agreement, unless the Parties agree otherwise.

3. The Services Committee shall meet as mutually determined by the Parties as required under this Article and Article 7 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

10. Replace Chapter 10 (Electronic Commerce) with:

CHAPTER 10
ELECTRONIC COMMERCE

SECTION A
GENERAL PROVISIONS

ARTICLE 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 Article 1(a) (Definitions) of Chapter 11 (Investment);

(ii) an "investor of a Party" as defined in Article 1(d) (Definitions) of Chapter 11 (Investment) 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 1 (Definitions) of Chapter 8 (Trade in Services),

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;

(d) **electronic invoicing** means the automated creation, exchange and processing of requests for payments between suppliers and buyers using a structured digital format;

(e) **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] 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 11 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

(f) **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.

ARTICLE 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. In supporting the development and promotion of electronic commerce, each Party recognises the importance of providing an enabling legal and regulatory environment, providing a conducive and competitive business environment and protecting the public interest.

3. The legal and regulatory frameworks in each Party that support electronic commerce shall take into account model laws, conventions, principles or guidelines of relevant international organisations or bodies.

4. The Parties recognise the importance of the principle of technological neutrality and the benefits of alignment in policy and regulatory approaches among the Parties as far as possible, to facilitate cross-border electronic commerce.

5. 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

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

ARTICLE 3
SCOPE[3]

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, except for Article 15 (Open Government Data).

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

4. Article 17 (Location of Computing Facilities) and Article 18 (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 11 (Investment) to the extent that such measures are adopted or maintained in accordance with:

(a) Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) or Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment);

(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 9 (Most-Favoured-Nation Treatment) or Article 11 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services); or

(c) any exception that is applicable to the obligations in Chapter 8 (Trade in Services) or Chapter 11 (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 11 (Investment),

including Annex 2 (Schedules of Specific Commitments for Services), Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), as well as any exceptions that are applicable to those obligations.

ARTICLE 4
CO-OPERATION

Each Party shall, where appropriate, co-operate to:

(a) work together to assist MSMEs to overcome obstacles in the use of electronic commerce;

(b) identify areas for targeted co-operation between the Parties which will help Parties implement or enhance their electronic commerce legal frameworks, 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 co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;

(e) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and

(f) actively participate in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall endeavour to undertake forms of co-operation that build on and do not duplicate existing co-operation initiatives pursued in international fora.

SECTION B
TRADE FACILITATION

ARTICLE 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 co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

ARTICLE 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:

(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.

[4] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Subparagraph (a) before 1 January 2027.

[5] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 before 1 January 2027.

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.

ARTICLE 7
ELECTRONIC INVOICING

1. The Parties recognise the importance of electronic invoicing which increases the efficiency, accuracy and reliability of transactions.

2. The Parties recognise the benefits of interoperable electronic invoicing systems. When developing measures related to electronic invoicing, a Party shall endeavour to take into account international standards, where applicable, and in accordance with its readiness in terms of capacity, regulations and infrastructure.

3. The Parties agree to co-operate and collaborate on initiatives which promote, encourage, support or facilitate the adoption of electronic invoicing.

SECTION C
CREATING A CONDUCIVE ENVIRONMENT FOR ELECTRONIC COMMERCE

ARTICLE 8
DIGITAL TRADE STANDARDS AND CONFORMITY ASSESSMENT

1. The Parties recognise the important role of relevant international standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease trade compliance costs and increase interoperability, reliability and efficiency.

2. Each Party shall, where appropriate, encourage the adoption of international standards that support digital trade.

3. The Parties shall endeavour to explore collaborative initiatives, share best practices and exchange information on standards, technical regulations and conformity assessment procedures in areas of mutual interest with a view to facilitating electronic commerce and digital trade.

ARTICLE 9
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 co-operation 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.

5. Each Party shall endeavour to promote awareness of, and access to, consumer redress mechanisms, including mechanisms for cross-border transactions.

6. The Parties recognise the benefits of alternative dispute resolution to facilitate the resolution of claims over electronic commerce transactions. To this end, the Parties shall endeavour to, where appropriate, share best practices and collaborate on alternative dispute resolution.

ARTICLE 10
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. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall encourage the development and adoption of mechanisms to promote compatibility and where appropriate, interoperability, between different legal frameworks for protecting

[6] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027.

[7] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027.

[8] For greater certainty, a Party may comply with the obligation under Paragraph 1 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.

personal information. The Parties also recognise that, in accordance with their respective laws and regulations, there are other existing mechanisms, including contractual provisions, for the transfer of personal information across their territories to ensure the protection of personal information.

5. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information.

6. The Parties shall co-operate, to the extent possible, for the protection of personal information transferred from a Party.

ARTICLE 11
UNSOLICITED COMMERCIAL ELECTRONIC MESSAGES

1. The Parties recognise the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. 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 endeavour to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and to the extent provided for in a Party's laws and regulations, contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. 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]

4. The Parties shall endeavour to co-operate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 12
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]

[9] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 3 before 1 January 2027. Brunei Darussalam shall not be obliged to apply Paragraph 3 before 1 January 2025.

[10] Cambodia shall not be obliged to apply Paragraph 1 before 1 January 2027.

2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions and take into account input by interested persons[11] in the development of its legal framework for electronic transactions.

ARTICLE 13
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 adopted on 17 June 2022* in relation to the Work Programme on Electronic Commerce (WT/MIN(22)/32).

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 the 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 14
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 15
OPEN GOVERNMENT DATA[12]

1. The Parties recognise that facilitating public access to and use of government information and data may foster economic and social development, competitiveness and innovation.

[11] For the purposes of Paragraph 2, a Party may limit "interested persons" to those persons provided for in, and in accordance with, its laws and regulations.

[12] Cambodia, Lao PDR and Myanmar shall not be obliged to apply this Article for a period of five years after the date of entry into force of the Second Protocol.

2. To the extent that a Party makes government information and data available to the public, it shall endeavour, to the extent practicable, to ensure that the information is made available in an open or machine-readable format.

3. The Parties shall endeavour to co-operate in matters that facilitate and expand public access to and use of government information and data, including exchanging information and experiences on practices and policies, with a view to encouraging the development of electronic commerce and creating business opportunities, especially for MSMEs.

4. For greater certainty, this Article is without prejudice to each Party's laws and regulations, including on intellectual property and personal data protection.

ARTICLE 16
CYBER SECURITY

The Parties recognise the importance of:

(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 co-operate on matters related to cyber security.

SECTION D
PROMOTING CROSS-BORDER ELECTRONIC COMMERCE

ARTICLE 17
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.[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

[13] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

[14] For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

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 18
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.[15]

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,[16] 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.

SECTION E
OTHER PROVISIONS

ARTICLE 19
DIGITAL INCLUSION FOR ELECTRONIC COMMERCE

1. The Parties recognise the importance of digital inclusion and that all people and businesses including MSMEs can participate in, contribute to, and benefit from electronic commerce and digital trade. To this end, the Parties recognise the importance of expanding and facilitating electronic commerce and digital trade opportunities by addressing barriers to, and encouraging participation in, electronic commerce and digital trade. The Parties also recognise that this may require tailored approaches, developed in consultation with any individuals and groups that disproportionately face such barriers and other relevant stakeholders.

[15] Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

[16] For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

2. To promote digital inclusion, the Parties shall endeavour to co-operate on matters relating to digital inclusion. This may include:

(a) identifying and addressing barriers to accessing electronic commerce and digital trade opportunities;

(b) developing programmes to promote participation of all groups in electronic commerce and digital trade;

(c) sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and

(d) co-operation in other areas as jointly agreed by the Parties.

ARTICLE 20
SETTLEMENT OF DISPUTES

1. Unless otherwise provided in this Chapter, Chapter 20 (Consultations and Dispute Settlement) shall apply to this Chapter, subject to the following:

(a) Chapter 20 (Consultations and Dispute Settlement) shall not apply to Article 17 (Location of Computing Facilities) and Article 18 (Cross-border Transfer of Information by Electronic Means) until three years after the date of entry into force of the Second Protocol; and

(b) in relation to Cambodia, Lao PDR and Myanmar, Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

2. Notwithstanding Paragraph 1(b), Chapter 20 (Consultations and Dispute Settlement) may apply in relation to Cambodia, Lao PDR and Myanmar after a review of the application of Chapter 20 (Consultations and Dispute Settlement) to this Chapter for Cambodia, Lao PDR and Myanmar, which shall commence within 10 years of the date of entry into force of the Second Protocol for that Party. In the course of that review, which shall be completed within three years from the date of its commencement, Cambodia, Lao PDR and Myanmar shall give due consideration to applying Chapter 20 (Consultations and Dispute Settlement) to either the whole or parts of this Chapter.

3. In the event of any difference between the Parties regarding the operation, interpretation, or application of Article 17 (Location of Computing Facilities) or Article 18 (Cross-border Transfer of Information by Electronic Means), the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

4. In the event of any difference between Cambodia, Lao PDR or Myanmar, or between Cambodia, Lao PDR or Myanmar and another Party, regarding the operation, interpretation, or application of this Chapter while Chapter 20 (Consultations and Dispute Settlement) does not apply in relation to Cambodia, Lao PDR and Myanmar, the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

5. In the event that the consultations referred to in Paragraph 3 or 4 fail to resolve the difference, any Party engaged in the consultations may refer the matter to the FTA Joint Committee.

11. Replace Chapter 11 (Investment) with:

CHAPTER 11
INVESTMENT

SECTION A

ARTICLE 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] by the host Party, subject to its relevant laws, regulations and policies;

(b) **freely usable currency** means a freely usable currency as determined by the IMF in accordance with the IMF Articles of Agreement and any amendments thereto;

(c) **investment**[2] means every kind of asset owned or controlled by an investor, 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) movable and immovable property and other property rights such as mortgages, liens or pledges;[3]

(ii) shares, stocks and other forms of equity participation in a juridical person including rights derived therefrom;

(iii) bonds, debentures, loans[4] and other debt instruments of a juridical person and rights derived therefrom;

(iv) intellectual property rights and goodwill which are recognised pursuant to the laws and regulations of the host Party;

---

[1] For greater certainty,

(a) in the case of Thailand, protection under this Chapter shall be accorded to covered investments which have been specifically approved in writing for protection by its competent authorities;

(b) in the case of Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

[2] The term "investment" does not include an order or judgment entered in a judicial or administrative action.

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

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

(v) claims to money or to any contractual performance related to a business and having financial value;[5]

(vi) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and

(vii) business concessions required to conduct economic activity and having financial value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources.

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

(d) **investor of a Party** means a natural person of a Party or a juridical person of a Party that seeks to make,[6] is making, or has made an investment in the territory of another Party;

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

(f) **juridical person of a Party** means a juridical person constituted or organised under the law of that Party;

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

(h) **measures by a Party** includes measures taken by:

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

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

(i) **natural person of a Party means** any natural person possessing the nationality or citizenship of, or right of permanent residence in, that Party in accordance with its laws and regulations; and

(j) **return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties and all other lawful income.

---

[5] 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.

[6] For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of another Party that has taken active steps 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 of another Party that has initiated such notification or approval process.

ARTICLE 2
SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

   (a) investors of any other 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 a governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

   (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 (Movement of Natural Persons).

3. Notwithstanding Paragraph 2(d), Article 5 (Senior Management and Board of Directors),[7] Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), Article 11 (Subrogation), and Section B (Investment Disputes between a Party and an Investor), 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.

ARTICLE 3
NATIONAL TREATMENT[8]

1. Each Party shall accord to investors of another Party, and to covered investments, in relation to establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments.[9]

[7] Article 5 (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 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

[8] 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.

[9] Notwithstanding Article 21 (Claim by an Investor of a Party), or anything else to the contrary in this Chapter, a disputing investor under Article 21 (Claim by an Investor of a Party) may not submit to conciliation or arbitration a claim under that Article that a

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 4
MOST-FAVOURED-NATION TREATMENT[10,11]

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 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 5
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.

disputing Party has breached an obligation under Article 3 (National Treatment) where the alleged breach arises within 30 months of the date of entry into force of the Second Protocol.

[10] 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.

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

ARTICLE 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:[12]

(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 license 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.[13] 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.

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;

[12] 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 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

[13] For the purposes of this Subparagraph, a “licence contract” means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

(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) Paragraph 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,[14] 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.[15]

(c) Paragraph 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) Paragraphs 1(a) to (c), 2(a) and (b) shall not apply to qualification requirements for goods with respect to export promotion and foreign aid programmes.

(e) Paragraph 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.

[14] 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.

[15] The Parties recognise that a patent does not necessarily confer market power.

ARTICLE 7
TREATMENT OF INVESTMENT[16]

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:

(b) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;

(c) 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

(d) 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 8
COMPENSATION FOR LOSSES

Each Party shall accord to investors of another Party, and to 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 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;

[16] This Article shall be interpreted in accordance with Annex 11A (Customary International Law).

(b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 8 (Compensation for Losses) and Article 10 (Expropriation and Compensation);

(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 that investment.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of the 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 orders or judgments in judicial or administrative proceedings;

(f) taxation;[17]

(g) social security, public retirement, superannuation, compulsory savings schemes or other arrangements to provide pension or similar retirement benefits;

(h) severance entitlements 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 each 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 a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this

[17] 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.

Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions) or on request of the IMF.

ARTICLE 10
EXPROPRIATION AND COMPENSATION[18]

1. A Party shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

(a) for a public purpose;[19]

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in Paragraph 1(c) shall:

(a) be paid without delay;[20]

(b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced,[21] or when the expropriation occurred, whichever is applicable;

(c) not reflect any change in value because the intended expropriation had become known earlier; and

(d) be effectively realisable and freely transferable between the territories of the Parties.

3. The compensation referred to in Paragraph 1(c) shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely usable currency, the compensation referred to in Paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

---

[18] This Article shall be interpreted in accordance with Annex 11B (Expropriation and Compensation).

[19] For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in Malaysia's laws and regulations relating to land acquisition.

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

[21] In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

6. Notwithstanding Paragraphs 1 to 4, in the case where Singapore or Viet Nam is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the existing laws and regulations of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation made 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 land.

ARTICLE 11
SUBROGATION

1. If a Party, or an agency of a Party, makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of 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, unless authorised to act on behalf of the Party or the agency making the payment, pursue those rights or claims against the other Party.

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

4. In the exercise of a subrogated or transferred right or claim, a Party or an agency of a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors of the relevant Party.

ARTICLE 12
DENIAL OF BENEFITS[22]

1. Following notification, a Party may deny the benefits of this Chapter:

   (a) to an investor of another Party that is a juridical person of that other Party and to investments of that investor if an investor of a non-Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of the other Party;

   (b) to an investor of another Party that is a juridical person of that other Party and to investments of that investor if an investor of the denying Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of any Party, other than the denying Party.

[22] 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 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.

4. 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.

5. Notwithstanding Paragraph 1 and subject to prior notification to and consultation with the relevant Party, 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 the denying Party.

6. In the case of Thailand, a juridical person is:

(a) "owned" by natural persons or juridical persons of a Party or 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 non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

7. Following notification, and without prejudice to Paragraph 1, the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of that investor where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended.

ARTICLE 13
RESERVATIONS AND NON-CONFORMING MEASURES

1. Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements) 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 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services);

(ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in Subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in Subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure:

(i) for Cambodia, Indonesia, Lao PDR, Myanmar and the Philippines, as it existed at the date of entry into force of the Second Protocol; and

(ii) for Australia, Brunei Darussalam, Malaysia, New Zealand, Singapore, Thailand and Viet Nam, as it existed immediately before the amendment,

with Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements).

2. Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

3. Notwithstanding Paragraph 1(c)(ii), for five years after the date of entry into force of the Second Protocol, Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements), shall not apply to an amendment to any non-conforming measure referred to in Paragraph 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 the Second Protocol with Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements).

4. No Party shall, under any measure adopted after the date of entry into force of the Second Protocol and covered by List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), 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 3 (National Treatment) and Article 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 4 (National Treatment) of Chapter 14 (Intellectual Property), or imposed by Article 3 or 4 of the TRIPS Agreement.

ARTICLE 14
TRANSPARENCY

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

2. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in Paragraph 1 available on the internet.

3. Where publication referred to in Paragraphs 1 and 2 is not practicable, such information[23] shall be made otherwise publicly available.

4. To the extent provided for under its legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons on measures referred to in Paragraph 1 before adoption.

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

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

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

6. Each Party shall respond within a reasonable period of time to all requests by any other Party for specific information on:

(a) any measures or international agreements referred to in Paragraph 1; and

(b) any new, or any changes to existing, measures or administrative guidelines which significantly affect investors or covered investments, whether or not the other Party has been previously notified of the new or changed measures or administrative guidelines.

7. Any notification or communication under this Article shall be provided to the other Party through the relevant contact points in the English language.

8. Nothing in this Article shall be construed as requiring a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interest of particular juridical persons, public or private.

9. Each Party shall ensure that in its administrative proceedings relating to the application of measures referred to in Paragraph 1 to particular investors of another Party or their investments in specific cases that:

(a) to the extent provided under its legal framework and where possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice when a proceeding is initiated;

[23] For greater certainty, such information may be published in each Party's chosen language.

(b) to the extent provided under its legal framework, it endeavours to afford such persons with reasonable opportunity to present their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its laws and regulations.

10. Each Party shall maintain judicial or administrative tribunals or procedures for the purposes of the prompt review[24] and, where warranted, correction of final administrative actions regarding matters covered by this Chapter. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

11. Each Party shall ensure that in any such tribunals or procedures the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision in accordance with the Party's laws.

12. Each Party shall ensure, subject to appeal or further reviews as provided in its law, that any decision referred to in Paragraph 11(b) shall be implemented in accordance with its laws.

ARTICLE 15
SPECIAL FORMALITIES AND DISCLOSURE OF INFORMATION

1. Nothing in Article 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 the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 3 (National Treatment), a Party may require an investor of another Party, or a 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 legitimate commercial interests of the investor or the covered investment. Nothing in this Paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 16
SPECIAL AND DIFFERENTIAL TREATMENT FOR THE NEWER ASEAN MEMBER STATES

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the preamble to this Agreement and objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States under this Chapter through:

[24] For avoidance of doubt, the form of "review" shall be as provided for under the Party's law.

(a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;

(b) access to information on the investment policies of other Parties, business information, relevant databases and contact points for investment promotion agencies;

(c) commitments in areas of interest to the newer ASEAN Member States; and

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

ARTICLE 17
WORK PROGRAMME

1. The Parties shall, no later than 18 months after the date of entry into force of the Second Protocol, commence a review of Section B (Investment Disputes between a Party and an Investor). The Parties shall conclude the review within 12 months from the date of commencement of the discussions, unless the Parties agree otherwise.

2. In parallel to the review in Paragraph 1, the Parties shall also enter into discussions on introducing two additional elements to Article 6.1 (Prohibition of Performance Requirements), as follows:

(a) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party; and

(b) to prevent the purchase or use of, or the according of a preference to, in its territory, a particular technology.

Without prejudice to other Least Developed Country Parties, these discussions will consider flexibilities for Lao PDR and Myanmar. The Parties shall conclude these discussions within 36 months from the date of commencement of the discussions, unless the Parties agree otherwise.

3. The discussions in Paragraphs 1 and 2 are without prejudice to the respective positions of the Parties, and the outcomes of the discussions are subject to agreement by all the Parties. These discussions shall be overseen by the Committee on Investment (the “Investment Committee”) established pursuant to Article 18 (Committee on Investment).

ARTICLE 18
COMMITTEE ON INVESTMENT

1. The Parties hereby establish an Investment Committee consisting of representatives of the Parties.

2. The Investment Committee shall meet within one year from the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The Investment Committee's functions shall be:

(a) to oversee the discussions referred to in Article 17.1 and 17.2 (Work Programme);

(b) to review the implementation of this Chapter;

(c) to consider any other matters related to this Chapter identified by the Parties; and

(d) to report to the FTA Joint Committee as required.

SECTION B
INVESTMENT DISPUTES BETWEEN A PARTY AND AN INVESTOR

ARTICLE 19
SCOPE AND DEFINITIONS

1. This Section shall apply to disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former under Section A which causes loss or damage to the covered investment of the investor.

2. This Section shall not apply to investment disputes which have occurred prior to the entry into force of this Agreement.

3. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

4. For the purpose of this Section:

(a) **Appointing Authority** means:

(i) in the case of arbitration under Article 22.1(b) or (c) (Submission of a Claim), the Secretary-General of ICSID;

(ii) in the case of arbitration under Article 22.1(d) or (e) (Submission of a Claim), the Secretary-General of the Permanent Court of Arbitration; or

(iii) any person as agreed between the disputing parties;

(b) **disputing Party** means a Party against which a claim is made under this Section;

(c) **disputing party** means a disputing investor or a disputing Party;

(d) **disputing parties** means a disputing investor and a disputing Party;

(e) **disputing investor** means an investor of a Party that makes a claim against another Party on its own behalf under this Section, and where relevant includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls;

(f) **ICSID** means the International Centre for Settlement of Investment Disputes;

(g) **ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and National of other States*, done at Washington on 18 March 1965;

(h) **ICSID Additional Facility Rules** means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

(i) **non-disputing Party** means the Party of the disputing investor;

(j) **New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958; and

(k) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

ARTICLE 20
CONSULTATIONS

1. In the event of an investment dispute referred to in Article 19.1 (Scope and Definitions), the disputing parties shall as far as possible resolve the dispute through consultations, with a view towards reaching an amicable settlement. Such consultations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

ARTICLE 21
CLAIM BY AN INVESTOR OF A PARTY

If an investment dispute has not been resolved within 180 days of the receipt by a disputing Party of a request for consultations, the disputing investor may, subject to this Article, submit to conciliation or arbitration a claim:

(a) that the disputing Party has breached an obligation arising under Article 3 (National Treatment), Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers) and Article 10 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and

(b) that the disputing investor or the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

ARTICLE 22
SUBMISSION OF A CLAIM

1. A disputing investor may submit a claim referred to in Article 21 (Claim by an Investor of a Party) at the choice of the disputing investor:

(a) where the Philippines or Viet Nam is the disputing Party, to the courts or tribunals of that Party, provided that such courts or tribunals have jurisdiction over such claim; or

(b) under the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings*,[25] provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention; or

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Party or non-disputing Party are a party to the ICSID Convention; or

(d) under the UNCITRAL Arbitration Rules; or

(e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under Subparagraphs (a) to (e) shall exclude resort to any other.

2. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of or request for arbitration made in accordance with this Section (notice of arbitration) is received under the applicable arbitration rules.

3. The arbitration rules applicable under Paragraphs 1(b) to (e) as in effect on the date the claim or claims were submitted to arbitration under this Article shall govern the arbitration, except to the extent modified by this Section.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

[25] In the case of the Philippines, the submission of a claim under the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings* shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.

ARTICLE 23
CONDITIONS AND LIMITATIONS ON SUBMISSION OF A CLAIM

1. The submission of a dispute as provided for in Article 21 (Claim by an Investor of a Party) to conciliation or arbitration under Article 22.1(b) to (e) (Submission of a Claim) in accordance with this Section, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in Article 21(a) (Claim by an Investor of a Party) causing loss or damage to the disputing investor or a covered investment;

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration and which briefly summarises the alleged breach of the disputing Party (including the articles or provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment;

(c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 21 (Claim by an Investor of a Party).

2. Notwithstanding Paragraph 1(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such a dispute. Diplomatic protection, for the purposes of this Paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Party shall not assert, as a defence, counter-claim, right of set off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

ARTICLE 24
SELECTION OF ARBITRATORS

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations

with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party or the disputing investor.

3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.

4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrator's remuneration.

6. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

ARTICLE 25
CONSOLIDATION

Where two or more claims have been submitted separately to arbitration under Article 21 (Claim by an Investor of a Party) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

ARTICLE 26
CONDUCT OF THE ARBITRATION

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide the matter before proceeding to the merits.

2. A disputing Party may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

6. Where an investor claims that the disputing Party has breached Article 10 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Section shall accord serious consideration to the decision of both Parties under this Paragraph.

7. If both Parties fail either to initiate consultations referred to in Paragraph 6, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultations referred to in Article 20 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

ARTICLE 27
TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to Paragraphs 2 and 3, the disputing Party may make publicly available all awards and decisions produced by the tribunal.

2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

5. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

6. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify all other Parties of the receipt of the notice of arbitration within 30 days thereof.

ARTICLE 28
GOVERNING LAW

1. Subject to Paragraphs 2 and 3, when a claim is submitted under Article 21 (Claim by an Investor of a Party), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other

applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties, and, where applicable, any relevant law of the disputing Party.

2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to Paragraph 3, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

ARTICLE 29
AWARDS

1. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. A tribunal may not award punitive damages.

4. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to Paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) In the case of a final award under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed.

(b) In the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 22.1(e) (Submission of a Claim):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

12. Replace Chapter 12 (Economic Co-operation) with:

CHAPTER 12
ECONOMIC CO-OPERATION

ARTICLE 1
SCOPE AND OBJECTIVES

1. The Parties reaffirm the importance of ongoing economic co-operation initiatives between ASEAN, Australia and New Zealand, and agree to complement their existing economic partnership in areas where the Parties have mutual interests, taking into account the different levels of development of the Parties.

2. The Parties acknowledge the provisions to encourage and facilitate economic co-operation included in various Chapters of this Agreement.

3. Economic co-operation under this Chapter shall support implementation of this Agreement through economic co-operation activities which are trade or investment related as specified in the Work Programme.

ARTICLE 2
DEFINITIONS

For the purposes of this Chapter:

(a) **implementing Party** or **implementing Parties** means, for each component of the Work Programme, the Party or Parties primarily responsible for the implementation of that component; and

(b) **Work Programme** means the programme of economic co-operation activities, organised into components, mutually determined by the Parties prior to the entry into force of this Agreement.

ARTICLE 3
RESOURCES

1. Recognising the development gaps among the ASEAN Member States and among the Parties, the Parties shall contribute appropriately to the implementation of the Work Programme.

2. In determining the appropriate level of contribution to the Work Programme, the Parties shall take into account:

(a) the different levels of development and capacity of Parties;

(b) any in-kind contributions able to be made to Work Programme components by Parties; and

(c) that the appropriate level of contribution enhances the relevance and sustainability of co-operation, strengthens partnerships between Parties and builds Parties' shared

commitment to the effective implementation and oversight of Work Programme components.

ARTICLE 4
ECONOMIC CO-OPERATION WORK PROGRAMME

1. Each Work Programme component shall:

(a) be trade or investment related and support this Agreement's implementation;

(b) be specified in the Work Programme;

(c) involve a minimum of two ASEAN Member States, Australia or New Zealand;

(d) address the mutual priorities of the participating Parties; and

(e) where possible, avoid duplicating existing economic co-operation activities.

2. The description of each Work Programme component shall specify the details necessary to provide clarity to the Parties regarding the scope and purpose of such component.

ARTICLE 5
FOCAL POINTS FOR IMPLEMENTATION

1. Each Party shall designate a focal point for all matters relating to the implementation of the Work Programme and shall keep all Parties updated on its focal point's details.

2. The focal points shall be responsible for overseeing and reporting on the implementation of the Work Programme in accordance with Article 6 (Implementation and Evaluation of Work Programme Components) and Article 7 (Review of Work Programme), and for responding to inquiries from any Party regarding the Work Programme.

ARTICLE 6
IMPLEMENTATION AND EVALUATION OF WORK PROGRAMME COMPONENTS

1. Prior to the commencement of each Work Programme component, the implementing Party or implementing Parties, in consultation with relevant participating Parties, shall develop an implementation plan for that Work Programme component and provide that plan to each Party.

2. The implementing Party or implementing Parties for a Work Programme component may use existing mechanisms for the implementation of that component.

3. Until the completion of a Work Programme component, the implementing Party or implementing Parties shall regularly monitor and evaluate the relevant component and provide periodic reports to each Party including a final component completion report.

ARTICLE 7
REVIEW OF WORK PROGRAMME

At the direction of the FTA Joint Committee, the Work Programme shall be reviewed to assess its overall effectiveness and recommendations may be made. The FTA Joint Committee may make modifications to the Work Programme taking into account the review and available resources.

ARTICLE 8
NON-APPLICATION OF CHAPTER 20 (CONSULTATIONS AND DISPUTE SETTLEMENT)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

13. Replace Chapter 13 (Intellectual Property) with:

CHAPTER 13
TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 1
BASIC PRINCIPLES

1. The Parties recall the United Nations General Assembly Resolution 70/1 titled "Transforming our world: the 2030 Agenda for Sustainable Development", adopted on 25 September 2015 (the "2030 Agenda for Sustainable Development") and its Sustainable Development Goals.

2. The Parties recall their commitment to the multilateral environmental and labour agreements to which they are individually a party, as well as the 2030 Agenda for Sustainable Development.

3. The Parties recognise trade and sustainable development as a new area for economic co-operation under this Agreement. The Parties recognise the importance of co-operation as a mechanism to strengthen the Parties' joint and individual efforts and capacities to protect the environment and to collaborate on labour and women's economic empowerment issues, as they strengthen their trade and investment relations.

4. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their desire to promote the development of international trade and investment in a way that contributes to the objectives of sustainable development.

5. The Parties respect the sovereign rights of each Party to develop, set, administer and enforce its laws, regulations and policies, in the area of trade and sustainable development.

6. The Parties share a common aspiration to promote high standards of environmental and labour protection commensurate with each Party's needs, capabilities and national circumstances, and according to each Party's laws and regulations; and to uphold these in the context of sustainable development.

7. The Parties recognise that it is inappropriate to use environmental or labour standards as a disguised means of trade protectionism. The Parties also recognise that it is inappropriate to weaken or reduce levels of protection in their environmental or labour standards to encourage trade or investment.

ARTICLE 2
CO-OPERATION

1. The Parties may engage in economic co-operation activities consistent with Article 1 (Basic Principles) in the area of trade and sustainable development.

2. Economic co-operation may be undertaken through ways and means considered appropriate by the FTA Joint Committee.

3. Economic co-operation may cover topics related to:

   (a) the climate and environment;

(b) the green and blue economy;

(c) circular economy in manufacturing;[1]

(d) energy;

(e) labour;

(f) issues under the Sustainable Development Goals; and

(g) any other areas as mutually agreed by the Parties.

4. Economic co-operation under this Chapter is subject to the availability of funds and human and other resources, and to each Party's laws and regulations.

5. Where the implementation of this Chapter is inhibited by capacity constraints, the Parties may co-operate under Chapter 12 (Economic Co-operation) to assist ASEAN Member States with such implementation. Such co-operation is subject to the identification of trade and sustainable development policy-related needs; the availability of funds and human and other resources; and each Party's laws and regulations.

ARTICLE 3
CONTACT POINTS

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, each Party shall designate a contact point or contact points for technical co-operation and information exchange under this Chapter. Each Party shall notify the other Parties of its contact point or contact points and of any change to its contact point or contact points.

ARTICLE 4
NON-APPLICATION OF CHAPTER 20 (CONSULTATIONS AND DISPUTE SETTLEMENT)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

[1] For greater certainty, co-operation related to circular economy in manufacturing shall include capacity-building on the concepts of remanufacturing and repairing or altering of goods.

14. Replace Chapter 14 (Competition) with:

CHAPTER 14
INTELLECTUAL PROPERTY

ARTICLE 1
OBJECTIVES

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

ARTICLE 2
DEFINITIONS

For the purposes of this Chapter:

(a) **intellectual property rights** means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and

(b) **WIPO** means the World Intellectual Property Organization.

ARTICLE 3
AFFIRMATION OF THE TRIPS AGREEMENT

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

ARTICLE 4
NATIONAL TREATMENT

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection[1] of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.

2. Each Party may avail itself of the exceptions referred to under Paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an

[1] For the purposes of this Paragraph, “protection” includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Paragraph, “protection” also includes the prohibition on circumvention of effective technological measures specified in Article 5 (Copyright).

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 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.

ARTICLE 5
COPYRIGHT

1. Each Party shall:

(a) provide to authors of works[2] the exclusive right to authorise any communication to the public of their works by wire or wireless means;

(b) provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and

(c) foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

2. Each Party shall endeavour to:

(a) provide to authors of sound recordings[3] the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

(b) provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures[4] that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law; and

(c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law, but which has a substantial prejudicial impact on the owner of the copyright.

[2] For the purposes of this Chapter, “works” includes a cinematograph film.

[3] Where a Party is, or becomes, a member of the WIPO Performances and Phonograms Treaty (WPPT), that Party’s obligations under this Paragraph shall be subject to any commitments and reservations that Party has made under the WPPT.

[4] For the purposes of this Chapter, “effective technological measures” means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

ARTICLE 6
GOVERNMENT USE OF SOFTWARE

Each Party confirms its commitment to:

(a) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this Chapter; and

(b) encourage its respective regional and local governments to maintain or adopt similar measures.

ARTICLE 7
TRADEMARKS AND GEOGRAPHICAL INDICATIONS

1. Each Party shall 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*, as amended from time to time.

2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

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

4. Each Party recognises that geographical indications may be protected through a trademark system.

ARTICLE 8
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

ARTICLE 9
CO-OPERATION

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this Chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide co-operation to that Party to assist in the implementation of this Chapter.

2. At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

(a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;

(b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and

(c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co-operate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

(a) *the Patent Cooperation Treaty 1970*;

(b) the *Strasbourg Agreement Concerning the International Patent Classification 1971*;

(c) the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977*;

(d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989*;

(e) the *Patent Law Treaty 2000*;

(f) the *International Convention for the Protection of New Varieties of Plants 1991*;

(g) the TRIPS Agreement;

(h) the *Singapore Treaty on the Law of Trademarks 200*6;

(i) the *WIPO Copyright Treaty 1996*; and

(j) the *WIPO Performances and Phonograms Treaty 1996*.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system[5] of trademark registration.

9. All co-operation under this Article is subject to the availability of resources.

ARTICLE 10
TRANSPARENCY

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

ARTICLE 11
RECOGNITION OF TRANSITIONAL PERIODS UNDER THE TRIPS AGREEMENT

Nothing in this Chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

ARTICLE 12
COMMITTEE ON INTELLECTUAL PROPERTY

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (the "IP Committee"), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.

2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The IP Committee shall determine its terms of reference in accordance with this Chapter.

4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.

[5] An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.

15. Replace Chapter 15 (General Provisions and Exceptions) with:

CHAPTER 15
COMPETITION

ARTICLE 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 co-operation 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 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 3
APPROPRIATE MEASURES AGAINST ANTI-COMPETITIVE ACTIVITIES[1]

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities,[2] and shall enforce those laws and regulations accordingly.

[1] This Article is subject to:

   (a) Annex 15A (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Brunei Darussalam);

   (b) Annex 15B (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Cambodia);

   (c) Annex 15C (Application of Article 3 (Appropriate Measuresagainst Anti-Competitive Activities) and Article 4 (Co-operation) to Lao PDR); and

   (d) Annex 15D (Application of Article 3 (Appropriate Measuresagainst Anti-Competitive Activities) and Article 4 (Co-operation) to Myanmar).

[2] Examples of anti-competitive activities may include anti-competitive agreements, abuses of a dominant position, and anti-competitive mergers and acquisitions.

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.

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;

(i) its need to safeguard confidential information; or

(ii) 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 Subparagraph (a)(i) to (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.

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.[3]

11. Each Party recognises the importance of timeliness in the handling of competition cases.

[3] This Paragraph shall not apply to a jury verdict in a criminal trial.

ARTICLE 4
CO-OPERATION[4]

The Parties recognise the importance of co-operation between or among their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may co-operate 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 co-operation 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;

(b) upon request, discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interests 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

(d) upon request, co-ordination of enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

ARTICLE 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, or 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

[4] This Article is subject to:

(a) Annex 15A (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Brunei Darussalam);

(b) Annex 15B (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Cambodia);

(c) Annex 15C (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Lao PDR); and

(d) Annex 15D (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Myanmar).

(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.

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 is 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 6
TECHNICAL CO-OPERATION AND CAPACITY BUILDING

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

(a) sharing of relevant experiences and non-confidential information on the development and implementation of competition and consumer protection law and policy;

(b) exchange of officials for training purposes;

(c) exchange of consultants and experts on competition and consumer protection law and policy;

(d) participation of officials as lecturers, consultants, or participants at training courses on competition and consumer protection law and policy;

(e) participation of officials in advocacy programmes; and

(f) any other form of technical co-operation as agreed upon by the Parties.

ARTICLE 7
CONSUMER PROTECTION

1. The Parties recognise the importance of consumer protection law and the enforcement of such law as well as co-operation 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 shall establish or maintain an authority or authorities to effectively implement its consumer protection laws and regulations.

4. The Parties recognise the importance of issuing public advisories or warnings against misleading practices or false or misleading descriptions in a manner compatible with their respective laws and regulations.

5. Each Party also recognises the importance of improving awareness of and access to consumer rights and consumer redress mechanisms, including the roles of consumer organisations and industry self-regulation in raising awareness of consumer rights. Each Party also recognises the importance of learning from international best practices.

6. The Parties may co-operate and co-ordinate on matters of mutual interest related to consumer protection. Such co-operation and co-ordination shall be carried out in a manner compatible with the Parties' respective laws and regulations and within their available resources.

7. The Parties may, through their respective authorities, exchange information in relation to the administration and enforcement of their consumer protection laws. Any exchange of information shall be compatible with their respective laws, regulations and important interests, within their available resources, and subject to the requirements and protections in Article 5 (Confidentiality of Information).

ARTICLE 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, a requested Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter that is the subject of the request 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 9
CONTACT POINTS

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, the Parties shall designate contact points for technical co-operation and information exchange under this Chapter.

ARTICLE 10
NON-APPLICATION OF CHAPTER 20 (CONSULTATIONS AND DISPUTE SETTLEMENT)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

16. Replace Chapter 16 (Institutional Provisions) with:

CHAPTER 16
MICRO, SMALL AND MEDIUM ENTERPRISES

ARTICLE 1
OBJECTIVES

1. The Parties recognise that MSMEs contribute significantly to economic growth, employment and innovation, and therefore seek to promote information sharing and co-operation to increase the ability of MSMEs to utilise and benefit from the opportunities created by this Agreement.

2. The Parties acknowledge that MSMEs are disproportionately affected by disasters and public emergencies. This Chapter seeks to promote co-operation among the Parties to facilitate the participation of MSMEs in international trade and in addressing trade-related issues.

3. The Parties acknowledge that various Chapters in this Agreement contain provisions that contribute to encouraging and facilitating the participation of MSMEs in this Agreement.

ARTICLE 2
INFORMATION SHARING

1. Each Party shall promote the sharing of information related to this Agreement that is relevant to MSMEs, including through the establishment and maintenance of a publicly accessible information platform, and through information exchange to share knowledge, experiences and best practices among the Parties.

2. The information to be made publicly accessible referred to in Paragraph 1 will include:

   (a) the full text of this Agreement;

   (b) information on trade and investment-related laws and regulations that each Party considers relevant to MSMEs; and

   (c) additional business-related information that each Party considers useful for MSMEs interested in benefitting from the opportunities provided by this Agreement.

3. Each Party shall make publicly accessible the information referred to in Paragraph 1, either on the AANZFTA website[1] or a website established by the Party.

4. Where, in accordance with Paragraph 3, a Party makes information publicly accessible, including through online means, that information may include links to any equivalent websites of the other Parties or a link to the AANZFTA website.

5. Each Party shall, regularly or on request of another Party, review the information referred to in Paragraph 2 and the links referred to in Paragraph 4 to ensure that the information provided is accurate and up-to-date.

[1] The AANZFTA website may be accessed at https://aanzfta.asean.org.

6. Each Party shall work towards ensuring that information made publicly accessible pursuant to this Article is presented in a manner that is easy to use for MSMEs. Where possible, each Party shall endeavour to make the information referred to in Paragraph 2 available in the English language.

ARTICLE 3
CO-OPERATION

1. The Parties shall strengthen their co-operation under this Chapter through sharing and exchanging information on best practices in relation to MSMEs. Such co-operation may include:

(a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;

(b) improving MSMEs' 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 MSMEs;

(d) exploring opportunities for exchanges of experiences among Parties' entrepreneurial programmes;

(e) promoting the formalisation of MSMEs;

(f) encouraging innovation and use of technology including supporting digital transformation and innovative start-ups;

(g) promoting awareness, understanding and effective use of intellectual property systems among MSMEs;

(h) promoting good regulatory practices and building capacity in formulating and implementing regulations, policies and programmes that contribute to MSMEs' development;

(i) helping MSMEs develop capabilities in sustainability;

(j) encouraging a vibrant and conducive sustainability ecosystem for MSMEs in the region;

(k) providing information on promoting access to finance throughout MSMEs' various stages of growth;

(l) supporting MSMEs to capture opportunities in new and emerging areas including in the green economy;

(m) strengthening human capital and talent development capabilities of MSMEs;

(n) enhancing the capability and competitiveness of MSMEs; and

(o) enhancing MSMEs' knowledge of and capacity to utilise free trade agreements.

2. Co-operation activities undertaken under this Chapter are subject to the availability of resources and any terms and conditions agreed between the Parties.

ARTICLE 4
CONTACT POINTS

Each Party shall, within 30 days of the date of entry into force of the Second Protocol for that Party, notify the other Parties of its contact point for this Chapter. Each Party shall promptly notify the other Parties of any change to its contact point.

ARTICLE 5
COMMITTEE ON MSMES

1. The Parties hereby establish a Committee on MSMEs (the "MSMEs Committee"), consisting of government officials of the Parties.

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

(a) identify ways to assist MSMEs of the Parties to take advantage of the commercial opportunities and benefits under this Agreement. This may include exchanging and sharing information on seminars, workshops or other activities such as export counselling undertaken by the Parties;

(b) consider any other matters pertaining to MSMEs as appropriate and as agreed by the Parties, including any issues raised by MSMEs regarding their ability to benefit from this Agreement; and

(c) report to the FTA Joint Committee as required and make recommendations to the FTA Joint Committee as appropriate.

3. The MSMEs Committee shall co-ordinate its work programme with other relevant bodies established under the Agreement and shall submit a report of any activities undertaken to the FTA Joint Committee as appropriate.

4. The MSMEs Committee may seek to collaborate with appropriate experts, international organisations and the private sector in carrying out its work programme and activities, including through consultation and dialogue with MSMEs as agreed by the Parties.

5. The MSMEs Committee shall meet within one year of the date of entry into force of the Second Protocol, and thereafter as determined by the Parties.

ARTICLE 6
NON-APPLICATION OF DISPUTE SETTLEMENT

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

17. Replace Chapter 17 (Consultations and Dispute Settlement) with:

CHAPTER 17
GOVERNMENT PROCUREMENT

ARTICLE 1
OBJECTIVES

The objectives of this Chapter are to recognise the importance of promoting the transparency of laws, regulations and procedures, facilitating participation by MSMEs, ensuring integrity, promoting environmentally sustainable procurement and the use of electronic means in procurement, and enhancing co-operation among the Parties, regarding government procurement.

ARTICLE 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 co-operation. A Least Developed Country Party may benefit from co-operation among the Parties.

ARTICLE 3
GENERAL 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 shall consider ways to promote and apply important principles of transparency, value for money, and accountability and due process in its government procurement procedures, where appropriate and consistent with that Party's laws, regulations and procedures.

ARTICLE 4
TRANSPARENCY

1. Each Party shall make publicly available any law, regulation or procedure regarding government procurement, including, to the extent possible and as appropriate, information on where tender opportunities and contract award notices are published.

2. If a Party maintains any law, regulation or procedure that provides preferential treatment for domestic goods, services or suppliers, including MSMEs, the Party shall endeavour to make such laws, regulations or procedures, including the criteria for eligibility, publicly available.

3. To the extent possible and as appropriate, each Party endeavours to make available and update the information referred to in Paragraphs 1 and 2 through electronic means.

4. Each Party shall specify in Annex 17A (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 Paragraphs 1 and 2.

5. Each Party endeavours to make the information referred to in Paragraphs 1 and 2 available in the English language.

6. To the extent possible and if appropriate, where a request has been made by an unsuccessful supplier, a Party's procuring entity is encouraged to provide that unsuccessful supplier with an explanation of the reasons why the procuring entity did not select that supplier's tender, or an explanation of the advantages of the successful supplier's tender.

ARTICLE 5
USE OF ELECTRONIC MEANS

In respect of procurement conducted by entities within the scope of this Chapter, the Parties shall endeavour to use electronic means to the widest extent practicable for the publication of notices, tender documentation, information exchange and communication, and the submission of tenders.

ARTICLE 6
ENVIRONMENTALLY SUSTAINABLE PROCUREMENT

The Parties recognise that government procurement can contribute to environmental sustainability. Accordingly, the Parties shall endeavour to incorporate environmentally sustainable procurement policies and practices to the extent possible and as appropriate.

ARTICLE 7
ENSURING INTEGRITY IN PROCUREMENT PRACTICES

1. Each Party shall ensure that criminal or administrative laws, regulations, and procedures exist to address corruption in its government procurement. This may include rendering ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory.

2. Each Party shall have in place laws, regulations or procedures to manage any potential conflict of interest on the part of those engaged in or having influence over a government procurement.

ARTICLE 8
FACILITATION OF PARTICIPATION BY MSMES

The Parties recognise the important contribution that MSMEs can make to economic growth and employment, and the importance of facilitating the participation of MSMEs in government procurement.

ARTICLE 9
CO-OPERATION

1. The Parties shall endeavour to co-operate on matters relating to government procurement, with a view to achieving a better understanding of each Party's respective government procurement systems. Such co-operation may include:

(a) exchanging information 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 on best practices, including those in relation to MSMEs;

(d) sharing information on electronic procurement systems; and

(e) sharing information on developing and expanding the use of electronic means in government procurement systems.

ARTICLE 10
REVIEW

The Parties may review this Chapter pursuant to Article 10 (Review) of Chapter 21 (Final Provisions) with a view to improving this Chapter to facilitate government procurement, as agreed by the Parties.

ARTICLE 11
CONTACT POINTS

Each Party shall, within 30 days of the date of entry into force of the Second Protocol for that Party, designate one or more contact points to facilitate co-operation 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 12
NON-APPLICATION OF DISPUTE SETTLEMENT

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

18. Replace Chapter 18 (Final Provisions) with:

CHAPTER 18
GENERAL PROVISIONS AND EXCEPTIONS

ARTICLE 1
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 (Electronic Commerce) and Chapter 11 (Investment), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons), Chapter 10 (Electronic Commerce) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[1]

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.[2]

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

[1] "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

[2] "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities. (Note from CIL team: This footnote was duplicated as such in the original text)

ARTICLE 2
SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for:

(i) the fulfilment of its obligations under the United Nations Charter for the maintenance or restoration of international peace or security; or

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

ARTICLE 3
TAXATION MEASURES

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 9 (Transfers) of Chapter 11 (Investment); or

(c) they are granted or imposed under Article 10 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) applies, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 19.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 26.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply mutatis mutandis.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 19 (Institutional Provisions).

6. 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 agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

ARTICLE 4
MEASURES TO SAFEGUARD THE BALANCE OF PAYMENTS

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and *the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(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 1 (Definitions) of Chapter 11 (Investment).

3. Restrictions adopted or maintained under Paragraph 1(b) or 2 shall:

(a) be consistent with the IMF Articles of Agreement;

(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 Paragraph 1(b) or 2;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1(b) or 2 improves; and

(e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or 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 their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under Paragraph 1 or 2, or any changes therein, shall be notified promptly to the other Parties.

6. A Party adopting or maintaining any restrictions under Paragraph 1 or 2 shall:

(a) in the case of investment, 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, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

ARTICLE 5
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 and services, 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 20 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

ARTICLE 6
SCREENING REGIME AND DISPUTE SETTLEMENT

A decision by a competent authority, including a foreign investment authority, of a Party , 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 Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) or Chapter 20 (Consultations and Dispute Settlement).

19. The following shall be Chapter 19:

CHAPTER 19
INSTITUTIONAL PROVISIONS

ARTICLE 1
FTA JOINT COMMITTEE

1. The Parties hereby establish a free trade agreement joint committee (the FTA Joint Committee) consisting of representatives of the Parties.

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

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

(b) consider and recommend to the Parties any amendments to this Agreement;

(c) supervise and co-ordinate the work of all subsidiary bodies established pursuant to this Agreement;

(d) adopt, where appropriate, decisions and recommendations of subsidiary bodies established pursuant to this Agreement;

(e) consider any other matter that may affect the operation of this Agreement or that is entrusted to the FTA Joint Committee by the Parties; and

(f) carry out any other functions as the Parties may agree.

3. In the fulfilment of its functions, the FTA Joint Committee may establish additional subsidiary bodies, including ad hoc bodies, and assign them with tasks on specific matters, or delegate its responsibilities to any subsidiary body established pursuant to this Agreement including:

(a) Committee on Trade in Goods established pursuant to Article 19 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods):

(i) Sub-Committee on Rules of Origin established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) Sub-Committee on Sanitary and Phytosanitary Matters established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures);

(b) Committee on Trade in Services established pursuant to Article 28 (Committee on Trade in Services) of Chapter 8 (Trade in Services);

(c) Committee on Investment established pursuant to Article 18 (Committee on Investment) of Chapter 11 (Investment); and

(d) Committee on Intellectual Property established pursuant to Article 12 (Committee on Intellectual Property) of Chapter 14 (Intellectual Property).

4. The FTA Joint Committee shall establish its rules and procedures at its first meeting.

5. Unless the Parties agree otherwise, the FTA Joint Committee shall convene its first meeting within one year after this Agreement enters into force. Its subsequent meetings shall be convened at such frequency as the Parties may mutually determine, and as necessary to discharge its functions under this Agreement. The FTA Joint Committee shall convene alternately in ASEAN Member States, Australia and New Zealand, unless the Parties agree otherwise. Special meetings of the FTA Joint Committee may be convened, as agreed by the Parties, within 30 days upon the request of a Party.

6. The FTA Joint Committee shall regularly report to the consultations of the ASEAN Economic Ministers, the Trade Minister of Australia and the Trade Minister of New Zealand through the meetings of their Senior Economic Officials.

ARTICLE 2
COMMUNICATIONS

Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

20. The following shall be Chapter 20:

CHAPTER 20
CONSULTATIONS AND DISPUTE SETTLEMENT

SECTION A
INTRODUCTORY PROVISIONS

ARTICLE 1
OBJECTIVES

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

ARTICLE 2
DEFINITIONS

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

(a) **Complaining Party** means any Party or Parties that request consultations under Article 6 (Consultations);

(b) **dispute arising under this Agreement** means a complaint made by a Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations[1] under this Agreement;[2]

(c) **Parties to the dispute** means the Complaining Party and the Responding Party;

(d) **Responding Party** means any Party to which the request for consultations is made under Article 6 (Consultations); and

(e) **Third Party** means any Party who has notified its substantial trade interest or substantial interest in the matter pursuant to Article 6.7 (Consultations) or Article 10.1 (Third Parties) respectively.

[1] A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

[2] Non-violation complaints are not permitted under this Agreement.

ARTICLE 3
SCOPE AND COVERAGE

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 12 (Economic Co-operation), Chapter 13 (Trade and Sustainable Development), Chapter 15 (Competition), Chapter 16 (Micro, Small and Medium Enterprises) and Chapter 17 (Government Procurement).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

ARTICLE 4
GENERAL PROVISIONS

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

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties to the dispute are encouraged at every stage of a dispute to make every effort 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 notified to the other Parties.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties to the dispute provided that any modification shall not prejudice the rights of the Third Parties pursuant to Article 10 (Third Parties).

ARTICLE 5
CHOICE OF FORUM

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

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 an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.
3. This Article does not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

SECTION B
CONSULTATION PROVISIONS

ARTICLE 6
CONSULTATIONS

1. Any Party may request consultations with any other Party with respect to any dispute arising under this Agreement. 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.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) 10 days after the date of receipt of the request in cases of urgency, including perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. If the Responding Party does not enter into consultations within the periods specified in Paragraph 4, or a period otherwise mutually agreed, the Complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals).

6. The Parties to the dispute shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties to the dispute shall:

(a) provide sufficient information 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 its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

7. 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 within seven days after the notification of the request for consultations, of its desire to be joined in the consultations. Such notification shall be simultaneously provided to all Parties. Such Party shall be joined in the consultations if the Parties to the dispute agree.

ARTICLE 7
GOOD OFFICES, CONCILIATION, MEDIATION

1. The Parties to the dispute may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or re-convened under this Chapter.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Parties to the dispute in any further or other proceedings.

SECTION C
ADJUDICATION PROVISIONS

ARTICLE 8
REQUEST FOR ESTABLISHMENT OF ARBITRAL TRIBUNALS

1. The Complaining Party may request the establishment of an arbitral tribunal to consider the matter if:

   (a) the Responding Party does not enter into consultations in accordance with Article 6.4 (Consultations); or

   (b) if the consultations fail to resolve a dispute within:

      (i) 20 days after the date of receipt of the request for consultations in cases of urgency including perishable goods;

      (ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

      (iii) such other period as the Parties to the dispute may agree.

2. A request made pursuant to Paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. Where a request is made pursuant to Paragraph 1, an arbitral tribunal shall be established in accordance with Article 11 (Establishment and Re-convening of Arbitral Tribunals).

ARTICLE 9
PROCEDURES FOR MULTIPLE COMPLAINANTS

1. Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may be established to examine these complaints if all of the Parties to the disputes agree. The Parties to the disputes should seek to establish a single arbitral tribunal whenever feasible.

2. The single arbitral tribunal shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would have enjoyed had separate arbitral tribunals examined the complaints are in no way impaired.

3. If more than one arbitral tribunal is established to examine the complaints related to the same matter, the Parties to the disputes shall endeavour to ensure that the same persons serve as arbitrators for each arbitral tribunal. The arbitral tribunals shall consult to ensure, to the greatest extent possible, that the timetables for the arbitral tribunal processes are harmonised.

ARTICLE 10
THIRD PARTIES

1. Any Party having a substantial interest in a matter before an arbitral tribunal may notify the Parties to the dispute of this interest no later than 10 days after the date of receipt by the Responding Party of the request for the establishment of the arbitral tribunal or the date of a request for a Compliance Review Tribunal pursuant to Article 16 (Compliance Review). Such notification shall be simultaneously provided to all Parties. Any Party notifying its substantial interest shall have the rights and obligations of a Third Party.

2. A Third Party shall receive the submissions of the Parties to the dispute to the first substantive meeting of the arbitral tribunal with the Parties to the dispute.

3. A Third Party shall have an opportunity to make at least one written submission to the arbitral tribunal and shall have an opportunity to be heard by the arbitral tribunal at its first substantive meeting with the Parties to the dispute. Any submissions or other documents submitted by Third Parties shall be simultaneously provided to the Parties to the dispute and other Third Parties.

4. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding participation in arbitral tribunal proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose conditions. Unless otherwise agreed by the Parties to the dispute, the arbitral tribunal shall not grant any additional or supplemental rights to any Third Parties regarding participation in arbitral tribunal proceedings.

5. If a Third Party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs benefits accruing to it under this Agreement, such Party may have recourse to dispute settlement procedures under this Chapter.

ARTICLE 11
ESTABLISHMENT AND RE-CONVENING OF ARBITRAL TRIBUNALS

1. An arbitral tribunal requested pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in Paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 8 (Request for Establishment of Arbitral Tribunals), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties to the dispute may agree to use any of the optional procedures specified in Annex 20B (Optional Procedures for Composing Arbitral Tribunals). Any procedures for composing the arbitral tribunal which are agreed under this Paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of Paragraphs 12 and 13.

4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in Paragraph 3, any Party to the dispute may at any time thereafter notify the other Parties to the dispute that it wishes to use the procedures set forth in Paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in accordance with Paragraphs 5 to 7.

5. The Complaining Party or Parties shall appoint one arbitrator within 10 days of the date of the receipt of the notification referred to in Paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in Paragraph 4.

6. Following the appointment of the arbitrators in accordance with Paragraph 5, the Parties to the dispute shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each of the Parties to the dispute may provide to the other Parties to the dispute a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties to the dispute have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in Paragraph 4, any Party to the dispute may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were 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. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators 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 to the dispute;

(d) not have dealt with the matter in any capacity; and

(e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties to the dispute otherwise agree, arbitrators shall not be nationals of a Party to the dispute. In addition, the chair of arbitral tribunal shall not have his or her usual place of residence in the territory of a Party to the dispute.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

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

13. Where an arbitral tribunal is re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) the re-convened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

ARTICLE 12
FUNCTIONS OF ARBITRAL TRIBUNALS

1. An arbitral tribunal 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 the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days from the date of the establishment of an arbitral tribunal:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 8 (Request for Establishment of Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement."

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal 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 findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and

(d) its reasons for its findings in Subparagraphs (b) and (c).

4. In addition to Paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties to the dispute. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties to the dispute otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings. Third Parties' submissions shall be reflected in the report of the arbitral tribunal.

7. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

8. The arbitral tribunal shall consult regularly the Parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

9. An arbitral tribunal re-convened under this Chapter shall also carry out functions with regard to compliance review under Article 16 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 17 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal re-convened under Article 16 (Compliance Review) and Article 17 (Compensation and Suspension of Concessions or other Obligations).

10. An arbitral tribunal shall make its findings by consensus provided that where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

ARTICLE 13
ARBITRAL TRIBUNAL PROCEDURES

1. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in Annex 20A (Rules of Procedure for Arbitral Tribunal Proceedings) (the "Rules of Procedure Annex") unless the Parties to the dispute agree otherwise. On the request of a Party to the dispute, or on its own initiative, the arbitral tribunal may, after consulting the Parties to the dispute, adopt additional

rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties to the dispute, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

4. Similarly, a Compliance Review Tribunal re-convened pursuant to Article 16 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after re-convening, fix the timetable for the compliance review process taking into account the time periods specified in Article 16 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties to the dispute agree otherwise. All presentations and statements made at hearings shall be made in the presence of the Parties to the dispute. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party to the dispute shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to the dispute to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall upon 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

11. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. The arbitral tribunal shall provide its final report to all other Parties seven days after the report is presented to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the report publicly available subject to the protection of any confidential information contained in the report.

ARTICLE 14
SUSPENSION AND TERMINATION OF PROCEEDINGS

1. The Parties to the dispute may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of any Party to the dispute. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties to the dispute agree otherwise.

2. The Parties to the dispute may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal presents 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 notify the other Parties that the arbitral tribunal has been suspended, terminated or its authority has lapsed pursuant to Paragraph 1.

SECTION D
IMPLEMENTATION PROVISIONS

ARTICLE 15
IMPLEMENTATION

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in Paragraph 1;

(b) whether such implementation can take place immediately; and

(c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in Paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, whenever possible, be mutually 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 presentation of the arbitral tribunal's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the arbitral tribunal determine the reasonable period of time. Unless the Parties to the dispute otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute.

5. Where a request is made pursuant to Paragraph 4, the chair of the arbitral tribunal shall present the Parties to the dispute with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. As a guideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral tribunal'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.

ARTICLE 16
COMPLIANCE REVIEW

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of measures taken to comply with the obligation in Article 15.1 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal re-convened for this purpose (Compliance Review Tribunal). Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of any Party to the dispute.

2. Such request may only be made after the earlier of:

(a) the expiry of the reasonable period of time; or

(b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 15.1 (Implementation).

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Responding Party; and

(b) whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

4. The Compliance Review Tribunal 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 factual aspects of the case; and

(c) its findings on whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties to the dispute within 75 days of the date it re-convenes, and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.

6. Where an arbitral tribunal is requested to re-convene pursuant to Paragraph 1, it shall re-convene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to re-convene to the submission of its final report shall not exceed 120 days, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies or the Parties to the dispute otherwise agree.

ARTICLE 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 its obligation under Article 15.1 (Implementation). However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under Article 15.1 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

(a) the Responding Party has notified the Complaining Party that it does not intend to comply with the obligation in Article 15.1 (Implementation); or

(b) a failure to comply with the obligation in Article 15.1 (Implementation) has been established in accordance with Article 16 (Compliance Review),

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under Paragraph 2, the Complaining 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 and impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under Paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to Paragraph 8; or

(b) a mutually agreed solution has been reached.

5. A notification made under Paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

(b) the Complaining Party may suspend concessions or other obligations in other sectors it if considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under Paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth

in Paragraph 6 have not been followed, the Responding Party may request the arbitral tribunal to re-convene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties to the dispute within 30 days of the date it re-convenes. Where an arbitral tribunal is requested to re-convene pursuant to this Paragraph, it shall re-convene within 15 days of the date of the request, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 15.1 (Implementation) has been complied with or a mutually satisfactory solution is reached.

10. Where the right to suspend concessions or other obligations has been exercised under this Article, if the Responding Party considers that:

(a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or

(b) it has complied with the obligation in Article 15.1 (Implementation),

it may request the arbitral tribunal to re-convene to examine the matter.[3]

11. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(a), Paragraph 8 shall apply. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(b), Article 16.3 to 16.5 (Compliance Review) shall apply.

SECTION E
FINAL PROVISIONS

ARTICLE 18
SPECIAL AND DIFFERENTIAL TREATMENT INVOLVING NEWER ASEAN MEMBER STATES

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving newer ASEAN Member States, particular sympathetic consideration shall be given to the special situation of newer ASEAN Member States. 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 17 (Compensation and Suspension of Concessions or other Obligations) or other obligations pursuant to these procedures.

2. Where one or more of the Parties to a dispute is a newer ASEAN Member State, the arbitral tribunal's reports shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a newer ASEAN Member State that form part of this Agreement which have been raised by the newer ASEAN Member State in the course of the dispute settlement procedures.

[3] Where a Compliance Review Tribunal determines that measures taken to comply are inconsistent with this Agreement, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

ARTICLE 19
EXPENSES

1. Unless the Parties to the dispute otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

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

ARTICLE 20
CONTACT POINTS

1. Each Party shall designate a contact point for this Chapter and shall notify the other Parties of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Parties of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party or Parties through their designated contact points who shall provide confirmation of receipt of such documents in writing.

ARTICLE 21
LANGUAGE

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to 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 provide an English language translation of that document.

21. The following shall be Chapter 21:

CHAPTER 21
FINAL PROVISIONS

ARTICLE 1
ANNEXES, APPENDICES AND FOOTNOTES

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

ARTICLE 2
RELATION TO OTHER AGREEMENTS

1. Each Party reaffirms its rights and obligations under the WTO Agreement and other agreements to which the Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which the Parties are party.

3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.

4. Nothing in this Agreement shall prevent any individual ASEAN Member State from entering into any agreement with any one or more ASEAN Member State and/or Australia and/or New Zealand relating to trade in goods, trade in services, investment and/or other areas of economic co-operation.

5. The provisions of this Agreement shall not apply to any agreement among ASEAN Member States. The provisions of this Agreement shall also not apply to any agreement involving any ASEAN Member State and/or Australia and/or New Zealand unless otherwise agreed by the parties to that agreement.

ARTICLE 3
AMENDED OR SUCCESSOR INTERNATIONAL AGREEMENTS

If any international agreement, or a provision therein, referred to in this Agreement (or incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

ARTICLE 4
DISCLOSURE OF INFORMATION

Unless otherwise provided in this Agreement, nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would 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 5
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 maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

ARTICLE 6
AMENDMENTS

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed among them.

ARTICLE 7
DEPOSITARY

1. The Secretary-General of ASEAN is designated as the Depositary for this Agreement.

2. The Depositary shall promptly notify each Party and provide them with the date and a copy of a notice of withdrawal under Article 9.1 (Withdrawal and Termination).

ARTICLE 8
ENTRY INTO FORCE

1. Each Party shall notify each other Party in writing upon completion of its internal requirements necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2009 for any Party that has made such notifications provided that Australia, New Zealand and at least four ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1, 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.

3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2, this Agreement shall enter into force for any Party 60 days after the date of its notification referred to in Paragraph 1.

ARTICLE 9
WITHDRAWAL AND TERMINATION

1. Any Party may withdraw from this Agreement by giving six months advance notice in writing to the Depositary.

2. This Agreement shall terminate if, pursuant to Paragraph 1:

(a) Australia withdraws;

(b) New Zealand withdraws; or

(c) this Agreement is in force for less than four ASEAN Member States.

ARTICLE 10
REVIEW

The Parties shall undertake a general review of this Agreement with a view to furthering its objectives in 2016, and every five years thereafter, unless otherwise agreed by the Parties.