ECONOMIC PARTNERSHIP AGREEMENT

BETWEEN

THE EFTA STATES

AND

MALAYSIA

PREAMBLE

Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation (European Free Trade Association (EFTA) States),

and

Malaysia,

(hereinafter each individually referred to as a "Party" or collectively as the "Parties"),

RECOGNISING the common wish to strengthen the links between the EFTA States and Malaysia by establishing close and lasting trade relations through this Economic Partnership Agreement (Agreement);

REAFFIRMING their commitment to democracy, the rule of law, human rights and fundamental freedoms in accordance with each Party's respective obligations under international law, including as set out in the United Nations Charter and the Universal Declaration of Human Rights;

DESIRING to create favourable conditions for the development and diversification of trade between them and for the promotion of commercial and economic cooperation in areas of common interest on the basis of mutual benefit, non-discrimination and international law;

RECOGNISING the importance of trade facilitation in promoting efficient and transparent procedures to reduce costs and to ensure predictability for the trading communities of the Parties;

DETERMINED to promote and further strengthen the multilateral trading system, building on their respective rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation (WTO Agreement) and other agreements negotiated thereunder, thereby contributing to the harmonious development and expansion of world trade;

REAFFIRMING their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development;

RECOGNISING the importance of coherence and mutual supportiveness of trade, environment and labour policies;

REAFFIRMING their commitment to protect and enforce labour rights, improve working conditions and living standards, strengthen cooperation and the Parties' capacity on labour issues;

RECALLING their rights and obligations under multilateral environmental agreements to which they are a party, and the respect for the fundamental principles and rights at work, including the principles set out in the relevant International Labour Organisation (ILO) Conventions to which they are a party;

AIMING to create new employment opportunities, improve living standards and raise the levels of protection of health, safety and the environment;

DETERMINED to implement this Agreement in line with the objectives to preserve and protect the environment through sound environmental management that has been enumerated under the UN 2030 Agenda for Sustainable Development;

AFFIRMING their determination to prevent and combat corruption in international trade and investment and to promote the principles of transparency and good public governance;

ACKNOWLEDGING the importance of good corporate governance and corporate social responsibility for sustainable development, and affirming their aim to encourage enterprises to observe internationally recognised guidelines and principles in this respect, such as the OECD Guidelines for Multinational Enterprises and the UN Global Compact;

CONVINCED that this Agreement will enhance the competitiveness of their enterprises in global markets and create conditions encouraging economic, trade and investment relations between them;

HAVE AGREED, in pursuit of the above, to conclude the following Agreement:

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1.1

Objectives

1. The EFTA States and Malaysia hereby establish a free trade area in accordance with the provisions of this Agreement, which is based on trade relations between market economies.

2. The objectives of this Agreement are:

(a) to achieve the liberalisation of trade in goods, in conformity with Article XXIV of the General Agreement on Tariffs and Trade (GATT 1994);

(b) to achieve the liberalisation of trade in services, in conformity with Article V of the General Agreement on Trade in Services (GATS);

(c) to mutually enhance investment opportunities;

(d) to promote competition in their economies, particularly as it relates to economic relations between the Parties;

(e) to achieve liberalisation on a mutual basis of the government procurement markets of the Parties;

(f) to ensure adequate, effective protection and enforcement of intellectual property rights;

(g) to develop international trade in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties' trade relationship; and

(h) thereby to contribute to the harmonious development and expansion of world trade.

ARTICLE 1.2

Scope of Application

1. Except as otherwise specified in Annex I (Rules of Origin and Administrative Cooperation), this Agreement shall apply:

(a) to the land territory, internal waters and the territorial sea of a Party, and the air-space above the territory of a Party, in accordance with domestic and international law; and

(b) beyond the territorial sea, with respect to measures taken by a Party in the exercise of its sovereign rights or jurisdiction in accordance with domestic and international law.

2. This Agreement shall not apply to the Norwegian territory of Svalbard, with the exception of trade in goods.

ARTICLE 1.3

Trade Relations Governed by this Agreement

1. This Agreement shall apply to the trade relations between, on the one side, the individual EFTA States and, on the other side, Malaysia, but not to the trade relations between individual EFTA States, unless otherwise provided for in this Agreement.

2. As a result of the customs union established by the Customs Treaty of 29 March 1923 between Switzerland and Liechtenstein, Switzerland shall represent Liechtenstein in matters covered thereby.

ARTICLE 1.4

Relationship to Other International Agreements

1. The Parties confirm their rights and obligations under the WTO Agreement and other agreements negotiated thereunder to which they are a party, and any other international agreements to which they are a party.

2. If a Party considers that the maintenance or establishment of customs unions, free trade areas, arrangements for frontier trade or other preferential agreements by another Party has the effect of altering the trade regime provided for by this Agreement, it may request consultations. The Party concluding such agreement shall afford adequate opportunity for consultations with the requesting Party with a view to reaching a mutually satisfactory solution.

ARTICLE 1.5

Central, Regional and Local Government

The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. Subject to the provisions of this Agreement, each Party shall ensure within its territory the observance of all obligations and commitments under this Agreement by its respective central, regional and local governments and authorities, and by non-governmental bodies in the exercise of governmental powers delegated to them by central, regional and local governments or authorities.

ARTICLE 1.6

Transparency and Confidentiality

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

2. Each Party shall promptly respond to specific questions and provide, upon request, information to another Party on matters referred to in paragraph 1.

3. Nothing in this Agreement shall require any Party to disclose confidential information that would impede law enforcement or otherwise be contrary to the public interest or that would prejudice the legitimate commercial interests of particular enterprises, public or private. Where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, that Party shall maintain the confidentiality of the information.

4. In case of any inconsistency between this Article and provisions relating to transparency in other parts of this Agreement, the latter shall prevail to the extent of the inconsistency.

CHAPTER 2

TRADE IN NON-AGRICULTURAL GOODS

ARTICLE 2.1

Scope

This Chapter applies to trade between the Parties relating to goods as set out in Annex II (Product Coverage of Non-Agricultural Goods).

ARTICLE 2.2

Definitions

For the purpose of this Agreement:

(a) "originating goods" means the goods that qualify as originating goods in accordance with Annex I (Rules of Origin and Administrative Cooperation);

(b) "goods" includes manufactured goods and commodities in their raw, semi-processed and processed forms;

(c) "import duties" means any duty or charge of any kind imposed in connection with the importation of goods, including any form of surtax or surcharge, but does not include any:

(i) charges equivalent to an internal tax imposed consistently with Article III of GATT 1994;

(ii) fees or other charges in connection with the importation commensurate with the cost of services rendered in accordance with Article VIII of GATT 1994; and

(iii) anti-dumping, countervailing duties or safeguard duties which are applied in accordance with Chapter 6 (Trade Remedies).

ARTICLE 2.3

Import Duties

1. Upon entry into force of this Agreement, Malaysia shall abolish or reduce its import duties on goods originating in an EFTA State covered by Article 2.1 (Scope), in accordance with the terms and conditions set out in Annex III (Reduction or Elimination of Import Duties).

2. Upon entry into force of this Agreement, the EFTA States shall abolish all import duties on goods originating in Malaysia covered by Article 2.1 (Scope).

3. No Party may increase an existing import duty nor introduce a new import duty on originating goods of another Party.

ARTICLE 2.4

Customs Valuation[1]

For the purpose of determining the customs value of goods traded between the Parties, Article VII of the GATT 1994 and Part I of the Agreement on Implementation of Article VII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5

Quantitative Restrictions

1. With respect to the rights and obligations of the Parties concerning quantitative restrictions, Article XI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

2. A Party introducing a measure in accordance with paragraph 2 of Article XI of the GATT 1994 shall promptly notify the Joint Committee. A notification by a Party in accordance with Article XI of the GATT 1994 shall be deemed equivalent to a notification under this Agreement.

3. Any measure applied in accordance with this Article shall be of limited duration, non-discriminatory, transparent and may not go beyond what is necessary to remedy circumstances described in paragraph 2 of Article XI of the GATT 1994 and may not create unnecessary obstacles to trade between the Parties.

ARTICLE 2.6

Rules of Origin and Methods of Administrative Cooperation

The rules of origin and administrative cooperation are set out in Annex I (Rules of Origin and Administrative Cooperation).

ARTICLE 2.7

Classification of Goods

The classification of goods shall be in conformity with the Harmonized Commodity Description and Coding System (Harmonized System or HS).

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[1] Switzerland applies customs duties based on weight and quantity rather than *ad valorem* duties.

ARTICLE 2.8

Fees and Formalities

Article VIII of the GATT 1994 applies, and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.9

National Treatment on Internal Taxation and Regulations

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

ARTICLE 2.10

Technical Amendments

1. The Parties shall, following the periodic amendments to the HS by the World Customs Organization (WCO), transpose its Annex III (Reduction or Elimination of Customs Duties), Annexes IV-VI (Schedules of Tariff Commitments on Agriculture from the EFTA States) and Appendix 1 (Product Specific Rules (PSR)) to Annex I (Rules of Origin and Administrative Cooperation) accordingly.

2. The transposition of the Schedules of Tariff Commitments and the PSR as a result of periodic amendments to the HS by the WCO or other technical adjustments in the respective tariff nomenclature shall not impair commitments listed in the Annex III (Reduction or Elimination of Customs Duties), Annexes IV-VI (Schedules of Tariff Commitments Agriculture from the EFTA States) and Appendix 1 (PSR) to Annex I (Rules of Origin and Administrative Cooperation).

3. Upon request of one or several Parties and within a reasonable period of time after receiving the request, the requested Party shall address any concerns raised regarding the transposed tariff commitments or PSR under this Agreement.

4. In the Schedules of Tariff Commitments and the PSR according to paragraph 1, the version of the HS and the year shall be indicated.

ARTICLE 2.11

Exchange of Trade Data

1. The Parties recognise the value of trade data in the accurate analysis of the utilisation and the impact of this Agreement on trade between the Parties. The Parties shall annually exchange data on the most-favoured-nation (MFN) tariff rates, preferential tariff rates under this Agreement and import statistics (preferential and MFN) between them.

2. Import statistics shall pertain to the most recent calendar year available. If there has been a revision in the previously submitted data pertaining to the three most recent calendar years, a revised version of the data shall be submitted. The preferential tariff rates and applied MFN tariff rates exchanged shall pertain to the same year as the import statistics. Upon request, the Parties may exchange additional information and explanations.

3. Subject to the availability of data, the exchange of import statistics and tariff rates shall start in the year following the first full calendar year the Agreement was in force. The Parties shall exchange all relevant data no later than three years from the date of the entry into force of this Agreement.

4. Each Party shall establish a designated contact point. The contact points, shall, as appropriate, jointly determine the details concerning the nature and format of data to be exchanged.

5. Each Party shall give consideration to a request from another Party for technical cooperation with regard to exchange of data under paragraph 1 and 2.

6. Notwithstanding paragraphs 1 and 2, no Party shall be obliged to exchange data which is confidential in accordance with its domestic laws and regulations.

7. The Parties shall exchange information in English.

ARTICLE 2.12

Sub-Committee on Trade in Goods

1. A Sub-Committee on Trade in Goods (Sub-Committee) under the Joint Committee, comprising representatives of each Party, is hereby established.

2. The functions of the Sub-Committee are set out in Annex VII (Functions of the Sub-Committee on Trade in Goods).

ARTICLE 2.13

State Trading Enterprises

With respect to the rights and obligations of the Parties concerning state trading enterprises, Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.14

Balance-of-Payments

1. A Party in serious balance-of-payments difficulties, or under imminent threat thereof, may, in accordance with the conditions established under the GATT 1994 and the

WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt trade restrictive measures, which shall be of limited duration and non-discriminatory, and may not go beyond what is necessary to remedy the balance-of-payments situation.

2. A Party introducing a measure under this Article shall promptly notify the other Parties thereof.

ARTICLE 2.15

Trade Facilitation

The provisions on trade facilitation are laid out in Annex VIII (Customs Procedures and Trade Facilitation).

ARTICLE 2.16

General Exceptions

For the purposes of this Chapter, Article XX of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.17

Security Exceptions

For the purposes of this Chapter, Article XXI of the GATT 1994 applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

CHAPTER 3

TRADE IN AGRICULTURAL GOODS

ARTICLE 3.1

Scope

This Chapter applies to trade between the Parties relating to goods other than those covered in Annex II (Product Coverage of Non-Agricultural Goods).

ARTICLE 3.2

Tariff Concessions

1. Malaysia shall grant tariff concessions on agricultural goods originating in an EFTA State as specified in Annex III (Reduction or Elimination of Customs Duties).

2. Each EFTA State shall grant tariff concessions on agricultural goods originating in Malaysia as specified in Annexes IV-VI (Schedule of tariff commitments agriculture from the EFTA States).

ARTICLE 3.3

Other Provisions

1. With regard to trade in agricultural goods referred to in this Chapter, the following provisions apply, *mutatis mutandis*: Articles 2.2 (Definitions), 2.4 (Customs Valuation), 2.5 (Quantitative Restrictions), 2.6 (Rules of Origin and Methods of Administrative Cooperation), 2.7 (Classifications of Goods), 2.8 (Fees and Formalities), 2.9 (National Treatment on Internal Taxation and Regulations), 2.10 (Technical Amendments), 2.11 (Exchange of Trade Data), 2.12 (Sub-Committee on Trade in Goods), 2.13 (State Trading Enterprises), 2.14 (Balance-of-Payments), 2.15 (Trade Facilitation), 2.16 (General Exceptions), 2.17 (Security Exceptions), Chapter 4 (Technical Barriers to Trade), Chapter 5 (Sanitary and Phytosanitary Measures) and Chapter 6 (Trade Remedies).

2. With regard to Article 2.6 (Rules of Origin and Methods of Administrative Cooperation), only bilateral accumulation between the individual Parties shall be allowed for goods covered by this Chapter.

ARTICLE 3.4

Dialogue

The Parties shall examine any difficulties that might arise in their trade in agricultural goods and shall endeavour to seek appropriate solutions through dialogue and consultations.

ARTICLE 3.5

Further Liberalisation

The Parties undertake to continue their efforts with a view to achieving further liberalisation of their trade in agricultural goods, taking into account the arrangements for processed agricultural goods, the pattern of trade in agricultural goods between the Parties, the particular sensitivities of such goods, the development of each Party's agricultural policy and developments in bilateral and multilateral fora. With a view to achieving this objective, the Parties may consult in conjunction with the Joint Committee meetings.

CHAPTER 4

TECHNICAL BARRIERS TO TRADE

ARTICLE 4.1

Objectives

1. The objectives of this Chapter are to:

   (a) further the implementation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement);

   (b) facilitate bilateral trade and access to respective markets for goods falling within the scope of this Chapter;

   (c) facilitate information exchange and cooperation in the field of technical regulations, standards and conformity assessment between the Parties, and enhance mutual understanding of each Party's regulatory system;

   (d) eliminate, reduce or prevent unnecessary obstacles to trade between the Parties, in particular to avoid duplications in conformity assessment procedures; and

   (e) address, with a view to solve, trade concerns affecting bilateral trade within the scope of this Chapter.

ARTICLE 4.2

Scope

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

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

   (a) sanitary and phytosanitary measures covered by Chapter 5 (Sanitary and Phytosanitary Measures); and

   (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

ARTICLE 4.3

Incorporation of the TBT Agreement

Except as otherwise provided for in this Chapter, with respect to technical regulations, standards and conformity assessments, the TBT Agreement applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis.*

ARTICLE 4.4

International Standards

For the purposes of this Chapter, standards issued by international standardising bodies, in particular, but not limited to the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius shall be considered relevant international standards in the sense of Article 2.4 of the TBT Agreement.

ARTICLE 4.5

Movement of Goods, Border Control and Market Surveillance

1. The Parties shall ensure that goods fully complying with the relevant technical regulations of the importing Party can move within their respective territories, once placed on the market.[2]

2. Where a Party detains, at a port of entry, goods imported from another Party, the reasons for the detention shall be notified without undue delay to the importer or his or her representative.

3. Where a Party withdraws from its market goods imported from another Party, the reasons shall be notified without undue delay to the importer, his or her representative or a person responsible for placing the goods on the market.

ARTICLE 4.6

Conformity Assessment Procedures

1. The Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in another Party's territory, including:

(a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified technical regulations conducted by recognised conformity assessment bodies;

(b) voluntary arrangements between conformity assessment bodies in each Party's territory;

(c) use of accreditation based on international standards, to qualify conformity assessment bodies;

(d) government designation of conformity assessment bodies;

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

[2] Depending on where the first placing of a good in Malaysia takes place, specific goods may not move within Malaysia. The Malaysian contact point will notify the EFTA States of changes in this regime.

(f) use of regional or international arrangements and regional or international recognition agreements to which the Parties are parties; and

(g) the importing Party's acceptance of a supplier's declaration of conformity, based on international standards.

2. No Party shall prepare, adopt or apply conformity assessment procedures which are likely to create unnecessary obstacles to trade and shall to this end:

(a) reinforce the role of international standards as a basis for technical regulations, including conformity assessment procedures;

(b) promote the accreditation of conformity assessment bodies on the basis of the relevant Standards and Guidelines of the ISO and the IEC; and

(c) encourage the mutual acceptance of conformity assessment results of bodies accredited in accordance with subparagraph (b), which have been recognised under the relevant international agreement.

3. If a Party requires a positive assurance of conformity with domestic technical regulations, it should consider the acceptance of supplier's declarations of conformity, based on international standards.

ARTICLE 4.7

Cooperation

With a view to increasing the mutual understanding of their respective systems and facilitating access to respective markets, the Parties shall strengthen their cooperation, in particular in the following areas:

(a) activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;

(b) communication between each other's competent authorities, exchange of information in respect of technical regulations, good regulatory practice, standards, conformity assessment procedures, border control and market surveillance; and

(c) encouraging their respective standardisation, accreditation and metrology bodies to cooperate, taking into account cooperation activities in relevant international fora.

ARTICLE 4.8

Consultations

Consultations shall be held at the request of a Party which considers that another Party has taken a measure which is likely to create, or has created, an obstacle to trade. Such consultations shall take place within 40 days from the date of receipt of the request.

They may be conducted by any agreed method on a case-by-case basis with the objective of finding mutually acceptable solutions.[3]

ARTICLE 4.9

Annexes

The Parties have concluded Annexes IX-XII (Electrical and Electronic Products, Good Laboratory Practice, Good Manufacturing Practice, Marking and Labelling) to this Agreement to prevent, eliminate, or reduce unnecessary non-tariff barriers to trade, including to avoid duplicative and unnecessarily burdensome conformity assessment procedures in specific good sectors. The Parties may conclude further Annexes and side agreements in the future.

ARTICLE 4.10

Review Clause

The Parties shall consider extending to each other equivalent treatment related to technical regulations, standards and conformity assessment procedures granted by each Party to the European Union (EU), three years after the date of entry into force of this Agreement and thereafter, upon request by a Party. Such treatment may take the form of a sector specific arrangement. This provision exclusively concerns the trade relations between the Parties and does not lead to any obligations towards the EU.

ARTICLE 4.11

Contact Points

The Parties shall exchange names and addresses of contact points for this Chapter in order to facilitate communication and the exchange of information.

[3] It is understood that consultations pursuant to this paragraph shall be without prejudice to the rights and obligations of the Parties under Chapter 15 (Dispute Settlement) or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

CHAPTER 5

SANITARY AND PHYTOSANITARY MEASURES

ARTICLE 5.1

Objectives

The objectives of this Chapter are to:

(a) further the implementation of the WTO Agreement on Sanitary and Phytosanitary Agreement (SPS Agreement);

(b) facilitate trade in food, animals and plants, including their goods, while protecting human, animal or plant life or health in the territory of each Party;

(c) deepen mutual understanding of each Party's regulations and procedures relating to sanitary and phytosanitary measures;

(d) address, with a view to solve, trade concerns affecting bilateral trade within the scope of this Chapter; and

(e) strengthen communication, consultation and cooperation between the Parties on sanitary and phytosanitary measures.

ARTICLE 5.2

Scope and Coverage

This Chapter applies to sanitary and phytosanitary measures which may, directly or indirectly, affect trade between the Parties.

ARTICLE 5.3

Affirmation and Incorporation of the SPS Agreement

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.

2. For the purposes of this Chapter, the SPS Agreement applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.4

Definitions

For the purposes of this Chapter, "international standards" means the standards, guidelines and recommendations defined in paragraph 3 of Annex A of the SPS Agreement.[4]

ARTICLE 5.5

Audits

1. An importing Party shall base its audits of the exporting Party on international standards, guidelines and recommendations.

2. System audits shall be the preferred assessment method. The system audit may include the on-site inspections of facilities.

3. The costs incurred by the auditing Party shall be borne by the importing Party, unless both Parties decide otherwise.

4. The importing Party shall provide information in writing to the exporting Party within 90 days after the audit. The exporting Party may comment on such information within 30 days from the date of receipt. These comments shall be included in the assessment report.

ARTICLE 5.6

Certificates

1. The Parties agree to cooperate in order to minimise the number of sanitary and phytosanitary certificates as far as possible. Where such certificates are required, they should be in line with international standards, guidelines and recommendations and shall be made available in English.

2. Notwithstanding the Party's existing rights and obligations in relation to the notification under the SPS Agreement, the notifying Party shall, upon request, provide supplementary rationale to the exporting Party with regard to the new or modified certificate. The exporting Party shall be given a reasonable period of time to adapt to the new requirements.

ARTICLE 5.7

Cooperation

1. The Parties shall:

[4] This includes the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS).

(a) strengthen their cooperation with a view to increasing the mutual understanding of their respective systems and facilitating access to respective markets. Such cooperation includes, but is not limited to, collaboration between the relevant institutions that provides the Parties with scientific advice and risk analysis; and

(b) explore opportunities for further cooperation, collaboration and information exchange with the other Party on sanitary and phytosanitary matters of mutual interest consistent with the objectives of this Chapter.

2. Consistent with Article 5.1 (Objectives), each Party agrees to further explore and strengthen technical cooperation as set out in Chapter 13 (Cooperation and Capacity Building).

3. The Parties shall ensure that all adopted sanitary and phytosanitary regulations are published and available on the internet. Upon request, a Party shall provide supplementary information regarding import requirements in English.

4. Notwithstanding the Party's existing rights and obligations in relation to the notification under the SPS Agreement, the notifying Party, upon request, when introducing new sanitary and phytosanitary measures, will provide supplementary justifications for the measure.

ARTICLE 5.8

Movement of Goods

1. An importing Party shall ensure free movement of goods complying with its relevant sanitary and phytosanitary requirements with no less favourable treatment than that accorded to domestic goods once placed on its market.

2. Notwithstanding paragraph 1 above, the movement of goods in Malaysia is subject to the relevant domestic laws and regulations applicable to Peninsular Malaysia, Sabah and Sarawak.

ARTICLE 5.9

Import Checks

1. The import requirements and checks applied to imported goods including live animals shall be based on the risk that is associated with such goods and shall be applied in a non-discriminatory manner. Import checks shall be carried out without undue delay, in a manner that is no more trade-restrictive than necessary.

2. Information about the frequency of import checks or changes in this frequency shall be exchanged on request between competent authorities.

3. Import checks should be in accordance with international standards, guidelines and recommendations.

4. Each Party shall ensure that the clearance process for goods not subject to random and routine checks are undertaken without undue delay. Goods subject to random and routine checks should not be detained pending test results.

5. The importing Party shall notify the importer or its representative or the competent authority of the exporting Party or the embassy if the competent authority is not known of a non-compliant consignment including the reason for non-compliance and provide them with an opportunity to appeal the decision.

6. If a good is detained at the border due to a perceived risk, the necessary investigations as well as decision on clearance shall be undertaken as soon as possible to avoid any delays, in particular to prevent the deterioration of perishable goods.

7. When a Party detains, at a port of entry, goods exported from another Party due to non-conformity with a sanitary or phytosanitary measure, the reasons for the detention shall be promptly notified to the importer or his or her representative.

8. If goods are rejected at a port of entry, each Party shall ensure that the importer or his or her representative may appeal the decision.

9. When goods are rejected at a port of entry due to a serious sanitary or phytosanitary non-conformity, the competent authority in the exporting Party shall be informed as soon as possible.

ARTICLE 5.10

Consultations

If a Party has concerns regarding any matter arising under this Chapter with another Party, the Party may request consultations to address the matter. Such consultations shall take place, without undue delay, using any agreed method, with a view of finding mutually acceptable solutions. The Parties shall endeavour to resolve the matter and may inform the Joint Committee thereof.

ARTICLE 5.11

Competent Authorities and Contact Points

1. The Parties shall exchange information on competent authorities and contact details of contact points for this Chapter in order to facilitate communication and the exchange of information.

2. In the event of changes in this information, the Parties shall notify each other.

CHAPTER 6

TRADE REMEDIES

ARTICLE 6.1

Subsidies and Countervailing Measures

1. The rights and obligations of the Parties relating to subsidies and countervailing measures shall be governed by Articles VI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures, except as provided for in paragraph 2.

2. Before a Party initiates an investigation to determine the existence, degree and effect of any alleged subsidy in another Party, as provided for in Article 11 of the WTO Agreement on Subsidies and Countervailing Measures, the Party considering initiating an investigation shall notify in writing the Party whose goods are subject to investigation and allow for a 25-day period with a view to finding a mutually acceptable solution. The consultations shall take place within 15 days from the receipt of the notification. The consultations may take place in the Joint Committee, unless the Parties making and receiving the notification agree otherwise.

ARTICLE 6.2

Anti-Dumping

1. The rights and obligations of a Party relating to anti-dumping measures shall be governed by Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994 (the WTO Anti-Dumping Agreement), subject to paragraphs 2 to 6. The Parties will endeavour to refrain from initiating anti-dumping procedures against each other.

2. When a Party receives a properly documented application and before initiating an investigation under the WTO Anti-Dumping Agreement, the Party shall, as soon as possible, notify in writing the other Party whose goods are allegedly being dumped and allow for consultations throughout the investigation with a view to finding a mutually acceptable solution. The consultations shall take place in the Joint Committee, unless the Parties making and receiving the notification agree otherwise.

3. A Party shall not initiate an anti-dumping investigation with regard to the same good from the same Party within 12 months of a determination which resulted in the non-application or revocation of anti-dumping measures or from the termination of a measure.

4. If a Party decides to impose an anti-dumping duty, the Party shall apply a duty less than the margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry.

5. When anti-dumping margins are established, assessed or reviewed under Article 2, paragraph 9.3 and paragraph 9.5 of Article 9 and Article 11 of the WTO Anti-Dumping

Agreement, regardless of the comparison bases under subparagraph 2.4.2 of Article 2 of the WTO Anti-Dumping Agreement, all individual margins, whether positive or negative, shall be counted toward the average.

6. Five years from the date of entry into force of this Agreement, the Parties shall, in the Joint Committee, review whether there is a need to maintain the possibility to take anti-dumping measures between them. If the Parties decide after the first review to maintain this possibility, biennial reviews shall thereafter be conducted in the Joint Committee.

ARTICLE 6.3

Global Safeguard Measures

1. The rights and obligations of the Parties in respect of global safeguards shall be governed by Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, except as provided for in paragraph 2.

2. In taking measures under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, a Party shall, consistent with its obligations under the WTO Agreements, exclude imports of an originating good from a Party if such imports do not cause or threaten to cause injury, in particular if the share of imports of that Party does not exceed three percent of the total imports of the good concerned.

ARTICLE 6.4

Bilateral Safeguard Measures

1. Where during the transition period, as a result of the reduction or elimination of a customs duty under this Agreement, any good originating in a Party is imported into the territory of another Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of like or directly competitive goods in the territory of the importing Party, the importing Party may take bilateral safeguard measures to the minimum extent necessary to remedy or prevent the serious injury and facilitate adjustment, subject to paragraphs 2 to 12.

2. If the conditions set out in paragraph 1 are met, the importing Party may:

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

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

(i) the MFN rate of duty applied at the time the bilateral safeguard measure is taken; or

(ii) the MFN rate of duty applied on the day immediately preceding the date of entry into force of this Agreement.

3. Bilateral safeguard measures shall only be taken upon clear evidence that increased imports have caused or are threatening to cause serious injury pursuant to an investigation in accordance with the procedures laid down in the WTO Agreement on Safeguards, in particular Articles 3 and 4 thereof.

4. Bilateral safeguard measures may be taken during the transition period, which shall be a period of five years beginning on the date of entry into force of this Agreement. In the case of a good subject to tariff dismantling as set out in Annexes III-VI (Reduction or Elimination of Customs Duties and Schedules of tariff commitments agriculture from the EFTA States) that lasts five or more years, the transition period shall be extended to the end of the tariff dismantling period for that product. Bilateral safeguard measures shall be taken for a period not exceeding two years. In very exceptional circumstances, measures may be taken up to a total maximum period of three years. No bilateral safeguard measures shall be applied to the import of a good which has previously been subject to such a measure.

5. No Party may apply, with respect to the same good, at the same time, a measure in accordance with:

(a) this Article;

(b) Article XIX of GATT 1994 and the WTO Safeguards Agreement; and

(c) Article 5 of the WTO Agreement on Agriculture.

6. A Party intending to apply or extend a bilateral safeguard measure shall offer to the Party which may be affected by the bilateral safeguard measure compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the bilateral safeguard measure.

7. The Party intending to apply or extend a bilateral safeguard measure pursuant to this Article shall immediately, and in any case before taking or extending a measure, notify the other Parties. The notification shall contain all pertinent information, including evidence of serious injury or threat thereof caused by increased imports, a precise description of the good concerned, and the proposed measure, as well as the proposed date of introduction, expected duration and timetable for the progressive removal of the measure and the offered compensation. In the case of an extension of a bilateral safeguard measure, evidence that the domestic industry concerned is adjusting shall also be provided. Upon request of a Party affected by the bilateral safeguard measure, the Party applying or extending the bilateral safeguard measure shall to the extent possible provide additional information.

8. Upon request of a Party, the Joint Committee shall, within 30 days from the date of receipt of the notification, examine the information provided under paragraph 7 in order to facilitate a mutually acceptable solution. In the absence of such solution, the importing Party may adopt a bilateral safeguard measure pursuant to paragraph 2 to remedy the problem and, in the absence of mutually agreed trade compensation, the Party against whose good the bilateral safeguard measure is taken may take compensatory action by suspending the application of substantially equivalent concessions to the Party applying the bilateral safeguard measure. The application of a bilateral safeguard measure and compensatory action shall be notified to the other Parties at least 30 days in advance.

In the selection of the bilateral safeguard measure and the compensatory action, priority must be given to the action or measure which least disturbs the functioning of this Agreement. A Party shall take compensatory action only for the minimum period necessary to achieve the substantially equivalent trade effects and in any event, only while the bilateral safeguard measure under paragraph 2 is being applied.

9. Regardless of its duration or whether it has been subject to extension, a bilateral safeguard measure on a good shall be terminated at the end of the transition period.

10. Upon the termination of the bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the measure.

11. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports as a result of the reduction or elimination of a customs duty under this Agreement have caused or threaten to cause serious injury to the domestic industry. The Party intending to take such a measure shall immediately notify the other Parties thereof. The procedures set out in in this Article shall be initiated within 30 days from the date of receipt of the notification. Any compensation shall be based on the total period of application of the provisional bilateral safeguard measure and of the bilateral safeguard measure.

12. Any provisional bilateral safeguard measure shall be terminated within 200 days at the latest. The period of application of any such provisional bilateral safeguard measure shall be counted as part of the duration, and any extension thereof, of the bilateral safeguard measure, set out in paragraphs 2 and 4 respectively. Any tariff increases shall be promptly refunded if the investigation described in paragraph 3 does not result in a finding that the conditions of paragraph 1 are met.

CHAPTER 7

TRADE IN SERVICES

ARTICLE 7.1

Scope and Coverage

1. This Chapter applies 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;

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

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) in respect of 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:

      (i) aircraft repair and maintenance services;

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

      (iii) computer reservation system (CRS) services;

      (iv) airport operation services; and

      (v) ground handling services.

ARTICLE 7.2

Definitions

1. For the purposes of this Chapter:

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

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

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

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

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

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

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

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

(f) "measures by Parties affecting trade in services" includes measures with respect to:

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

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

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

(g) "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;

(h) "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;

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

(i) "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 domestic 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 and/or its use in whole or in part; or

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

(j) "service supplier" means any person which supplies a service;[5]

(k) "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;

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

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

(n) "natural person of another Party" means a natural person who, under the domestic laws and regulations of that other Party, is:

(i) a national of that other Party; or

(ii) a permanent resident of that other Party who resides in the territory of any Party, if that other Party accords substantially the same treatment to its permanent residents as to its nationals in respect of measures affecting trade in services.

(o) "juridical person" means any legal entity duly constituted or otherwise organised under the domestic laws and regulations of a Party, whether for profit or otherwise, and whether privately-owned or governmentally owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(p) "juridical person of another Party" means a juridical person which is either:

(i) constituted or otherwise organised under the domestic laws and regulations of that other Party, and is engaged in substantive business operations in the territory of any Party; or

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

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(aa) natural persons of that other Party; or

(bb) juridical persons of that other Party identified under subparagraph (p) (i);

(q) a juridical person is:

(i) "owned" by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;

(ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(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; and

(r) "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

ARTICLE 7.3

Most-Favoured-Nation Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex XIV (List of MFN Exemptions), each Party shall accord immediately and unconditionally, in respect of all measures affecting the supply of services, to services and service suppliers of any other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party.

2. Treatment granted under other existing or future agreements concluded by one of the Parties and notified under Article V or Article V*bis* of the GATS shall not be subject to paragraph 1.

3. Notwithstanding paragraph 2, if a Party concludes an agreement of the type referred in the paragraph 2, it shall, upon request from another Party, afford adequate opportunity to that Party to negotiate the benefits granted therein. Such a negotiation is without prejudice to the final outcome.

4. Nothing in this Chapter shall be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

ARTICLE 7.4

Market Access

1. With respect to market access through the modes of supply identified in subparagraph (a) of Article 7.2 (Definitions), each Party shall accord services and service suppliers of another Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule in Annex XIII (Schedules of Specific Commitments).[6]

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

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

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

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[7]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

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

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

ARTICLE 7.5

National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of another Party, in respect of all measures affecting the supply of

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[6] If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) (i) of Article 7.2 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (a) (iii) of Article 7.2 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

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

services, treatment no less favourable than that it accords to its own like services and service suppliers.[8]

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

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

ARTICLE 7.6

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 7.4 (Market Access) or 7.5 (National Treatment), including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule in Annex XIII (Schedules of Specific Commitments).

ARTICLE 7.7

Domestic Regulation

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

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

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

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[8] 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.

4. 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, the Joint Committee shall take a decision aiming at incorporating into the Agreement any disciplines developed in the WTO in accordance with paragraph 4 of Article VI of the GATS. The Parties may also, jointly or bilaterally, decide to develop further disciplines.

5. In sectors in which a Party has undertaken specific commitments, pending the entry into force of a decision incorporating WTO disciplines for these sectors pursuant to paragraph 4, and, if agreed between the Parties, disciplines developed jointly or bilaterally under this Agreement pursuant to paragraph 4, the Party shall not apply qualification requirements and procedures, technical standards and licensing requirements and procedures that nullify or impair such specific commitments in a manner which is:

(a) not based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) more burdensome than necessary to ensure the quality of the service; or

(c) in the case of licensing procedures, in itself a restriction on the supply of the service.

6. In determining whether a Party is in conformity with the obligation under subparagraph 5(a), account shall be taken of international standards of relevant international organisations[9] applied by that Party.

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

ARTICLE 7.8

Recognition

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

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

[9] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties.

demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also be recognised.

3. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 7.9

Movement of Natural Persons Supplying Services

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

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

3. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to a Party under the terms of a specific commitment.[10]

ARTICLE 7.10

Transparency

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

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

3. Nothing in this Chapter shall require 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 interests of particular enterprises, public or private.

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[10] The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under a specific commitment.

ARTICLE 7.11

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 7.3 (Most-Favoured-Nation Treatment) and specific commitments.

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

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

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

ARTICLE 7.12

Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 7.11 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of another Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic laws and regulations and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

ARTICLE 7.13

Payments and Transfers

1. Except under the circumstances envisaged in Article 7.14 (Restrictions to Safeguard the Balance-of-Payments), no Party shall apply restrictions on international transfers and payments for current transactions relating to its specific commitments with another Party.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the International Monetary Fund (IMF), including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 7.14 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

ARTICLE 7.14

Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payment and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance-of-payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserve adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate against any other Party in comparison to non-Party;

(b) shall be consistent with the Articles of Agreement of the IMF;

(c) shall avoid unnecessary damage to the commercial, economic and financial interest of any other Party;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services which are most essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular services sector.

ARTICLE 7.15

General Exceptions

1, Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of

measures:

(a) necessary to protect public morals or to maintain public order;[11]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with domestic laws or regulations which are not inconsistent with this Chapter including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) inconsistent with Article 7.5 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective[12] imposition or collection of direct taxes in respect of services or service suppliers of other Parties;

(e) inconsistent with Article 7.3 (Most-Favoured-Nation Treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

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[11] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

[12] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;

(iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in subparagraph (d) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

ARTICLE 7.16

Security Exceptions

1. Nothing in this Chapter shall be construed:

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

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

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

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

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

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

ARTICLE 7.17

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 7.4 (Market Access), 7.5 (National Treatment) and 7.6 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule shall specify:

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

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments referred to in Article 7.6 (Additional Commitments); and

(d) where appropriate, the time frame for implementation of such commitments; and the date of entry into force of such commitments.

2. Measures inconsistent with both Articles 7.4 (Market Access) and 7.5 (National Treatment) shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of Specific Commitments are set out in Annex XIII (Schedules of Specific Commitments).

ARTICLE 7.18

Modification of Schedules

The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained. Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 14.2 (Joint Committee) and 16.2 (Amendments).

ARTICLE 7.19

Review

With the objective of further liberalising trade in services between them, the Parties shall review at least every five years, or more frequently if so agreed, their Schedules of Specific Commitments and their Lists of MFN Exemptions, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than five years from the entry into force of this Agreement.

ARTICLE 7.20

Consultations on Subsidies

1. Notwithstanding Article 7.1 (Scope and Coverage), a Party which considers that it is adversely affected by a subsidy of another Party may request *ad hoc* consultations with that Party on such matters. Such request shall be accorded sympathetic considerations.

2. No Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

ARTICLE 7.21

Denial of Benefits

1, A Party may deny the benefits of this Chapter to a national of a non-Party, or to a juridical person of another Party that is owned or controlled by a non-Party or by a person of a non-Party, if the denying Party:

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

(b) adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which prohibit transactions with that person or would be violated or circumvented if the benefits of this Chapter were accorded to that person.

ARTICLE 7.22

Annexes

The following Annexes form an integral part of this Chapter:

- Annex XV (Financial Services);
- Annex XVI (Telecommunication Services);
- Annex XIII (Schedules of Specific Commitments); and
- Annex XIV (Lists of MFN Exemptions).

CHAPTER 8

INVESTMENT

ARTICLE 8.1

Scope and Coverage

1. This Chapter applies to commercial presence in all sectors as set out in Annex XVII (Covered Sectors). This Chapter does not apply to commercial presence in services sectors as set out in Article 7.1 (Coverage).[13]

2. This Chapter does not include investment protection and shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and Malaysia are parties.[14]

3. This Chapter shall not apply to:

   (a) subsidies or grants provided by a Party; and

   (b) government procurement.

ARTICLE 8.2

Definitions

1. For the purposes of this Chapter:

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

   (b) "juridical person of a Party" means a juridical person constituted or otherwise organised under the domestic laws and regulations of a Party and engaged in substantive business operations in that Party;

   (c) "natural person" means a person who has the nationality, or is a permanent resident, of a Party in accordance with its domestic laws and regulations;

   (d) "commercial presence" means any type of business establishment, including through:

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[13] It is understood that services specifically exempted from the scope of Chapter 7 (Trade in Services) do not fall under the scope of this Chapter.

[14] For greater certainty, any dispute settlement mechanism in any existing or future investment protection agreement to which one or several EFTA States and Malaysia are parties to is not applicable to alleged breaches of this Chapter.

(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 another Party for the purpose of performing an economic activity.

ARTICLE 8.3

National Treatment

Each Party shall, subject to Article 8.4 (Reservations) and the reservations set out in Annex XVIII (Investment Reservations), accord to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations,[15] to its own juridical and natural persons, and to the commercial presence of such persons.

ARTICLE 8.4

Reservations[16]

1. Article 8.3 (National Treatment) shall not apply to:

(a) any reservation pertaining to existing or future measures that is listed by a Party in Annex XVIII (Investment Reservations);

(b) the continuation or prompt renewal of any reservation referred to in subparagraph (a);

(c) an amendment to a reservation pertaining to existing measures to the extent that the amendment does not decrease the conformity of the reservation with Article 8.3 (National Treatment), with respect to an EFTA State consistent with Annex XVIII (Investment Reservations) and, with respect to Malaysia consistent with its List A of Reservations under Annex XVIII (Investment Reservations); and

(d) any new reservation adopted by a Party, and incorporated into Annex XVIII (Investment Reservations) which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 8.3 (National Treatment).

2. As part of the reviews provided for in Article 8.12 (Review) the Parties undertake to review periodically the status of the reservations set out in Annex XVIII (Investment Reservations) with a view of possibly improving their commitments.

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15 For greater certainty, whether treatment is accorded in "like situations" under this Article depends on the totality of the circumstances.

16 For greater certainty, this Article does not entail a ratchet mechanism.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part its reservations set out in Annex XVIII (Investment Reservations) by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into Annex XVIII (Investment Reservations) in accordance with subparagraph 1 (d) by written notification to the other Parties. On receiving such written notification, another Party may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the requesting Party.

ARTICLE 8.5

Key Personnel

1. Each Party shall, subject to its domestic laws and regulations, and national policies,[17] grant natural persons of another Party, and key personnel who are employed by natural or juridical persons of another Party, entry and temporary stay in its territory in order to engage in activities connected with commercial presence.

2. Each Party shall, subject to its domestic laws and regulations, and national policies, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. The Parties shall, subject to their domestic laws and regulations, and national policies, grant entry and temporary stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2.

ARTICLE 8.6

Right to Regulate

1. The Parties reaffirm their right to regulate within their jurisdictions to achieve legitimate policy objectives, such as the protection of public health, safety, or the environment.

2. A Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment,

[17] For greater certainty, "National policies" means those policies on entry and temporary stay of natural persons of another Party and key personnel who are employed by natural or juridical persons of another Party that are endorsed and announced by the government of a Party and made publicly available in a written form.

acquisition, expansion or retention in its territory of a commercial presence of persons of another Party or a non-Party.

ARTICLE 8.7

Consultations on Subsidies

1. Notwithstanding Article 8.1 (Scope and Coverage), a Party which considers that it is adversely affected by a subsidy of another Party may request *ad hoc* consultations with that Party on such matters. Such request shall be accorded sympathetic considerations.

2. No Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

ARTICLE 8.8

Transparency

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

2. Where publication in accordance with paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Nothing in this Chapter shall require 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 interests of particular juridical persons, public or private.

ARTICLE 8.9

Payments and Transfers

1. Except under the circumstances referred to in Article 8.10 (Restrictions to Safeguard the Balance-of-Payments), no Party shall apply restrictions on international transfers and payments for current transactions relating to commercial presence activities in non-services sectors as covered in this Chapter.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of IMF, including the use of exchange actions which are in conformity with the Articles of the Agreement of IMF, provided that no Party shall impose

restrictions on capital transactions[18] relating to commercial presence activities in non-services sectors as covered under this Chapter, except under Article 8.9 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

ARTICLE 8.10

Restrictions to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on commercial presence in the non-services sectors, including on payments or transfers for transactions. It is recognised that particular pressure on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserve adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate against the other Party in comparison to non-Party;

(b) shall be consistent with the Articles of Agreement of the IMF;

(c) shall avoid unnecessary damage to the commercial, economic and financial interest of any other Party;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Parties may give priority to the commercial presence in non-services 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 non-services sector.

ARTICLE 8.11

General Exceptions

For the purposes of this Chapter Article XIV of the GATS and the chapeau and subparagraphs (f) and (g) of Article XX of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

[18] For greater certainty, the Parties are committed to allow transfers of capital relating to commercial presence activities in non-services sectors as covered in this Chapter into and out of their territories.

ARTICLE 8.12

Security Exceptions

For the purposes of this Chapter, paragraph 1 of Article XIV*bis* of the GATS and subparagraph (b) (ii) of Article XXI of the GATT 1994 apply and are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 8.13

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.

ARTICLE 8.14

Denial of Benefits

1. A Party may deny the benefits of this Chapter to a national of a non-Party, or to a juridical person of another Party that is owned or controlled by a non-Party or by a person of a non-Party, if the denying Party:

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

(b) adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which prohibit transactions with that person or would be violated or circumvented if the benefits of this Chapter were accorded to that person.

CHAPTER 9

INTELLECTUAL PROPERTY RIGHTS

ARTICLE 9.1

Protection of Intellectual Property

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with this Chapter and Annex XIX (Protection of Intellectual Property), and the international agreements referred to therein.

2. With respect to intellectual property rights covered by this Chapter, Annex XIX (Protection of Intellectual Property), and in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), each Party shall accord another Party's nationals' treatment no less favourable than that it accords its own nationals. Exemptions from this obligation must be in accordance with Articles 3 and 5 of the TRIPS Agreement.

3. Each Party shall grant another Party's nationals treatment no less favourable than that it accords nationals of a non-Party. If a Party concludes a trade agreement containing provisions on the protection of intellectual property rights with a non-Party, notified under Article XXIV of the GATT 1994, it shall notify the other Parties within reasonable time and accord them treatment no less favourable than that provided under such agreement. The Party concluding such an agreement shall, upon request by another Party, negotiate the incorporation into this Agreement of provisions granting treatment no less favourable than that provided under that agreement. Exemptions from this obligation must be in accordance with the provisions of the TRIPS Agreement, in particular Articles 4 and 5 thereof.

4. In accordance with Article 14.2 (Joint Committee), the Parties may also undertake reviews in the light of any relevant new developments which might warrant modifications or amendments of this Chapter and Annex XIX (Intellectual Property Rights) with a view to improving the intellectual property system.

ARTICLE 9.2

General Provision

The Parties may, but shall not be obliged to, implement in their domestic laws and regulations more extensive protection than required by this Chapter, provided that such protection does not contravene this Chapter. The Parties shall be free to determine the appropriate method of implementing this Chapter within their own legal system and practice.

CHAPTER 10

GOVERNMENT PROCUREMENT

ARTICLE 10.1

Scope and Coverage

1. This Chapter applies to any measure of a Party regarding covered procurement.

2. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of goods, services, or any combination thereof

(i) as specified in each Party's Appendices to Annex XX (Government Procurement); and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;

(b) by any contractual means, including purchase, lease, rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with the rules specified in Appendix 9 (Value of Thresholds) to Annex XX (Government Procurement) equals or exceeds the relevant threshold specified in Appendices 1 to 3 (Entities at Central Government Level, Entities at Sub-Central Government Level and Other Covered Entities) to Annex XX (Government Procurement) at the time of publication of a notice in accordance with Article 10.10 (Notices);

(d) by a procuring entity; and

(e) that is not otherwise excluded pursuant to this Agreement.

3. Unless otherwise provided in a Party's schedule to Annex XX (Government Procurement), this Chapter does not apply to:

(a) acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorships arrangements;

(c) procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or

services related to sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

(ii) under a particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under a particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter;

(f) procurement of a good or service outside the territory of the Party or the procuring entity, for consumption outside the territory of that Party.

Valuation

4. In estimating the value of procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

(a) neither divide a procurement into separate procurements nor use a particular method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter;

(b) include the estimated maximum total value of the procurement over its entire duration, taking into account all forms of remuneration, including any premiums, fees, commissions, interest and, where the procurement provides for the possibility of option clauses, the total value of such options;

(c) for any contract awarded at the same time or over a given period to one or more suppliers under the same procurement base its calculation of the total maximum value of the procurement over its entire duration;[19] and

(d) where domestic laws and regulations allow for contracts to be concluded for an indefinite period and a total price is not specified, the basis for valuation of such contracts shall be based on the estimated monthly instalment multiplied by 48.

[19] For the EFTA States it is understood that this covers a period of 12 months.

ARTICLE 10.2

Definitions

1. For the purposes of this Chapter:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, as described in Appendix 6 (Construction Services);

(c) "days" means calendar days;

(d) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(e) "in writing or written" means any worded or numbered expression that can be read, reproduced, and may be communicated later, including electronically transmitted and stored information;

(f) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(g) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action as determined by a Party, including its procuring entities, relating to a covered procurement;

(h) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(i) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(j) "notice of planned procurement" means a notice published by a procuring entity regarding its future procurement plans;

(k) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;

(l) "open tendering" means a procurement method where all interested suppliers may submit a tender;

(m) "person" means a natural person or a juridical person;

(n) "procuring entity" means an entity covered under Appendices 1 to 3 (Entities at Central Government Level, Entities at Sub-Central Government Level and Other Covered Entities) to Annex XX (Government Procurement);

(o) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(p) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(q) "services" includes construction services, unless otherwise specified;

(r) "standard" means a document approved by a recognised body, that provides for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

(s) "supplier" means a person or group of persons that provides or could provide goods or services;

(t) "technical specification" means a tendering requirement that:

(i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or

(ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

ARTICLE 10.3

Security and General Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

2 The Parties understand that paragraph 1 includes procurement indispensable for the maintenance or restoration of international peace.

3. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

4. The Parties understand that subparagraph 3 (b) includes environmental measures necessary to protect human, animal, or plant life or health.

ARTICLE 10.4

National Treatment and Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of another Party and to the suppliers of another Party offering such goods or services, treatment no less favourable than the treatment accorded to domestic goods, services and suppliers. For greater certainty, this obligation refers only to the treatment accorded by a Party to any good, service or supplier of another Party under this Agreement.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of another Party.

3. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

ARTICLE 10.5

Use of Electronic Means

1. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including the publication of procurement information, notices, and tender documentation, and for the receipt of tenders.

2. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and

encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

ARTICLE 10.6

Conduct of Procurement

A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering, and limited tendering;

(b) avoids conflicts of interest; and

(c) prevents corrupt practices.

ARTICLE 10.7

Rules of Origin

For the purposes of covered procurement, no Party may apply rules of origin to goods or services imported from or supplied by another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade.

ARTICLE 10.8

Offsets

With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.

ARTICLE 10.9

Information on the Procurement System

1. Each Party shall promptly publish any measure of general application regarding covered procurement and any modification to this information, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public.

2. Each Party shall list in Appendix 7 (Means of Publication) to Annex XX (Government Procurement) the paper or the electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article

10.10 (Notices), Article 10.12 (Qualification of Suppliers) and Article 10.22 (Transparency of Procurement Information).

3. Each Party shall, on request, provide to another Party an explanation relating to such information.

ARTICLE 10.10

Notices

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances referred to in Article 10.17 (Limited Tendering). The notice shall be published in the electronic or paper medium listed in Appendix 7 (Means of Publication) to Annex XX (Government Procurement).

2. Such medium shall:

(a) be widely disseminated and the notice shall remain accessible, at least, until expiration of the time period indicated in the notice or the deadline for submission of the tender.

b) for procuring entities covered under Appendix 1 (Entities at Central Government Level) to Annex XX (Government Procurement) be accessible by electronic means free of charge through a single point of access; and

(c) for procuring entities covered under Appendices 2 or 3 (Entities at Sub-Central Government Level and Other Covered Entities) to Annex XX (Government Procurement), where accessible by electronic means, be provided, at least through links in a gateway electronic site that is accessible free of charge.

3. The Parties, including their procuring entities covered under Appendix 2 (Entities at Sub-Central Government Level) or Appendix 3 (Other Covered Entities) to Annex XX (Government Procurement), are encouraged to publish their notices by electronic means free of charge through a single point of access.

4. Except as otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) a description of any options;

(d) the timeframe for delivery of goods or services or the duration of the contract;

(e) the procurement method that will be used and whether it will involve negotiation or electronic auction;

(f) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(g) the address and the final date for the submission of tenders;

(h) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

(i) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(j) where, pursuant to Article 10.12 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender;

(k) an estimate, if possible, of the timing of subsequent notices of intended procurement for any contract awarded at the same time or over a given period to one or more suppliers under the same procurement; and

(l) an indication that the procurement is covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 10.9 (Information on the Procurement System).

5. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix 7 (Means of Publication) to Annex XX (Government Procurement), as early as possible in each fiscal year, a notice regarding their future procurement plans. The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

6. A procuring entity covered under Appendix 2 (Entities at Sub-Central Government Level) or Appendix 3 (Other Covered Entities) to Annex XX (Government Procurement) may use a notice of planned procurement as a notice of intended procurement, provided that the notice of planned procurement includes any information referred to in paragraph 3 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

ARTICLE 10.11

Conditions for Participation

1. In establishing the conditions for participation and assessing whether a supplier satisfies such conditions, a Party, including its procuring entities:

(a) shall limit any conditions for participation in a covered procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement;

(b) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;

(c) shall base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation;

(d) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party or that the supplier has prior work experience in the territory of that Party; and

(e) may require relevant prior experience where essential to meet the requirements of the procurement.

2. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

(d) final judgments in respect of serious crimes or other serious offences;

(e) grave professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier; or

(f) failure to pay taxes.

ARTICLE 10.12

Qualification of Suppliers

Registration Systems and Qualification Procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. No Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of another Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of other Parties on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

Selective tendering

3. Where a procuring entity intends to use selective tendering, the entity shall:

(a) include in the notice of intended procurement at least the information specified in subparagraphs 3 (a), 3 (b), 3 (f), 3 (g), 3 (j), and 3 (k) of Article 10.10 (Notices) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time-period for tendering, at least the information in subparagraphs 3 (d), 3 (e), 3 (h), 3 (i) and 3 (k) of Article 10.10 (Notices) to the qualified suppliers that it notifies as specified in subparagraph 2 (b) of Appendix 8 (Time Periods) to Annex XX (Government Procurement).

4. Where using selective tendering, a procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

5. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 4.

Multi-Use Lists

6. A procuring entity may establish or maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is published annually in the appropriate medium listed in Appendix 7 (Means of Publication) to Annex XX (Government Procurement), or, is made available continuously in the electronic medium listed in Appendix 7 (Means of Publication) to Annex XX (Government Procurement). Where a multi-use list will be valid for three years or less, a procuring entity may publish the notice only once, at the beginning of the period of validity of the list.

7. The notice provided for in paragraph 6 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list; and

(d) period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list.

8. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on that list all qualified suppliers within a reasonably period of time.

Information on Procuring Entity Decisions

9. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

10. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and on request of the supplier, promptly provide the supplier with a written explanation of the reason for its decision.

ARTICLE 10.13

Tender Documentation

1. A procuring entity shall make available to suppliers' tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided for in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;

(d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

2. Where procuring entities do not offer free direct access to the entire tender documents and any supporting documents by electronic means, entities shall make promptly available the tender documentation at the request of any interested supplier of the Parties. The procuring entities shall also promptly reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

ARTICLE 10.14

Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification nor prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to trade between the Parties.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, where such exist or otherwise, on national technical regulations, recognised national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documentation.

4. A procuring entity shall not prescribe any technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as “or equivalent” in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

7. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

8. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside the territory of the Party.

ARTICLE 10.15

Modifications of the Tender Documentation and Technical Specifications

1. Where, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall publish or provide those modifications, amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if known, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

ARTICLE 10.16

Time Periods

A procuring entity shall, consistent with its own reasonable needs, provide suppliers sufficient time to prepare and submit requests for participation and responsive tenders, taking into account in particular the nature and complexity of the procurement. Each Party shall apply time periods according to the conditions specified in Appendix 8 (Time Periods) to Annex XX (Government Procurement). Such time periods, including any extension of the time periods, shall be the same for all interested or participating suppliers.

ARTICLE 10.18

Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of another Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles 10.10 (Notices), 10.11 (Conditions for Participation), 10.12 (Qualification of Suppliers), 10.13 (Tender Documentation), 10.16 (Time Periods), 10.18 (Electronic Auctions), 10.19 (Negotiations), 10.20 (Treatment of Tenders) and 10.21 (Awarding of Contracts) only under the following circumstances:

(a) where:

(i) no tenders were submitted, or no supplier requested participation;

(ii) no tenders that conform to the essential requirements of the tender documentation were submitted;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been collusive;

provided that the requirements of the tender documentation are not substantially modified;

(b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorised agents, of goods and services that were not included in the initial procurement where a change of supplier for such additional goods and services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs to the procuring entity;

(d) insofar as strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using an open or selective tendering procedure;

(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

ARTICLE 10.18

Electronic Auctions

1. Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 10.19

Negotiations

1. A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement:

(a) where the entity has indicated such intent in the notice of intended procurement pursuant to Article 10.10 (Notices); or

(b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 10.20

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity provided that the mishandling is supported by documentation.

3. Where a procuring entity provides suppliers with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the entity shall provide the same opportunity to all participating suppliers.

ARTICLE 10.21

Awarding of Contracts

1. To be considered for award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be submitted by a supplier that satisfies the conditions for participation.

2. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that it has determined to be

capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) where price is the sole criterion, the lowest price.

3. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

4. A procuring entity shall not use option clauses, cancel a procurement or modify or terminate awarded contracts in a manner that circumvents the obligations of this Chapter.

ARTICLE 10.22

Transparency of Procurement Information

1. A procuring entity shall promptly inform participating suppliers of its contract award decisions and, on request, shall do so in writing. Subject to Article 10.23 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

2. No later than 72 days from the award of each contract for covered procurement, a procuring entity shall publish in a paper or electronic medium listed in Appendix 7 (Means of Publication) to Annex XX (Government Procurement), a notice that includes at least the following information about the contract:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and in cases where limited tendering was used pursuant to Article 10.17 (Limited Tendering), a description of the circumstances justifying the use of limited tendering.

Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time.

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports provided for in Article 10.17 (Limited Tendering), and to ensure the appropriate traceability of the conduct of covered procurement by electronic means.

ARTICLE 10.23

Disclosure of Information

1. On request of another Party, a Party shall provide promptly any information sufficient to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender.

2. In cases where the release of such information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

3. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided information, disclose information to a particular supplier that might prejudice fair competition between suppliers.

4. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Chapter where disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 10.24

Domestic Review Procedures for Supplier Challenges

1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent and effective manner, a challenge or complaint (complaint) by a supplier that there has been:

(a) breaches of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity shall encourage

that entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. Each supplier shall be allowed a sufficient time period to prepare and submit a complaint, which in no case shall be less than ten days from the time when the basis of the complaint became known or reasonably should have become known to the supplier.

4. Where a body other than the review authority initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity whose procurement is the subject of the complaint.

5. Each Party shall ensure that the review authority that is not a court shall either have its decisions subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the complaint and disclose all relevant documents to the review authority;

(b) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(c) the review authority shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

6. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in the suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and

(b) where a review body has determined that there has been a breach of this Chapter or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs reasonably incurred for the preparation of the tender or the costs relating to the complaint, or both.

ARTICLE 10.25

Modifications and Rectifications to Coverage

1. A Party may make rectifications of a purely formal nature to its coverage under this Chapter, or minor amendments to its Schedules in Annex XX (Government Procurement), provided that it notifies the other Parties in writing and no Party objects in

writing within 45 days following the date of the circulation of the notification. A Party that makes such a rectification or minor amendment need not provide compensatory adjustments to the other Parties.

2. For the purposes of this Article, rectifications of a purely formal nature and minor modifications include, but are not limited to:

(a) changes in the name of a procuring entity;

(b) the merger of one or more procuring entities listed in a Party's schedule;

(c) the separation of a procuring entity listed in a Party's schedule into two or more procuring entities that are all added to the procuring entities listed in the same section of the annex; and

(d) changes in website references.

3. A Party may otherwise modify its coverage under this Chapter provided that:

(a) it notifies the other Parties in writing and offers at the same time acceptable compensatory adjustments to maintain a level of coverage comparable to that existing prior to the modification, except where provided for in paragraph 4; and

(b) no Party objects in writing within 45 days following the date of the circulation of the notification.

4. A Party is not required to provide compensatory adjustments where the Parties agree that the proposed modification covers a procuring entity over which a Party has effectively eliminated its control or influence. If a Party objects to the assertion that such government control or influence has been effectively eliminated, the objecting Party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under this Chapter.

5. If the modifying Party and any objecting Party resolve the objection through consultations, the modifying Party shall notify the other Parties of the resolution.

6. The Joint Committee shall modify Annex XX (Government Procurement) to reflect any agreed modification.

ARTICLE 10.26

Ensuring Integrity in Procurement Practices

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated time period, suppliers that the Party has determined to have engaged in fraudulent

or other illegal actions in relation to government procurement in the Party's territory. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

ARTICLE 10.27

Small and Medium Enterprises Participation

1. The Parties recognise the importance of the participation of small and medium enterprises (SMEs) in government procurement. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular of SMEs.

2. The Parties may agree to work jointly towards exchanging information on facilitating SMEs access to government procurement procedures, methods and contracting requirements, focused on SMEs special needs.

ARTICLE 10.28

Cooperation

1. The Parties recognise the importance of cooperation with a view to achieving a better understanding of their respective government procurement systems, as well as a better access to their respective markets.

2. The Parties shall endeavour to cooperate in matters of mutual interest such as:

(a) technical assistance and capacity building in relation to the implementation of this Chapter;

(b) development and use of electronic communications in government procurement systems;

(c) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;

(d) enhancing the ability to provide multilingual access to procurement opportunities; and

(e) exchange of experiences and information, such as regulatory frameworks, best practices and statistics.

ARTICLE 10.29

Contact Points

Each Party shall, within 30 days from the date of entry into force of this Agreement for that Party, designate one or more contact points to facilitate

communication pertaining to the implementation of 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 10.30

Review

The Parties shall undertake a review of this Chapter five years after the date of entry into force of this Agreement, with a view to improving the coverage, as mutually agreed by the Parties, and at least every three and a half years thereafter, unless otherwise agreed by the Parties.

ARTICLE 10.31

Transitional Measures

1. With a view to facilitate the implementation of this Chapter, Malaysia may, with the agreement of the other Parties:

(a) adopt or maintain transitional measures during a transition period; or;

(b) delay the implementation of any obligation of this Chapter,

as set out in, and in accordance with, Appendix 11 (Transitional Measures) to Annex XX (Government Procurement).

2. A transitional measure shall be applied in a transparent manner that does not discriminate between the Parties.

3. After the date of entry into force of this Agreement, the Parties, on request of Malaysia, may:

(a) extend the transition period for a measure adopted or maintained under paragraph 1 (a) or any implementation period negotiated under paragraph 1 (b); or

(b) approve the adoption of a new transitional measure under paragraph 1, in special circumstances that were unforeseen.

4. Malaysia shall take those steps during the transition period or implementation period referred to paragraphs 1 and 3 that may be necessary to ensure that it complies with this Chapter at the end of any such period.

CHAPTER 11

COMPETITION

ARTICLE 11.1

General Principles

1. The Parties recognise the importance of undistorted competition and that anticompetitive activities may undermine the benefits of this Agreement.

2. For the purposes of this Chapter, "anticompetitive activities" means:

   (a) agreements between enterprises, decisions by associations of enterprises and concerted practices between enterprises which have as their object or effect the prevention, restriction or distortion of competition; and

   (b) abuse by one or more undertakings of a dominant position in the territory of a Party as a whole or in a substantial part thereof.

3. Each Party shall take appropriate action against anticompetitive activities by applying its respective domestic competition laws and regulations in conformity with the principles of transparency, non-discrimination and procedural fairness.

4. This Chapter shall not be construed to create any direct obligations for undertakings.

ARTICLE 11.2

Scope

1. This Chapter shall apply to the commercial activities of all undertakings in so far as the application of these provisions does not obstruct the performance, in law or in fact, of particular public tasks assigned to them.

2. This Chapter shall not prevent a Party from providing exemptions and exclusions from application of its domestic competition laws and regulations, provided that those exemptions and exclusions are based on public policy grounds or public interest grounds, and made transparent. On request, a Party shall make available to another Party public information concerning such exemption.

ARTICLE 11.3

Cooperation

1. The Parties recognise the importance of cooperation to promote effective competition enforcement.

2. The Parties may cooperate and exchange information relating to competition matters, subject to their respective domestic laws and regulations and available resources.

ARTICLE 11.4

Consultations

The Parties may request consultations in the Joint Committee on matters related to anticompetitive practices and their adverse effects on trade. The consultations shall be without prejudice to the autonomy of each Party to develop, maintain and enforce its domestic competition laws and regulations.

ARTICLE 11.5

Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 12

TRADE AND SUSTAINABLE DEVELOPMENT

ARTICLE 12.1

Context and Objectives

1. The Parties recall the Declaration of the United Nations Conference on the Human Environment of 1972, the Rio Declaration on Environment and Development of 1992, Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Rio+20 Outcome Document "The Future We Want" of 2012, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998, the ILO Centenary Declaration for the Future of Work of 2019, the Ministerial Declaration of the UN Economic and Social Council on Full and Productive Employment and Decent Work for All of 2006, the ILO Declaration on Social Justice for a Fair Globalization of 2008 and the outcome document of the UN Summit on the Sustainable Development Goals "Transforming our World: The 2030 Agenda for Sustainable Development" of 2015.

2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually supportive components of sustainable development. The Parties underline the benefit of cooperation on trade related labour and environmental issues as part of a global approach to trade and sustainable development.

3. The Parties reaffirm their commitment to promote the development of international trade in such a way as to contribute to the objective of sustainable development and to ensure that this objective is integrated and reflected in the Parties' trade relationship.

ARTICLE 12.2

Scope

Except as otherwise provided for in this Chapter, this Chapter applies to measures[20] adopted or maintained by the Parties affecting trade-related and investment-related aspects of labour and environmental issues.

[20] For the purposes of this Chapter, for Malaysia measures refers to "environmental laws" that are an Act of Parliament or regulation promulgated pursuant to an Act of Parliament that are enforceable by action of the Federal Government.

ARTICLE 12.3

Right to Regulate and Levels of Protection

1. Recognising the right of each Party to establish its own level of environmental and labour protection, and to adopt or modify accordingly its relevant domestic laws, policies and practices, each Party shall endeavour to ensure that its domestic laws, policies and practices provide for and encourage high levels of environmental and labour protection, consistent with standards, principles and agreements referred to in Articles 12.5 (International Labour Standards and Agreements) and 12.6 (Multilateral Environmental Agreements and Environmental Principles), and to further improve the level of protection provided for in those domestic laws, policies and practices.

2. The Parties recognise the importance, when preparing and implementing measures related to the environment and labour conditions that affect trade and investment between them, of taking account of scientific, technical and other information, and relevant international standards, guidelines and recommendations.

ARTICLE 12.4

Upholding Levels of Protection in the Application and Enforcement of Laws, Regulations or Standards

1. A Party shall not fail to effectively enforce its environmental and labour laws, regulations or standards through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.

2. Without prejudice to each Party's right to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant domestic laws, policies and practices, a Party shall not:

(a) weaken or reduce the level of environmental or labour protection provided by its domestic laws, regulations or standards with the sole intention to encourage investment from another Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory; or

(b) waive or otherwise derogate from, or offer to waive or otherwise derogate from, such domestic laws, regulations or standards with the sole intention to encourage investment from another Party or to seek or to enhance a competitive trade advantage of producers or service providers operating in its territory.

ARTICLE 12.5

International Labour Standards and Agreements

1. The Parties strive to attain full and productive employment and decent work for all as a foundation for sustainable development.

2. The Parties recall the obligations deriving from membership of the ILO in respect of the fundamental principles and rights at work as reflected in the ILO Declaration on Fundamental Principles and Rights at Work of 1998, as amended in 2022. Each Party commits to respect, promote and realise the principles concerning the fundamental rights, namely:

(a) freedom of association and the effective recognition of the right to collective bargaining;

(b) the elimination of all forms of forced or compulsory labour;

(c) the effective abolition of child labour;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) a safe and healthy working environment.

3. The Parties shall effectively implement the ILO Conventions which they have ratified, and make continued and sustained efforts towards ratifying the fundamental and other ILO Conventions that are classified as "up-to-date" by the ILO, taking into account their domestic circumstances.[21]

4. The Parties recognise the importance of the strategic objectives of the ILO Decent Work Agenda, as reflected in the Declaration on Social Justice for a Fair Globalization of 2008, as amended in 2022.

5. The Parties shall:

(a) develop and enhance measures for social protection and decent working conditions for all, including with regard to social security, occupational safety and health, wages and earnings, working time and other conditions of work;

(b) promote social dialogue and tripartism; and

(c) build and maintain a well-functioning labour inspection system.

6. Each Party shall ensure that persons with a recognised interest under its law in a particular matter have appropriate access to administrative and judicial proceedings for the enforcement of the Party's labour laws.

7. The violation of fundamental principles and rights at work shall not be invoked or otherwise used as a legitimate comparative advantage and that labour standards shall not be used for protectionist trade purposes.

[21] This paragraph only applies to the Parties that are ILO members.

ARTICLE 12.6

Multilateral Environmental Agreements and Environmental Principles

Each Party reaffirms its commitment to the effective implementation in its laws and practices of the multilateral environmental agreements to which it is a party, and to recognise and respect environmental principles reflected in the international instruments referred to in Article 12.1 (Context and Objectives).

ARTICLE 12.7

Promotion of Trade and Investment Favouring Sustainable Development

1. The Parties shall strive to facilitate and promote foreign investment, trade in and dissemination of goods and services beneficial to the environment, including environmental technologies, sustainable renewable energy, energy efficient and ecolabelled goods and services.

2. The Parties shall strive to facilitate and promote foreign investment, trade in and dissemination of goods and services that contribute to sustainable development, including goods and services that are the subject of schemes such as fair and ethical trade.

3. To this end, the Parties agree to exchange views and may consider, jointly or bilaterally, cooperation in this area.

4. The Parties shall encourage cooperation between enterprises in relation to goods, services and technologies that contribute to sustainable development and are beneficial to the environment.

ARTICLE 12.8

Women's Economic Empowerment and Trade

1. The Parties recognise that women's participation in international trade can contribute to advancing women's economic empowerment and economic independence and that enhancing their participation in national and international economies contribute to sustainable economic development.

2. The Parties reaffirm the commitments made in the Joint Declaration on Trade and Women's Economic Empowerment at the WTO Ministerial Conference in Buenos Aires in December 2017.

3. The Parties reaffirm their commitment to implement in their laws, policies and practices the international agreements pertaining to equality of opportunity or non-discrimination to which they are a party, in particular their provisions related to eliminating discrimination against women in the economy and in the field of employment.

ARTICLE 12.9

Sustainable Forest Management and Associated Trade

1. The Parties recognise the importance of effective forest law and governance in order to ensure sustainable forest management and thereby contribute to the reduction of greenhouse gas emissions and biodiversity loss resulting from deforestation and degradation of natural forest and peat swamp forest.

2. With the aim of contributing to sustainable forest management, the Parties commit to promote trade in goods that derive from sustainably managed forests. To this end, the Parties undertake to, *inter alia*:

(a) promote the effective use of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with regard to endangered timber species;

(b) promote the development and use of certification schemes for forest goods from sustainably managed forests;

(c) combat illegal logging by improving forest law enforcement and governance and by ensuring that only legally sourced timber is traded among the Parties; and

(d) cooperate on issues pertaining to sustainable forest management in the relevant multilateral fora in which they participate, such as the United Nations collaborative initiative on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+).

ARTICLE 12.10

Trade and Climate Change

1. The Parties recognise the importance of pursuing the objectives and principles of the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement in order to address the urgent threat of climate change and the role of trade and investment in pursuing these objectives.

2. Pursuant to paragraph 1, each Party commits to:

(a) effectively implement its respective commitments under the UNFCCC and the Paris Agreement;

(b) promote the contribution of trade and investment to the transition to a low-carbon-economy and to climate-resilient development; and

(c) cooperate bilaterally, regionally and in international fora as appropriate on trade-related climate change matters.

ARTICLE 12.11

Trade and Biological Diversity

1. The Parties recognise the importance of pursuing the objectives of the Convention on Biological Diversity (CBD) and CITES, and the role of trade in achieving these objectives.

2. Pursuant to paragraph 1, the Parties commit to:

(a) adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under CITES;

(b) implement effective measures to combat transnational organised wildlife crime throughout the entire value chain;

(c) enhance efforts to assess, address and minimise, the risk and adverse impact of invasive alien species; and

(d) cooperate, where applicable, on matters concerning trade and the conservation and sustainable use of biological diversity, including initiatives to reduce demand for illegal wildlife goods.

ARTICLE 12.12

Sustainable Management of Vegetable Oils Sector and Associated Trade

1. The Parties recognise the need to take into account the economic, environmental and social opportunities and challenges associated with the production of vegetable oils and that trade between them can play an important role in promoting sustainable development, management and operation of the vegetable oils sector.

2. Accordingly, the Parties commit to:

(a) effectively implement and enforce applicable laws, policies and practices aiming at ensuring management and operation of the vegetable oils sector in an economically, environmentally and socially beneficial manner;

(b) support the dissemination and use of sustainability certifications schemes practices and guidelines for sustainably produced vegetable oils and work towards making them accessible to all producers including smallholders;

(c) cooperate on improving and strengthening national standards related to the vegetable oils sector where applicable;

(d) ensure transparency of domestic policies measures pertaining to the vegetable oils sector.

3. For the palm oil sector, the Parties commit to effectively implement and enforce applicable laws, policies and practices aiming at:

(a) protecting forests, peatlands, and related ecosystems, in particular those of high carbon stock and high conservation value, halting deforestation, peat drainage and fire clearing in land preparation, reducing soil degradation, air and water pollution; and

(b) respecting the rights of workers, including migrant workers, as well as the rights of indigenous peoples and local communities, which includes ensuring the participatory, informed, non-coercive consultation and negotiations between organisations, local communities, and indigenous people prior to developments on their customary lands.

4. The Parties shall ensure that palm oil and its derivatives traded between the Parties are produced in accordance with the sustainability commitments referred to in paragraph 3.

ARTICLE 12.13

Responsible Business Conduct

Each Party shall promote responsible business conduct, by encouraging relevant practices, such as responsible management of supply chains by businesses. In this regard, the Parties acknowledge the importance of internationally recognised principles and guidelines[22], that have been endorsed or are supported by that Party.

ARTICLE 12.14

Cooperation on Trade and Sustainable Development

1. The Parties may, subject to national priorities, circumstances and available resources, cooperate on trade and investment related labour and environmental issues of mutual interest referred to in this Chapter bilaterally as well as in the international fora in which they participate.

2. Each Party may, as appropriate, invite the participation of relevant stakeholders in identifying possible areas of cooperation.

ARTICLE 12.15

Implementation and General Principles

1. The Parties shall designate the administrative entities which shall serve as contact point(s) for the purpose of implementing this Chapter.

[22] Examples of such internationally recognised principles and guidelines are the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

2. Each Party may request consultations at the technical level regarding any matter arising under this Chapter. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

3. If a Party considers that a problem persists after consultations in accordance with paragraph 2 have taken place, it may request consultations in the Joint Committee with a view to facilitating a resolution of the matter.

4. With regard to paragraphs 2 and 3, the Parties concerned may agree to seek advice from relevant international organisations or bodies.

5. The Parties may at any time agree to good offices, conciliation and mediation procedures. Such procedures may begin and be terminated at any time. Proceedings involving good offices, conciliation and mediation, shall be confidential and without prejudice to the rights of the Parties involved in any other procedures provided for in this Chapter. If the Parties involved so agree, good offices, conciliation and mediation procedures may continue while other proceedings referred to in Articles 12.16 (Consultations) and 12.17 (Panel of Experts) are in progress.

6. No Party shall have recourse to Chapter 15 (Dispute Settlement) of this Agreement for matters arising under this Chapter.

7. The Parties shall provide their stakeholders with the opportunity to share comments and make recommendations regarding the implementation of this Chapter.

ARTICLE 12.16

Consultations

1. A Party (the requesting Party) may request in writing consultations with another Party (the responding Party) regarding any matter arising under this Chapter. Such a request shall be submitted to the responding Party's contact point referred to in Article 12.15 (Implementation and General Principles). The request shall set out the reasons for requesting consultations, including sufficient information to enable a full examination of the matter to identify the provisions of this Chapter considered to be applicable, to enable the responding Party to respond. The requesting Party shall simultaneously provide a copy of the notification to the other Parties through the contact points referred to in Article 12.15 (Implementation and General Principles).

2. The responding Party shall reply to the request within 20 days from the date of receipt. If the parties making and receiving the request for consultation agree, the consultations may take place in the Joint Committee.

3. Whenever a Party, other than the consulting Parties, considers that it has substantial interest in the matter under consultation, such a Party may notify the consulting Parties no later than 14 days after the date of receipt of the copy of the request for consultations referred to in paragraph 2, of its desire to be joined in the consultations. The notifying Party shall simultaneously provide a copy of the notification to the other Parties. The notifying Party shall include in its notice an explanation of its substantial interest in the matter under consultation.

4. Consultations may be held in person or by any technological means available to the consulting Parties. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

5. Consultations shall commence within 45 days from the date of receipt of the request for consultations.

6. The consulting Parties shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Chapter and treat as confidential any information designated as such by the Party providing the information.

7. The Parties involved in the consultations may agree to seek advice from experts or bodies they deem appropriate to assist them in the consultations.

8. The consulting Parties shall inform the other Parties of any mutually agreed resolution of the matter. Any mutually agreed resolution shall be made publicly available, unless the consulting Parties agree otherwise.

9. Consultations shall be deemed terminated no later than 150 days from the date of receipt of the request for consultations pursuant to paragraph 1 unless otherwise agreed by the consulting Parties.

ARTICLE 12.17

Panel of Experts

1. If the Parties concerned fail to reach a mutually satisfactory resolution of a matter arising under this Chapter through consultations in accordance with Article 12.16 (Consultations): the requesting Party may request the establishment of a panel of experts by means of a written request to the responding Party, if:

(a) the Party to which the request is made does not reply within 20 days in accordance with paragraph 2 of Article 12.16 (Consultations).

(b) the Party to which the request is made does not enter into consultations within 45 days from the date of receipt of the request for consultations in accordance with paragraph 5 of Article 12.16 (Consultations).

(c) the consultations referred to in Article 12.16 (Consultations) fail to settle a dispute within 150 days from the date of receipt of the request for consultations by the responding Party.

2. The request for the establishment of a panel of expert made pursuant to paragraph 1 shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint sufficient to present the problem clearly. A copy of this request shall be communicated to the other Parties.

3. Unless the Parties concerned otherwise agree within 20 days from the receipt of the request for the establishment of the panel of experts, the terms of reference for the panel of experts shall be:

"To examine, in the light of the relevant provisions of this Chapter, the matter referred to in the request for the establishment of a panel of experts and issue a written report, to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the matter."

4. The recommendations of the panel of experts cannot add to or diminish the rights and obligations of the Parties concerned provided in this Agreement.

5. The panel of experts shall consist of three members. The requesting Party shall appoint one panellist. Within 30 days of the date of the receipt of the request, the responding Party to which it was addressed shall appoint another panellist.

6. The Parties concerned shall designate by common agreement the third panellist who shall chair the panel of experts. If the Parties concerned have not reached the agreement on the third panellist within 30 days from the appointment of the second panellist, the two panellists appointed in accordance with paragraph 5 shall, within 15 days, designate the third panellist. If any panellist of the panel of experts has not been appointed within 75 days of receipt of the request referred to in paragraph 1, either party concerned may request the Secretary-General of the Permanent Court of Arbitration ("PCA") to make the necessary appointments. In the event where the Secretary-General of the PCA is not able to appoint the third expert panellist or is a national or permanent resident of a party concerned, any party concerned may request the Deputy Secretary-General of the PCA or the next person in line who is not a national or permanent resident of a party concerned to make the necessary appointments.

7. The panellists shall have relevant expertise, including in international trade law and international labour law or environmental law. They shall be independent, serve in their individual capacities and shall not take instructions from any organisation or government with regard to issues related to the disagreement, or be affiliated with the government of a Party.

8. The date of establishment of the panel of experts shall be the date on which the chair is appointed.

9. The chair of the panel of experts shall not be a national, permanent resident nor have his or her usual place of residence in a party to the matter.

10. Any panellist may be challenged if circumstances give rise to justifiable doubts as to the panellist's impartiality, or independence. If a Party concerned does not agree with the challenge or the challenged panellist does not withdraw, the party making the challenge may request the Secretary-General of the PCA to decide on the challenge. If the Secretary-General is unable to act or is a national or permanent resident of a concerned, the party making the challenge may request the Deputy Secretary-General of the PCA or the next person in line who is not a national or permanent resident of a Party concerned to make a decision on the challenge.

11. If a panellist resigns, is removed or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of that original panellist. The work of the panel of experts shall be suspended pending appointment of the successor.

12. Where more than one Party requests the establishment of a panel of experts relating to the same matter or where the request involves more than one responding Party, and whenever feasible, a single panel of experts should be established to examine requests relating to the same matter.

13. A Party which is not involved in the matter shall be entitled, on delivery of a written notice to the Parties concerned, to make written submissions to the panel of experts, receive written submissions, including annexes, from the Parties concerned, attend hearings and make oral statements.

14. Unless the Parties concerned agree otherwise, the Panel of Experts shall adopt its rules of procedures within 30 days of its establishment.

15. The panel of experts shall examine the matter referred to it in the request for the establishment of a panel of experts in the light of the relevant provisions of this Chapter which the panel of experts shall interpret in accordance with customary rules of interpretation of public international law.

16. The hearings of the panel of experts shall be confidential.

17. There shall be no *ex parte* communications with the panel of experts concerning matters under its consideration.

18. The panel of experts may hire up to three assistants, unless otherwise required by the panel of experts or agreed by the Parties concerned.

19. All information or documents submitted by a Party concerned to the panel of experts, shall, at the same time as it is submitted to the panel of experts, be transmitted by that party to the other party concerned.

20. The Parties and the panel of experts shall treat as confidential information and documents submitted to the panel of experts which has been designated as confidential by the submitting Party. Any Party may make public statements as to its own position or submissions regarding the matter.

21. The panel of experts may seek information or advice from relevant international organisations or bodies. Any information obtained shall be submitted to the Parties concerned for their comments.

22. The deliberations of the panel of experts shall be kept confidential. The panel of experts shall take its decisions by consensus. In the event where the panel of experts is unable to reach a consensus, it may take its decisions by majority vote. Any member may furnish separate opinions on matters not unanimously agreed. The panel of experts shall not disclose which members are associated with majority or minority opinions. The reports of the panel of experts shall be drafted without the presence of the Parties concerned.

23. The panel of experts shall submit an initial report containing its findings and recommendations to the Parties concerned within 90 days from the date of establishment of the panel of experts. A Party concerned may submit written comments to the panel of experts on its initial report within 14 days from the date of receipt of the report. After considering any such written comments, the panel of experts may modify the initial report and make any further examination it considers appropriate. The panel of experts shall present to the Parties concerned a final report within 30 days from the date of receipt of the initial report. The final report shall be made public.

24. The Parties concerned shall discuss appropriate measures and come to a mutually acceptable solution to implement the recommendation of the panel of experts contained in the Final Report. Such measures shall be communicated to the other Parties within three months from the date of issuance of the final report and shall be monitored by the Joint Committee.

25. The recommendations in the final report by the panel of experts do not prejudice the rights of the Party concerned in implementing the appropriate measures to remedy the matter.

26. Any time period for the purposes of this Article may be modified by mutual agreement of the Parties concerned.

27. When a panel of experts considers that it cannot comply with a timeframe imposed on it for the purposes of this Article, it shall inform the Parties concerned in writing and provide an estimate of the additional time required. Any additional time should not exceed 30 days.

28. The Parties concerned may agree that a panel of experts suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the timeframes regarding the work of the panel of experts shall be extended by the amount of time that the work was suspended. If the work of a panel of experts has been suspended for more than 12 months, the authority for the establishment of the panel of experts shall lapse unless the Parties concerned agree otherwise. This shall not prejudice the rights of the requesting Party to request at a later stage, the establishment of a panel of experts on the same matter.

29. The requesting Party may withdraw its request for the establishment of a panel of experts at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new request for the establishment of a panel of experts regarding the same issue at a later point in time, no earlier than 12 months from the date of withdrawal.

30. The Parties concerned may agree to terminate the proceedings of the panel of experts by jointly so notifying the chair of the panel of experts at any time before the issuance of the final report to the Parties concerned.

ARTICLE 12.18

Review

The Parties shall periodically review, in the Joint Committee, progress achieved in pursuing the objectives set out in this Chapter, and consider relevant international developments to identify areas where further action could promote these objectives.

CHAPTER 13

COOPERATION AND CAPACITY BUILDING

ARTICLE 13.1

Objectives and Principles

1. This Chapter sets out a framework to facilitate and coordinate cooperation and capacity building relevant to this Agreement for the benefit of the Parties in accordance with their laws, regulations and policies.

2. The Parties declare their readiness to foster trade and economic cooperation in order to facilitate the implementation of the overall objectives of this Agreement, in particular to enhance trade and investment opportunities arising from this Agreement and to contribute to sustainable development.

3. The Parties also recognise that the involvement of the private sector, including SMEs, plays an important role in enhancing the trade and investment opportunities arising from this Agreement.

ARTICLE 13.2

Scope

1. Cooperation may cover any fields jointly identified by the Parties that may serve to enhance the Parties' and their economic operators' capacities to benefit from increased international trade and investment opportunities arising from this Agreement.

2. Cooperation may include trade and investment related aspects of activities such as:

(a) promotion and facilitation of exports of goods and services to the other Parties, and promotion of market opportunities;

(b) activities to facilitate the participation of SMEs in international trade and investment;

(c) customs and origin matters, including vocational training in the customs field;

(d) technical regulations and sanitary and phytosanitary measures, including standardisation and certification;

(e) regulatory assistance in areas such as intellectual property rights and public procurement;

(f) investment, trade and industry related aspects of sustainable development including promotion of a resource efficient, circular and green economy and labour and employment issues;

(g) sustainable agriculture and food systems;

(h) engineering, science, technology and innovation;

(i) green mobility and transport;

(j) digitalisation and automation;

(k) pharmaceuticals and medical devices; and

(l) any other areas of cooperation mutually agreed by the Parties.

3. The Parties shall seek to identify and develop innovative cooperation activities that provide added value to trade and investment between the Parties.

ARTICLE 13.3

Memorandum of Understanding

This Chapter shall be implemented on the basis of a Memorandum of Understanding on Cooperation and Capacity Building between the EFTA States and Malaysia. It shall be signed in parallel with this Agreement.

ARTICLE 13.4

Forms of Cooperation

1. The Parties recognise that cooperation and capacity building activities may be undertaken between two or more Parties on a mutually agreed basis and shall seek to complement and build on existing agreements or arrangements between them.

2. Cooperation and capacity building provided by the EFTA States for the implementation of this Chapter shall be carried out through programmes administered by the EFTA Secretariat, without prejudice to other cooperation and capacity building programmes that the Parties may develop in fields covered by this Agreement.

3. Cooperation and capacity building provided by Malaysia for the implementation of this Chapter shall be administered by the Ministry of Investment, Trade and Industry of Malaysia, without prejudice to other cooperation and capacity building programmes that the Parties may develop in fields covered by this Agreement.

4. The Parties shall cooperate with the objective of identifying and employing the most effective methods and means for the implementation of this Chapter. To this end they may, if appropriate, coordinate efforts with relevant international organisations.

5. The Parties shall endeavour to encourage technical, technological and scientific cooperation in a manner as agreed by the Parties and in accordance with their domestic laws and regulations.

6. Means of cooperation and capacity building may include:

(a) exchange of information, training, visits, exchange of experts and internships, and facilitating contacts between relevant institutions and economic operators;

(b) facilitation of dialogue and exchange of experiences between relevant institutions and economic operators involved in trade and investment promotion;

(c) implementation of joint actions such as seminars, workshops, meetings, training sessions, and outreach;

(d) promotion and encouragement of cooperation and matchmaking between academia, institutions dedicated to research, and private sectors of the Parties;

(e) technical and administrative assistance; and

(f) other forms of cooperation as mutually agreed by the Parties.

ARTICLE 13.5

Costs of Cooperation

1. The implementation of cooperation under this Chapter shall be subject to the availability of funds and resources of each Party.

2. Costs of cooperation under this Chapter shall be borne by the Parties within the limits of their own capacities and through their own channels, in a manner to be mutually agreed upon by the Parties.

ARTICLE 13.6

Sub-Committee on Cooperation and Capacity Building

1. For the purposes of effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Cooperation and Capacity Building (Cooperation Sub-Committee), composed of government representatives of each Party.

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

(a) review the implementation or operation of this Chapter and receiving reports from Parties on their involvement with technical activities under this Agreement;

(b) facilitate the exchange of information between Parties in areas including, but not limited to, experiences and lessons learned through cooperation and capacity building activities undertaken between them;

(c) discuss and consider issues or proposals for further cooperation and capacity building activities;

(d) initiate and undertake collaboration as appropriate to enhance and facilitate public-private partnerships in cooperation and capacity building activities;

(e) Invite, as appropriate, private sector entities, non-governmental organisations or other relevant institutions, to assist in the development and implementation of cooperation and capacity building activities;

(f) establish *ad hoc* working groups, as appropriate, which may include government or non-government representatives or both;

(g) coordinate with other sub-committees and working groups established under this Agreement, as appropriate;

(h) develop rules of procedures for the conduct of its work, as may be required by the Cooperation Sub-Committee; and

(i) engage in other activities as the Parties may agree upon.

3. The Cooperation Sub-Committee shall meet within one year of the date of entry into force of this Agreement, and thereafter as necessary.

4. The Cooperation Sub-Committee shall act by consensus.

5. The Cooperation Sub-Committee shall produce an agreed record of its meetings, including recommendations and next steps and, as appropriate, report to the Joint Committee.

6. The Cooperation Sub-Committee shall respect existing consultation mechanisms between Parties and, as appropriate, share information and coordinate with such mechanisms to ensure effective and efficient implementation of cooperative activities and projects.

ARTICLE 13.7

Contact Points

The Parties shall exchange names and addresses of designated contact points for matters pertaining to cooperation under this Chapter.

ARTICLE 13.8

Non-Application of Dispute Settlement

No Party shall have recourse to dispute settlement under Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 14

INSTITUTIONAL PROVISIONS

ARTICLE 14.1

Establishment of the EFTA-Malaysia Joint Committee

The Parties hereby establish the EFTA-Malaysia Joint Committee (Joint Committee) comprising representatives of each Party. Each Party shall be responsible for the composition of its delegation.

ARTICLE 14.2

Functions of the Joint Committee

1. The Joint Committee shall:

   (a) consider and supervise the implementation of this Agreement;

   (b) keep under review the possibility of further removal of barriers to trade and other restrictive measures concerning trade between the Parties;

   (c) oversee the further elaboration of this Agreement;

   (d) supervise the work of all sub-committees and working groups established under this Agreement;

   (e) endeavour to resolve disputes that may arise regarding the interpretation or application of this Agreement; and

   (f) consider any other matter as agreed by the Parties.

2. The Joint Committee may decide to set up such sub-committees and working groups as it considers necessary to assist it in accomplishing its tasks. Except where otherwise provided for in this Agreement, the sub-committees and working groups shall work under a mandate established by the Joint Committee. The Joint Committee may refer matters to, or consider matters raised by, the sub-committees or working groups. The Joint Committee may merge or dissolve any sub-committees or working groups it has established.

3. The Joint Committee may take decisions as provided for in this Agreement. On other matters, the Joint Committee may make recommendations to the Parties.

4. The Joint Committee shall take decisions and make recommendations by consensus. The Joint Committee may also adopt decisions and make recommendations regarding issues related only to Malaysia and one or more EFTA States. In such cases, consensus shall only involve the Parties concerned, and the decision or recommendation shall apply only to those Parties.

5. If a representative of a Party in the Joint Committee has accepted a decision subject to the fulfilment of domestic legal requirements, the decision shall enter into force on the first day of the third month following the date that the last Party, notifies the Depositary that its domestic legal requirements have been fulfilled, unless otherwise specified in the decision.

6. The Joint Committee shall meet within one year from the date of entry into force of this Agreement. Thereafter, it shall meet whenever necessary but normally every two years. Its meetings shall be chaired jointly by one of the EFTA States and Malaysia. Meetings of the Joint Committee shall be held in person or, if agreed, by technological means.

7. Each Party may request at any time, through a notice in writing to the other Parties, that a special meeting of the Joint Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.

8. The Joint Committee shall establish its rules of procedure.

ARTICLE 14.3

Contact Points

Each Party shall designate a contact point or points to facilitate communications among the Parties.

CHAPTER 15

DISPUTE SETTLEMENT

ARTICLE 15.1

Scope and Coverage

1. Except as otherwise provided for in this Agreement, this Chapter shall apply to the settlement of disputes between the Parties regarding the interpretation and application of this Agreement.

2. Subject to Article 15.2 (Choice of Forum), this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other agreements to which they are parties.

ARTICLE 15.2

Choice of Forum

1. Where a dispute regarding the same matter arises under this Agreement and under the WTO Agreement, the complaining Party may select the dispute settlement procedure in which to settle the dispute.[23]

2. The complaining Party shall notify in writing all other Parties of its intention to select a particular forum before doing so.

3. The forum selected shall be used to the exclusion of the other.

4. For the purposes of paragraph 1, dispute settlement procedures under the WTO Agreement are deemed to be selected by a Party's request for the establishment of a panel under Article 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, whereas dispute settlement procedures under this Agreement are deemed to be selected upon a request for arbitration pursuant to paragraph 1 of Article 15.5 (Request for Establishment of the Arbitration Panel).

ARTICLE 15.3

Good Offices, Conciliation and Mediation

1. The Parties to the dispute may at any time agree to good offices, conciliation or mediation. They may begin and be terminated at any time.

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[23] For the purposes of this Chapter, the terms "Party", "Party to the dispute", "complaining Party" and "Party complained against" can denote one or more Parties.

2. If the Parties to the dispute agree, good offices, conciliation or mediation proceedings may continue while the dispute proceeds for resolution before an arbitration panel.

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 their rights in any further proceedings.

ARTICLE 15.4

Consultations

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to reach a mutually satisfactory solution of any matter raised in accordance with this Article.

2. A Party may request in writing consultations with another Party if it considers that a measure is inconsistent with this Agreement. The Party requesting consultations shall at the same time notify the other Parties in writing of the request. The Party to which the request is made shall reply to the request within ten days from the date of receipt of the request for consultations. If the Parties requesting and receiving the request for consultation agree, the consultations may take place in the Joint Committee.

3. Consultations may be held in person or by any technological means available to the consulting Parties.

4. Consultations shall commence within 30 days from the date of receipt of the request for consultations. Consultations on urgent matters, including those on perishable goods, shall commence within 15 days from the date of receipt of the request for consultations.

5. The consulting Parties shall provide sufficient information to enable a full examination of whether the measure is inconsistent with this Agreement and treat as confidential any information designated as such by the Party providing the information. The request for consultation shall include the reasons for the request, including the identification of the measure at issue and an indication of the legal basis for the complaint. The consulting Parties shall make available for the consultations personnel who have expertise in the matter.

6. The consultations shall be confidential and without prejudice to the rights of the Parties in any further proceedings.

7. Whenever a Party other than the consulting Parties considers that it has an interest in the consultations, such Party may notify the consulting Parties no later than seven days after the date of receipt of the copy of the request for consultations referred to in paragraph 2, of its desire to be joined in the consultations. The notifying Party shall simultaneously provide a copy of the notification to the other Parties.

8. The consulting Parties shall inform the other Parties of any mutually agreed resolution of the matter.

ARTICLE 15.5

Request for Establishment of the Arbitration Panel

1. The complaining Party may request the establishment of an arbitration panel by means of a written request to the Party complained against, if:

(a) the Party complained against does not reply to the request within ten days in accordance with paragraph 2 of Article 15.4 (Consultations);

(b) the Party complained against does not enter into consultations within 30 days, or 15 days for urgent matters including those on perishable goods, from the date of receipt of the request for consultations in accordance with paragraph 3 of Article 15.4 (Consultations);

(c) the consultations referred to in Article 15.4 (Consultations) fail to settle a dispute within 60 days, or 30 days for urgent matters including those on perishable goods, from the date of receipt of the request for consultations by the Party complained against.

2. A copy of this request shall be communicated to the other Parties.

3. The request for the establishment of an arbitration panel made pursuant to paragraph 1 shall identify the specific measure at issue and provide a brief summary of the legal and factual basis of the complaint sufficient to present the problem clearly.

ARTICLE 15.6

Terms of Reference

1. Unless the Parties to the dispute otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitration panel, the terms of reference for the arbitration panel shall be:

> "To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitration panel pursuant to Article 15.5 (Request for the Establishment of the Arbitration Panel) and issue a written report, to make findings of law and fact together with the reasons, as well as recommendations, if any, for the resolution of the dispute."

2. The recommendations of the arbitration panel cannot add to or diminish the rights and obligations of the Parties to the dispute provided in this Agreement.

ARTICLE 15.7

Composition of the Arbitration Panel

1. An arbitration panel shall consist of three arbitrators. In the written request pursuant to Article 15.5 (Request for Establishment of Arbitration Panel), the

complaining Party shall appoint one arbitrator. Within 30 days from the date of receipt of the request, the Party complained against shall appoint another arbitrator.

2. The Parties to the dispute shall designate by common agreement the third arbitrator who shall chair the arbitration panel. If the Parties to the dispute have not reached the agreement on the third arbitrator within 30 days from the appointment of the second arbitrator, the two arbitrators appointed in accordance with paragraph 1 shall, within 15 days, designate the third arbitrator. If any arbitrator has not been appointed within 75 days of receipt of the request referred to in paragraph 1, either Party to the dispute may request the Secretary-General of the Permanent Court of Arbitration (PCA) to make the necessary appointments. In the event where the Secretary-General of the PCA is not able to appoint the third arbitrator or is a national or permanent resident of a Party to the dispute, any Party to the dispute may request the Deputy Secretary-General of the PCA or the next person in line who is not a national or permanent resident of a Party to the dispute to make the necessary appointments.

3. All arbitrators shall have specialised knowledge or experience in law, international trade or other matters relating to this Agreement or in the resolution of disputes arising under international trade agreements. They shall be independent and impartial, including serving in their individual capacities and not be affiliated with, neither take instructions from any Party to the dispute nor have dealt with the case in any capacity. A prospective arbitrator shall disclose to those who approach him or her in connection with his or her possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed, shall disclose such circumstances to the Parties to the dispute unless they have already been informed by him or her of these circumstances. An appointed arbitrator shall continue to disclose any such circumstances as soon as he or she becomes aware of them.

4. The chair of the arbitration panel shall not be a national, permanent resident nor have his or her usual place of residence in a Party to the dispute.

5. The date of establishment of the arbitration panel shall be the date on which the last arbitrator is appointed.

6. Any arbitrator may be challenged if circumstances give rise to justifiable doubts as to the arbitrator's impartiality, or independence. If a Party to the dispute does not agree with the challenge or the challenged arbitrator does not withdraw, the Party making the challenge may request the Secretary-General of the PCA to decide on the challenge. If the Secretary-General is unable to act or is a national or permanent resident of a Party to the dispute, the Party making the challenge may request the Deputy Secretary-General of the PCA or the next person in line who is not a national or permanent resident of a party to the dispute to make a decision on the challenge.

7. If an arbitrator resigns, is removed or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator. The work of the arbitration panel shall be suspended pending appointment of the successor.

8. Where more than one Party requests the establishment of an arbitration panel relating to the same matter or where the request involves more than one Party complained

against, and whenever feasible, a single arbitration panel should be established to examine complaints relating to the same matter.

9. A Party which is not a Party to the dispute shall be entitled, on delivery of a written notice to the Parties to the dispute, to make written submissions to the arbitration panel, receive written submissions, including annexes, from the Parties to the dispute, attend hearings and make oral statements.

ARTICLE 15.8

Procedures of the Arbitration Panel

1. Unless otherwise specified in this Agreement or agreed between the Parties to the dispute, the procedures of the arbitration panel shall be governed by Articles 2 and 4 and Section III (except Article 26) and Section IV (except Articles 35 and 37) of the Optional Rules for Arbitrating Disputes between Two States of the Permanent Court of Arbitration, as effective from 20 October 1992, *mutatis mutandis*.

2. The arbitration panel shall examine the matter referred to it in the request for the establishment of an arbitration panel in the light of the relevant provisions of this Agreement which the arbitration panel shall interpret in accordance with customary rules of interpretation of public international law.

3. The hearings of the arbitration panel shall be open to the public, unless the Parties to the dispute decide otherwise. The arbitration panel shall close the hearing for the duration of any discussions of confidential information.

4. There shall be no *ex parte* communications with the arbitration panel concerning matters under its consideration.

5. The arbitration panel may hire up to three assistants, unless otherwise required by the arbitration panel or agreed by the Parties to the dispute.

6. All information or documents submitted by a Party to the dispute to the arbitration panel shall, at the same time as it is submitted to the arbitration panel, be transmitted by that Party to the other Party to the dispute.

7. The Parties to the dispute and the arbitration panel shall treat as confidential information and documents submitted to the arbitration panel which has been designated as confidential by the submitting Party. Any Party may make public statements as to its own position or submissions regarding the dispute. Where a Party to the dispute has provided information or written submissions designated to be confidential, that party to the dispute shall, within 30 days of a request of the other Party to the dispute, provide a non-confidential summary of the information or written submissions which may be disclosed to the public.

8. The deliberations of the arbitration panel shall be kept confidential. The arbitration panel shall take its decisions by consensus. In the event where the arbitration panel is unable to reach a consensus, it may take its decisions by majority vote. Any member of the arbitration panel may furnish separate opinions on matters not unanimously agreed. The arbitration panel shall not disclose which members of the

arbitration panel are associated with majority or minority opinions. The reports of the arbitration panel shall be drafted without the presence of the Parties to the dispute.

ARTICLE 15.9

Arbitration Panel Reports

1. The arbitration panel shall normally issue to the Parties to the dispute an initial report within 90 days of the date of establishment of the arbitration panel. The initial report should be issued no later than 120 days after the date of the establishment of the arbitration panel.

2. Any party to the dispute may submit written comments to the arbitration panel on its initial report within 14 days of the receipt of the report. After considering any written comments by the Parties to the dispute on the initial report, the arbitration panel may reconsider its report and make any further examination it considers appropriate.

3. The arbitration panel shall normally issue to the Parties to the dispute a final report within 30 days from the date of receipt of the initial report. The ruling should be issued no later than 60 days after the date of receipt of the initial report.

4. The initial and final reports shall contain the findings of facts, the applicability of the relevant provisions, a descriptive part summarising the submissions and arguments of the Parties to the dispute, the reasons for the arbitration panel's findings and rulings as well as recommendations, if any, for the resolution of the dispute and the implementations of the ruling.

5. The final report, as well as any rulings under Articles 15.11 (Implementation of the Final Report) and 15.12 (Compensation and Suspension of Benefits), shall be communicated to the Parties and shall, subject to the protection of confidential information, be made public.

6. The report and any ruling of the arbitration panel shall be final and binding on the Parties to the dispute.

7. On matters of urgency, including those regarding perishable goods, the arbitration panel shall make every effort to issue its initial and final reports to the Parties to the dispute within half of the respective time periods under paragraphs 1 and 3.

ARTICLE 15.10

Suspension or Termination of Proceedings

1. The Parties to the dispute may agree that an arbitration panel suspends its work at any time for a period not exceeding 12 months from the date of such agreement. In the event of such a suspension, the timeframes regarding the work of the arbitration panel shall be extended by the amount of time that the work was suspended. If the work of an arbitration panel has been suspended for more than 12 months, the authority for the establishment of the arbitration panel shall lapse unless the Parties to the dispute agree

otherwise. This shall not prejudice the rights of the complaining Party to request at a later stage, the establishment of an arbitration panel on the same matter.

2. A complaining Party may withdraw its complaint at any time before the initial report has been issued. Such withdrawal is without prejudice to its right to introduce a new complaint regarding the same issue at a later point in time, no earlier than 12 months from the date of withdrawal.

3. The Parties to the dispute may agree to terminate the proceedings of the arbitration panel by jointly notifying the chair of the arbitration panel at any time before the issuance of the final report to the Parties to the dispute.

4. An arbitration panel may, at any stage of the proceedings prior to the issuance of the final report, propose that the Parties to the dispute seek to settle the dispute amicably.

ARTICLE 15.11

Implementation of the Final Report

1. The Party complained against shall promptly comply with the ruling in the final report. Where it is not practicable to comply immediately, the Party complained against shall comply with the ruling within a reasonable period of time. The Parties to the dispute shall endeavour to agree on a reasonable period of time to do so. In the absence of such agreement within 45 days from the date of the issuance of the final report, a party to the dispute may request the original arbitration panel to determine the length of the reasonable period of time, in light of the particular circumstances of the case. The ruling of the arbitration panel shall normally be given within 60 days from the date of receipt of that request.

2. The Party complained against shall notify the complaining Party of the measure adopted in order to comply with the ruling in the final report, as well as provide a detailed description of how the measure ensures compliance sufficient to allow the complaining Party to assess the measure.

3. In case of disagreement as to the existence of a measure complying with the ruling in the final report or to the consistency of that measure with the ruling, such disagreement shall be decided by the same arbitration panel upon the request of a party to the dispute before compensation can be sought or suspension of benefits can be applied in accordance with Article 15.12 (Compensation and Suspension of Benefits). The ruling of the arbitration panel shall normally be rendered within 90 days from the date of receipt of the request.

ARTICLE 15.12

Compensation and Suspension of Benefits

1. If the Party complained against does not comply with a ruling of the arbitration panel referred to in Article 15.11 (Implementation of the Final Report), that Party shall, if so requested by the complaining Party, enter into consultations with a view to agreeing on mutually acceptable compensation. If no such agreement has been reached within 20

days from the date of receipt of the request, the complaining Party shall be entitled to suspend the application of benefits granted under this Agreement but only equivalent to those affected by the measure that the arbitration panel has found to be inconsistent with this Agreement.

2. The complaining Party shall notify the Party complained against of the benefits which it intends to suspend, the grounds for such suspension and when suspension will commence, no later than 30 days before the date on which the suspension is due to take effect. Within 15 days from the date of receipt of that notification, the Party complained against may request the original arbitration panel to rule on whether the benefits which the complaining Party intends to suspend are equivalent to those affected by the measure found to be inconsistent with this Agreement, and whether the proposed suspension is in accordance with paragraphs 1 and 2. The ruling of the arbitration panel shall normally be given within 45 days from the date of receipt of that request. Benefits shall not be suspended until the arbitration panel has issued its ruling.

3. In considering what benefits to suspend, the complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the arbitration panel has found to be inconsistent with this Agreement. The complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

4. Compensation and suspension of benefits shall be temporary measures and shall only be applied by the complaining Party until the measure found to be inconsistent with this Agreement has been withdrawn or amended so as to bring it into conformity with this Agreement, or until the Parties to the dispute have resolved the dispute otherwise. Neither compensation nor suspension is preferred to full elimination of the non-conformity as determined in the report of the arbitration panel referred to in Article 15.9 (Arbitration Panel Report).

5. At the request of a party to the dispute, the original arbitration panel shall rule on the conformity with the final report of any implementing measures adopted after the suspension of benefits and, in light of such ruling, whether the suspension of benefits should be terminated or modified. The ruling of the arbitration panel shall normally be given within 30 days from the date of receipt of that request and shall be promptly complied with.

ARTICLE 15.13

Other Provisions

1. Whenever possible, the arbitration panel referred to in Articles 15.11 (Implementation of the Final Report) and 15.12 (Compensation and Suspension of Benefits) shall comprise of the same arbitrators who issued the final report. If this is not possible, the replacement arbitrator shall be appointed pursuant to Article 15.7 (Composition and Establishment of Arbitration Panel).

2. Any time period mentioned in this Chapter may be modified by mutual agreement of the Parties to the dispute.

3. When an arbitration panel considers that it cannot comply with a time frame imposed on it under this Chapter, it shall inform the Parties to the dispute in writing of the reasons for the delay and provide an estimate of the additional time required. Any additional time required should not exceed 30 days.

4. A written submission, request, notice or other document shall be considered received when it has been delivered to the addressee through diplomatic channels in the territory of the addressee. At the same time, a copy of these documents shall be provided in electronic format to the designated contact points. The contact points shall be notified to the Joint Committee.

ARTICLE 15.14

Language

1. All proceedings pursuant to this Chapter shall be conducted in English.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in English.

CHAPTER 16

FINAL PROVISIONS

ARTICLE 16.1

Annexes and Appendices

The Annexes to this Agreement, including their Appendices, constitute an integral part of this Agreement.

ARTICLE 16.2

Amendments

1. Any Party may submit proposals for amendments to this Agreement to the Joint Committee for consideration and recommendation.

2. Amendments to this Agreement shall be subject to ratification, acceptance or approval in accordance with the Parties' respective legal requirements.

3. Unless otherwise agreed by the Parties, amendments shall enter into force on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval.

4. Notwithstanding paragraphs 1 to 3, the Joint Committee may decide to amend the Annexes and Appendices to this Agreement.

5. If a Party has accepted a decision subject to the fulfilment of its domestic legal requirements, the decision shall enter into force on the first day of the third month following the date that the last Party notifies the Depositary that its internal requirements have been fulfilled, unless otherwise specified in the decision.

6. The text of the amendments and the instruments of ratification, acceptance or approval shall be deposited with the Depositary.

7. If its domestic legal requirements permit, a Party may apply any amendment provisionally, pending its entry into force for that Party. Provisional application of amendments shall be notified to the Depositary.

ARTICLE 16.3

Accession

1. Any State becoming a Member of EFTA may accede to this Agreement, provided that the Joint Committee approves its accession, on terms and conditions to be agreed upon by the Parties. The instrument of accession shall be deposited with the Depositary.

2. In relation to an acceding State, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of accession, or the approval of the terms of accession by the existing Parties, whichever is later.

ARTICLE 16.4

Withdrawal and Expiration

1. Each Party may withdraw from this Agreement by means of a written notification to the Depositary. The withdrawal shall take effect six months after the date on which the notification is received by the Depositary, unless the Parties agree on a different period.

2. If Malaysia withdraws, this Agreement shall expire when its withdrawal becomes effective.

3. Any EFTA State which withdraws from the Convention establishing the European Free Trade Association shall, *ipso facto* on the same day as the withdrawal takes effect, cease to be a Party to this Agreement.

ARTICLE 16.5

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective domestic legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. If its respective domestic legal requirements permit, any Party may apply this Agreement provisionally, pending its entry into force for that Party. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

3. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and Malaysia have deposited their instrument of ratification, acceptance or approval with the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after the date on which at least one EFTA State and Malaysia have deposited their instrument of ratification, acceptance or approval with the Depositary, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

ARTICLE 16.6

Depositary

The Government of Norway shall act as Depositary.

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

DONE at Tromsø, this 23rd day of June 2025, in one original in English, which shall be deposited with the Depositary, who shall transmit certified copies to all the Parties.

For Iceland

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For Malaysia

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For the Principality of Liechtenstein

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For the Kingdom of Norway

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For the Swiss Confederation

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